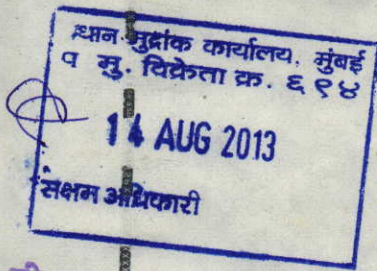




महाराष्ट्र MAHARASHTRA



श्री. प्रा. ना. चिंचवरे

23 SEP 2013  
को. ऑप. बैंक लि., मंत्रालय मुंबई ४०० ०२२  
एल. एस. सी. क्रमांक: २०७  
क्रमांक: - २०७  
लघुवाद न्यायालय  
संवन्धी/श्री./श्रीमती  
यांना न्यायेतर मुद्रांक  
विकला.  
23 SEP 2013  
NATIONAL STOCK EXCHANGE OF INDIA  
"EXCHANGE PLAZA"  
BANDRA - KURLA COMPLEX,  
BANDRA (E), MUMBAI - 400 051.  
साक्षी विजय नलावडे  
मुद्रांक विक्रेता

**Before the Panel of  
Arbitral Tribunal comprising of**

1. Mr. Uttam Gramopadhye (Presiding Arbitrator)
2. Mr. D.P.Roy. (Co- Arbitrator)
3. Mr. Shailesh R.Ghedia. (Co- Arbitrator)

In the Matter of Arbitration under the Bye-laws, Rules and Regulations of  
National Stock Exchange of India Limited (NSE)

**Arbitration No.: CDS/M-0001/2013**

W \*



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NATIONAL STOCK EXCHANGE OF INDIA  
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Before the Panel of  
Arbitral Tribunal consisting of

1. Mr. Ram Chandra Prasad  
2. Mr. D. K. Roy  
3. Mr. Shankar K. Chatterjee (as arbitrator)  
Matter of arbitration under the Arbitration and Conciliation Act, 1996  
National Stock Exchange of India Limited (NSEI)  
Arbitration No. 100/100

100



Between

**Globe Capital Market Limited**

(Clearing Member)  
Registered Office:  
609, Ansal Bhawan,  
16, K.G. Marg,  
Connaught Place,  
New Delhi- 110 001

.... Applicant

And

**M/S HRIM Finance & Securities Pvt. Ltd.**

(Trading Member)  
3 B, Jaihind Estate Building,  
1<sup>st</sup> Floor, Room No.7,  
Dr. Atmaram Merchant Road,  
Bhuleshwar, Mumbai – 400002

....Respondent

This is an Arbitration Reference submitted to us under the Bye-laws, Rules and Regulations of the National Stock Exchange Limited.

**1. BACKGROUND:**

1.1 The reference in this dispute being Reference No. CDS/M-0001/2013 was entrusted to us by the National Stock Exchange of India Limited (herein after 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.

**2. STATUS OF THE PARTIES:**

2.1 From the application dated 12<sup>th</sup> November 2012, filed by the Applicant with NSE, it is observed that the Applicant is a SEBI registered Clearing member of NSE. The Respondent is a Trading member of NSE and constituent of the Applicant.

**3. CLAIM & COUNTER CLAIM**

3.1 The Applicant, Globe Capital Market Limited has filed this present reference claiming a sum of Rs. 1,07,23,934.91 (Rupees One Crore Seven Lacs Twenty Three Thousand Nine Hundred Thirty Four and Paise Ninety One Only ) from the Respondent – M/S Hrim Finance & Securities Pvt. Ltd. (Trading Member) along with interest @18% p.a. from 31<sup>st</sup> May, 2012 till the date of payment/realization.





3.2 The Respondent, M/S HRIM Finance & Securities Pvt. Ltd. has preferred a counter claim of Rs.10,65,02,924 (Rs. Ten Crores Sixty Five lakhs Two Thousand Nine Hundred and Twenty Four only) against the Applicant along with interest @ 18% p.a. from 20<sup>th</sup> August 2013 till the date of payment/realization.

#### **4. HEARINGS:**

4.1 The first hearing was fixed on 6<sup>th</sup> September, 2013 vide notice dated 20/08/2013 issued to both the parties by the Arbitration Dept. of the Exchange. Subsequently the adjourned hearing was held 28<sup>th</sup> October, 2013.

#### **5. STATEMENT OF CLAIM OF THE APPLICANT & PRAYER OF THE APPLICANT**

The statement of claim dated 12<sup>th</sup> November 2012 as per the Applicant is briefly as under:

- a. The Applicant is a corporate Stock & Share Broker registered as a Clearing Member with NSE (Clearing Number M50302) and duly registered with SEBI having registration number INB230663732 (Capital Market Segment), INF230663732 (F & O Segment) and INF230663732 (Currency Derivative Segment). The Applicant undertakes clearing activities of other trading members/constituents and has more than 100 Trading Members registered with NSE for routing their clearing and settlement obligations through the Applicant in F&O and Currency Derivative segment. The Applicant states that it has earned its goodwill and established reputation among its retail, High Net Worth Individuals (HNIs), Corporate clients, Sub-Brokers etc on account of fair, transparent and honest dealings.
- b. The Applicant states that the Respondent is a corporate trading member of NSE having TM Code No. 11116 and duly registered with SEBI having registration number INE231111635. That the Respondent executed 'Clearing Member – Trading Member Agreement on 28<sup>th</sup> April, 2010 with the Applicant and become a Constituent of the Applicant for the purpose of, inter alia, clearing and settlement of its obligations on NSE for Currency Derivative Segment. The Respondent has its own proprietary trading as well as client's business, on whose behalf it carries out transactions in Currency Derivative Segment at the relevant time from its office/s.
- c. The Applicant states that the Respondent was maintaining their ledger account on an open, mutual and running account basis. In the said ledger account to/from payments, daily mark to market profit/loss, premium of Option Contracts, margin entries, clearing charges bills, late pay in charges etc. were recorded and entered from time to time.
- d. The Applicant states that the Respondent used to deposit equity shares in DEMAT mode as collateral for and towards open positions, debit balance etc. in currency



derivatives segment. The Respondent also used to deposit funds and withdraw funds/securities from time to time depending upon the requirements of the margins. The Respondent never objected to or raised any of the grievances with the Applicant during the course of dealings.

e. The Applicant states that the Respondent was having a debit balance of Rs. 7,84,40,333.81 as on 17.05.2012 in its ledger account. The Applicant repeatedly asked Respondent to deposit further margin money and to clear its debit balance. The Applicant had sent various emails to the Respondent in this regard however the Respondent neither made the payment nor gave a satisfactory payment schedule. Accordingly, due to non-payment of the obligations by Respondent, the Applicant sold the shares amounting to Rs. 88,44,619/- lying as collateral securities with the Applicant. The Applicant also informed National Securities Clearing Corporation Ltd.(NSCCL) vide its letter dated 29.05.2012 regarding selling of all the shares lying with the Applicant as collaterals due to non-payment of obligations by the Respondent.

f. Further, The Applicant states that the Bank guarantees of Rs.4,50,00,000/- lying with the Applicant towards margin obligations, were also invoked by the Applicant from Indusind Bank, Mumbai vide Applicants letter dated 18th May, 2012. A letter dated 29.05.2012, in this regard, was also forwarded to NSCCL. Even after taking the above mentioned steps, the Respondent has still a debit balance of Rs. 1,09,22,713.59 outstanding since 31.05.2012. That despite repeated reminders and demand, the Respondent has failed and neglected to make the aforesaid payment. That as per the statement of account kept and maintained by the Applicant in the ordinary course of its business, the Respondent is liable to pay a sum of Rs. 1,07,23,934.91 to the Applicant as on 25<sup>th</sup> Sept,2012.

g. The Applicant, therefore, prays that:

- 1) An award be passed in favour of the Applicant and against the respondent directing the Respondent to pay to the Applicant the said sum of Rs. 1,07,23,934.91 together with interest @18 % p.a. from 31 May 2012 till the date of final payment/realization.
- 2) The Respondent be directed to pay the cost of this arbitration Proceeding.
- 3) Any other relief's as the Learned Arbitrators may deem fit.

#### **6. RESPONDENT'S STATEMENT OF DEFENCE & COUNTER CLAIM**

The Respondent has filed his Statement of Defense and Statement of counterclaim dated 5<sup>th</sup> September 2013, which briefly is as under:

a. The Respondent at the outset denies all and singular adverse statements/ averments, claims and allegations made in the Applicant's Statement of Case. The Respondent states that the Applicant is guilty of suppressio veri and suggestion falsi and on this ground alone the Applicant is not entitled to any relief from this Hon'ble Arbitral Tribunal much less the




alleged relief claimed by the Applicant in its Statement of Case. The Respondent states that the Applicant has suppressed certain vital facts/documents which have a strong bearing on the case of the Applicant and clearly disentitle the Applicant from any relief and the Applicant's case against the Respondent out to be dismissed in limini.

b. The Respondent states that the Respondent has forwarded an email dated 6<sup>th</sup> August, 2013 to the Applicant requesting the Applicant to forward daily margin files of the Respondent for the period from 09/07/2010 to 18/05/2012 for NSE Currency Derivatives segment and NSE Futures & Options Segment in soft copy and as per the format prescribed by NSEIL vide its circular dated 14<sup>th</sup> December, 2011, download Ref. No.: NSE/INSP/19583. The Respondent states that the Applicant has failed and neglected to provide the daily margin files to the Respondent on a regular basis during the aforesaid period. The Respondent further states that the Respondent has provided various forms of collaterals towards margins other than cash margins to the Applicant during the aforesaid period which can only be reflected in the margin statements from the Applicant as per the format mandatorily prescribed by NSE vide its above circular.

c. The Respondent submits that the clearing and settlement of the trades executed by the Respondent in the Currency Derivatives Segment of NSEIL were being cleared and settled by the Clearing Member viz. the Applicant. The Respondent entered into a Clearing Member-Trading Member agreement on 28<sup>th</sup> April, 2010 with the Applicant. The Respondent states that the Respondent was initially clearing its trades in the Currency Derivatives Segment of NSEIL and MCX-SX through IL & FS Securities Services Limited (ISSL) since the year 2008 onwards.

d. The Respondent further states that the Respondent was amongst the top volume drivers in the currency Derivatives Segment of NSEIL and MCX-SX and was significantly contributing to the growth of the Currency Derivatives Segment of the Exchanges. The Respondent states that the Respondent was clearing its trades executed on NSEIL and MCX-SX till the financial year 2009-2010 through the clearing member IL&FS Securities Services Limited (ISSL). The Respondent submits that as per the contractual terms between the Respondent and ISSL for clearing the trades of the Respondent, ISSL was levying clearing/transaction fees of Rs.25/- per crore for the monthly turnover till 150 crores and Rs.15/- per crore for the monthly turnover above 150 crores upon the Respondent.

e. The Respondent submits that after looking at the huge turnover of the Respondent and the contribution of the Respondent to develop the newly launched Currency Derivatives Segment, ISSL drastically reduced its clearing fees from turnover basis to a flat fee structure (irrespective of the Respondent's turnover) wherein ISSL levied clearing fees of Rs.1,00,000/- per month for both the Exchanges combined viz. NSEIL and MCX-SX with effect from 20<sup>th</sup> May, 2009 and which was payable upfront by the Respondent to ISSL (implying flat fee of Rs. 50,000/- per month per Exchange irrespective of the Respondent's turnover) The Respondent submits that somewhere in the month of April, 2010, the Applicant approached the Respondent and introduced themselves as a registered





Clearing Member of all the exchanges and further offered that if the Respondent clears its trades through the Applicant by appointing the Applicant as the Clearing Member of the Respondent, the Applicant in turn will charge lower clearing/transaction fees as compared to charges levied by ISSL and further the Applicant also offered additional facilities to the Respondent. The Respondent submits that the Applicant had informed the Respondent that the Applicant was aggressively trying to increase its Clearing share of the Currency Derivatives Segment across all the Exchanges and therefore, requested the Respondent to clear its trades with the Applicant instead of ISSL. The Respondent states that in order to persuade and convince the Respondent to shift its clearing from ISSL to the Applicant; the Applicant offered lucrative terms to the Respondent wherein the Applicant stated and confirmed that it shall charge clearing/transaction fees of Rs.10/- per crore on the traded value in currency futures and options which would further be subjected to a maximum of Rs.50,000/- per month per exchange in the Currency Derivatives Segment.

f. The Respondent states that the Applicant further assured that no other charges viz. the penalty charges, late pay-in charges, bank guarantee charges, fixed deposit charges, demat charges, collateral charges for securities, etc. would be levied upon the Respondent.

g. The Respondent submits that since the terms and conditions offered by the Applicant were beneficial to the Respondent as compared with terms and conditions by ISSL, the Respondent as a prudent business person decided to change its clearing member from ISSL.

h. The Respondent states that as compared with ISSL, the Applicant offered the Respondent a running account facility with the Applicant wherein the Respondent was not required to carry out the MtoM (Market-to- Market) settlements on a daily basis. The Respondent states that such facility offered by the Applicant drastically reduced the back office work of the Respondent and further provided cushion wherein only the margins and the MtoM (Market-to- Market) settlements were adjusted inter se.

i. The Respondent states that as per the Rules, Bye-laws and Regulations of the Clearing Corporations, the Respondent provided sufficient margins to the Applicant in the form of cash, bank guarantees, FDR's, securities (including securities of the Respondent's client) and any other form of margins as approved and required by the Clearing Corporations and/or the Applicant. The Respondent states that however, there are no agreements/specific provisions in the Clearing Member-Trading Member agreement whereby the Applicant was authorized for inter-exchange transfers for the clearing and settlement of the transactions done by the Respondent across the exchanges.

j. The Respondent submits that unlike ISSL, the Applicant however never used to send any ledger of the Respondent as per the Applicant's books and the Applicant also never raised any bills regarding its clearing fees upon the Respondent till December, 2010 for all the Exchanges despite several requests and reminders made by the Respondent. The Respondent states that the Applicant informed the Respondent that since it is acting only as a Clearing member, the ledger of the Respondent as per the books of the Applicant was not so important and relevant. The Respondent states that the Applicant further provided



false reasons for not providing the documents by giving lame excuses that the ledger entries would be nothing but a reflection of the MtoM (Market-to- Market) entries and the banking entries only and which would also be available with the Respondent since the Respondent was also a member of the Exchange.

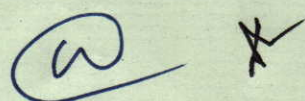
k. The Respondent further states that after rigorous follow ups by the Respondent, the Applicant for the first time somewhere in the month of January, 2011 and after nearly 6 months, informed the quantum of the charges levied by the Applicant on the Respondent from 8<sup>th</sup> July, 2010 till December, 2010 for all the segments of all the Exchanges viz. NSEIL, MCX-SX and USE.

l. The Respondent states that after receiving the information of the clearing/transaction charges debited by the Applicant unilaterally, the Respondent was shocked to know the quantum of the exorbitant and unjustified charges levied by the Applicant which was contrary to the agreed terms between the Applicant and the Respondent. The Respondent states that the charges levied by the Applicant were much higher and inflated as agreed between the Applicant and the Respondent and also as compared to the charges that were levied by the Respondent's earlier clearing member viz. ISSL for exactly similar type of services. The Respondent submits that only after continuous follow ups with the Applicant for seeking clarification regarding the excessive charges debited by the Applicant in the Respondent's account, the Applicant orally informed to the Respondent that the Applicant's back office officials inadvertently did not apply the agreed clearing fees tariff on the Respondent's account and accordingly levied wrong charges upon the Respondent which was assured to be reversed immediately by the Applicant.

m. The Respondent states that it is clearly established that the Applicant had deliberately and illegally levied unjustified and unauthorized charges of Rs.15,02,614.91/- (Rs.21,35,640.69/- Less Rs.6,33,025.78/-) upon the Respondent for the period of 8<sup>th</sup> July, 2010 to December, 2010.

n. The Respondent states that out of the Rs.15,02,614.91/- charges illegally levied by the Applicant upon the Respondent for the period of 8<sup>th</sup> July, 2010 to December, 2010, the Applicant only reversed a part amount of Rs.11,03,353.70/- out of the actual, clearly tantamounting to an admission by the Applicant of the wrongful levies. However, the Applicant deliberately failed, neglected and omitted to reverse the balance sum of Rs.3,99,261.21/- (Rs.15,02,614.91/- wrong charges levied less Rs.11,03,353.70/- wrong charges reversed) in the Respondent's account without giving any explanation to the Respondent.

o. The Respondent states that inspite of regular follow ups, the Applicant though assured but deliberately neglected to reverse the balance wrong charges of Rs.3,99,261.21. The Respondent states that the Applicant deliberately failed, neglected and omitted to reverse the wrong charges for a sum of Rs.3,99,261.21/- and on the contrary, levied wrong additional charges of Rs.7,92,272.11/- upon the Respondent under the disguise of late pay-in charges for the same period and which was contrary to the agreed terms between the Respondent and the Applicant.





- p. The Respondent states that being aggravated by the Applicant's false assurances and its illegal act of continuously and unilaterally levying charges in the Respondent's account which were contrary to the agreed terms and conditions; the Respondent decided to shift its clearing activities again with Respondent's old clearing member and accordingly approached ISSL to first shift the Respondent's clearing in the Futures and Options Segment of NSEIL from Self-Clearing to clearing through ISSL and later to shift the currency Derivatives Segment of all the Exchanges with ISSL.
- q. The Respondent states that no sooner the Applicant realized that the Respondent was trying to shift its entire clearing step by step from the Applicant to earlier Clearing Member, ISSL, the Applicant again approached the Respondent requesting and pleading not to shift its existing clearing services from the Applicant and in addition, the Applicant further persuaded the Respondent to shift its Self-Clearing membership from the NSEIL F&O Segment to Trading Membership with the Applicant so that the margins could be adjusted across the segments of the Exchange.
- r. The Respondent also states that the Applicant further assured to refund Rs.6,00,000/- bank guarantee charges which was paid by the Respondent to Indusind Bank Limited in case Indusind Bank Ltd did not refund the bank guarantee fees for the balance unutilized period on surrender of the bank guarantees favouring NSSCL. The Respondent states that the Applicant assured that out of Rs.6,00,000/-, Rs.4,50,000/- will be refunded to the Respondent's NSEIL Currency Derivatives Segment and Rs.1,50,000/- will be adjusted against the transaction charges of Currency Derivatives Segment of USE Limited.
- s. The Respondent states that on repetitive persuasion by the Applicant and based on the above assurances, the Respondent shifted its clearing in the F&O Segment of NSEIL from Self-Clearing to Clearing through the Applicant after entering into a Clearing Member – Trading Member agreement on 4<sup>th</sup> April, 2011 and on the condition that the Applicant will immediately reverse the balance excess charges of Rs.11,91,533.32/- levied earlier upon the Respondent for the Currency Derivatives Segment of all the Exchanges.
- t. The Respondent further states that during the course of the business, the Applicant in continuation to its malafide intentions and in connivance with its subsidiary company, Globe Fincap Limited had illegally and without authority siphoned off an amount of Rs.35,00,000/- through misusing the account in Axis Bank Limited, Delhi Branch. The Respondent states that the above stated amount of Rs.35,00,000/- was illegally transferred on 2<sup>nd</sup> December, 2011 by the Applicant without any authority from the Respondent's account with the Applicant to the Applicant's subsidiary company. The Respondent states that this transfer of a sum of Rs.35,00,000/- to Axis Bank Limited, Delhi Branch by Applicant was not informed to the Respondent and the Respondent observed the suppressed fact only when the Applicant's subsidiary company, M/s. Globe Fincap Limited for the first time sent a bank account statement of Axis Bank Limited, Delhi Branch only in the month of May, 2012 to the Respondent.
- u. The Respondent states that since the Applicant failed to amicably resolve the disputes, and further, continued to take undue advantage from the Respondent, the Respondent



terminated its clearing business with the Applicant in the NSEIL F&O Segment with effect from 27<sup>th</sup> April, 2012.

v. The Respondent states that for the period from July, 2010 to April, 2012, the Applicant had illegally debited various unjustified and unauthorized late pay-in charges, demat charges and penalty charges and excess transaction charges, and had also illegally siphoned off funds from the Respondent's account with the Applicant to the Applicant's subsidiary company's account. The Respondent further states that the Applicant deliberately failed to provide credit for the refund of the bank guarantee charges, TDS amounts, the Interest Free Security Deposit refunds and the bank interest amount due to the Respondent on the encashed FDR's. The Respondent states that by 30<sup>th</sup> April, 2012, the Applicant had eroded the Respondent's account by a huge sum of Rs.90,43,514.88/- with ulterior motives and in order to enable the Applicant to illegally create and artificial margin requirement.

w. The Respondent states that due to the panic wave created by the Applicant with ulterior motives and with a malafide intention to cause grave and irreparable harm and loss to the Respondent, the Respondent was forced to cut its open positions in NSEIL CDS Segment, albeit without any fault of the Respondent and was deliberately forced by the Applicant to suffer a huge loss of Rs.8,70,04,407.50/- on account of the forced square off of the open positions which was in fact were backed by sufficient margin requirements.

x. The Respondent states that in spite of it paying the said Rs.3,00,000/- to the Applicant, the Applicant instead of releasing the Respondent's client shares, illegally in contravention of established guidelines, sold off the said shares of the clients of the Respondent's which were pledged with the Applicant.

y. The Respondent further states that the Applicant in addition to the above wrongly and deliberately invoked the Respondent's Bank guarantee worth Rs.4,50,00,000/- issued by Indusind Bank Limited in favor of the Applicant towards margin obligations.

z. The Respondent further states that the Applicant has also not released the sum of Rs. 1,50,00,000/- which was given in the form of FDR No: 15775050024447 to the Applicant towards the margin requirements.

aa. The Respondent has also filed a counter claim of Rs.10,65,02,924 (Rs. Ten Crores Sixty Five lakhs Two Thousand Nine Hundred and Twenty Four only) against the Applicant and the details of which are given in the table below .

<b>STATEMENT OF COUNTER CLAIM OF THE RESPONDENT</b>				
<b>Sr.No.</b>	<b>Particulars</b>	<b>NSEIL CDS Segment (I)</b>	<b>NSEIL F &amp; O Segment (II)</b>	<b>Total Amount (I)+(II)</b>
1	Ledger Balance of the Respondent with the Applicant as on 16/05/2012	8,564,073.69		8,564,073.69



2	Interest Free Security Deposit to be Released in NSEIL F & O Segment	-	200,000.00	200,000.00
3	TDS credit for the Financial year ended 31 <sup>st</sup> March, 2011	-	-	180,000.00
4	Bank Interest for FDR No. 05985050080130 and 05985050080140(FDR Amount: Rs.2,00,00,000/-) for the period from 01/04/2012 to 19/04/2012 at 9.8% p.a.	-	-	102,027.40
5	Unjustified Excess Clearing Charges/Transaction Charges debited till 16/05/2012	305,695.59	116,714.23	422,409.82
6	Unauthorized Demat Charges debited till 16/05/2012	4,341.82	10,095.34	14,437.16
7	Illegal and Unauthorized Late Pay-in charges debited	705,513.41	213,397.31	918,910.72
8	Bank guarantee charges assured to be refunded	-	-	450,000.00
9	Excess Service Tax debited on the above unauthorized charges till 16/05/2012	150,390.79	35,041.32	185,432.11
10	Illegal and Unauthorized Penalty Charges debited	2,850,255.86	166,692.88	3,016,948.74
11	Amount paid by the Respondent to the Applicant through cheque towards release of client shares	300,000.00	-	300,000.00
12	Bank guarantee amount paid by indusind bank on illegal invocation by the Applicant	45,000,000.00	-	45,000,000.00
13	Release proceeds of encashment of HDFC FDR No. 15775050024447	15,000,000.00	-	15,000,000.00
14	Unauthorized and illegal siphoning off the funds of the Respondent from the Respondent's account with the Applicant to the Applicant's subsidiary company.	-	-	3,500,000.00
	Total (A) :			77,854,239.64



15	Simple Interest on Total (A) at 18% p.a. for the period from 01/06/2012 till 20/08/2013 (445 days)			17,085,273.25
	Total (B) :			17,085,273.25
16	Value of Shares of the Respondent's client given as pledge to the Applicant as on 30/11/2012	10,965,583.35		10,965,583.35
17	Dividend accrued on the pledged shares for the period till 30/11/2012	116,919.30		116,919.30
18	Penalty Charges debited by NSCCL directly to the Respondent	449,453.36	31,455.10	480,908.46
	Total (C) :			11,563,411.11
	<b>Counter Claim of the Respondent as on 20/08/2013 (A)+(B)+(C)*</b>			<b>106,502,924.00</b>
*Further interest @18% p.a. from 20/08/2013 till the date of realization of payment by the Respondent.				

bb. The Respondent prays before the Arbitral Tribunal that :

1. The claim if any of the Applicant be dismissed;
2. The counter claim of the Respondent for a sum of Rs. 10,65,02,924/- (Rs. Ten Crores Sixty Five lakhs Two Thousand Nine Hundred and Twenty Four only) along with interest @18% p.a. from 20/08/2013 till the date of realization be allowed;
3. The Costs of filing Arbitration be provided for;
4. Any other relief or claim that the Learned Arbitral tribunal may deem warranted on the basis of the facts of the case for furthering justice.

## **7 REASONING AND CONCLUSION:**

7.1 The Respondent had vide their letter dated 18<sup>th</sup> June 2013 made an Application u/sec 16 of the Arbitration and Conciliation Act, 1996 challenging the jurisdiction of the Arbitration Tribunal to adjudicate on the present matter. The Respondent had contended that since the matter was pertaining to dealings between a Clearing member and Trading member the Arbitration should be conducted as per the Rules, Bye-Laws and the Regulations of National Securities Clearing Corporation Ltd (NSCCL). At the first hearing held on 6<sup>th</sup> September 2013 the Bye Laws pertaining to Arbitration of NSCCL which is reproduced below were shown to the Respondent.

## **CHAPTER X**



*“ 1. All claims, disputes, differences, arising between Clearing Member and Constituents or between Clearing Member 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 any thing 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.”*

The above bye laws of NSCCL clearly states that deals between the clearing members and constituents shall be referred to Arbitration under byelaws and Regulations of National Stock Exchange of India Ltd (NSEIL). **The present Tribunal hence has the jurisdiction to adjudicate the present matter.**

7.2 The Applicant at the first hearing held on 6<sup>th</sup> September 2013, filed an application u/sec 12 of the Arbitration and Conciliation Act 1996 challenging the appointment/ constitution of one of the Arbitrator on the Panel. The Respondent submitted a letter dated 6<sup>th</sup> September 2013 objecting to the Application u/sec 12 of the Arbitration and Conciliation Act 1996. **The Applicant and the Respondent were heard at length and after considering the reply and arguments the Arbitrator decided to continue on the Tribunal and matter proceeded for hearing.**

7.3 The Respondent's defense primarily hinges on denial of receipt of Margin reports/ ledger from the Applicant. The Applicant has produced log of Margin reports emailed to the email id of the Directors of the Respondent Company provided by the Respondent in the "KYTM". The Respondent is also a Trading member of NSE and as per the operating procedures applicable for the trading members, NSCCL downloads MG13 file and for clearing members, NSCCL downloads MG12 file. Value of margin collected from each trading member/client as the case may be is to be entered in the relevant file and the file is to be uploaded to NSCCL within 2 working days. This is the obligation of every Trading member of NSE. The Respondent's claim that he never got the Margin files from the Applicant gets negated by the fact that the Respondent was under obligation to download and upload the MG-13 file on the NSE platform on a periodic basis. We are therefore not impressed by the argument forwarded by the Respondent that the Respondent never got any margin reports from the applicant.

7.4 The margin statements submitted by the Applicant vide his submission dated 30<sup>th</sup> October 2013 clearly reflect that the Respondent had a shortfall of margins throughout the period 02/05/2012 to 16/05/2012. **The question that we pose to ourselves is what is the recourse available to the Applicant in such a situation?** The answer to this question lies in clause no 4, 5 and 8 contained in "Rights of Clearing Members" of the TM-CM





agreement executed between the Respondent and the Applicant which are reproduced below:

**Clause 4**

*"The Clearing Member shall specify, subject to the requirements prescribed by NSCCL from time to time, the exposure limits upto which open positions can be taken by the Trading Member. Such limits may be increased or reduced by the Clearing Member from time to time. The Clearing Member has the authority to initiate any action necessary to protect its /his interests in this regard which may, inter alia, include restriction on further trading and close-out of open positions of the Trading Member or withdrawal/disablement of trading facility of the Trading Member by making necessary requests to NSEIL/NSCCL for initiating such action or appropriating the money by selling the securities including other collaterals and other assets held with the Clearing Member as the clearing member may deem fit and on which the Trading Members shall not claim any right"*

**Clause 5**

*"Clearing Member shall be entitled to collect from Trading Member margin(s) of such amounts of such kinds, as he may deem necessary, which at any point of time shall not be less than the amount stipulated by NSCCL from time to time. The Clearing Member shall have authority to collect such additional margin(s) as the Clearing Member may deem necessary or as per the requirement of NSCCL."*

**Clause 8**

*"The Clearing Member shall have authority to close out/liquidate the open positions of the Trading Member in accordance with the NSCCL Regulations, in the case of non-payment of dues by the Trading Member towards margins, mark to market settlement, final settlement or such other settlement, fees, brokerage commission and/or charges, by making necessary requests to NSEIL/NSCCL for initiating such action. In such case, any loss arising due to the closing out of open positions will be recovered from the Trading Member."*

The Applicant had also vide his email dated 16/05/2012 intimated the Respondent that due to continuous margin violations committed by the Respondent the Applicant would be required to square off the positions as per the Exchange Rules. The Respondent on 17/05/2012 *suomoto* squared off the open positions in currency derivatives and thereby resulting in a loss of Rs. 8,70,04,407.50. The squaring up of the open positions and resultant losses arising out of such squaring off are due to actions of the Respondent and hence can not be thrust upon the Applicant.

7.5 The above mentioned squaring off had resulted a net debit balance of Rs.7,84,40,333.81 as on 17/05/2012 in the Ledger Account of the Respondent in the books of the Applicant. The Applicant in order to recover the debit balance liquidated the collateral of the Respondent held by him in form of Shares, Bank FDR and Bank



Guarantees. The Respondent in his submission however has contested that this act of liquidating of collaterals given by the Respondent to the Applicant was unauthorized. **The question that we pose to ourselves is that, whether such action of liquidating of the collaterals by the Applicant was legitimate?** The answer to this question lies in clause no. 4 contained in "Rights of Clearing Members" of the TM-CM agreement between the Respondent and the Applicant which is reproduced below:

**Clause 4**

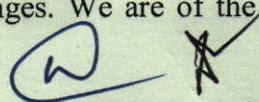
*"The Clearing Member shall specify, subject to the requirements prescribed by NSCCL from time to time, the exposure limits upto which open positions can be taken by the Trading Member. Such limits may be increased or reduced by the Clearing Member from time to time. The Clearing Member has the authority to initiate any action necessary to protect its /his interests in this regard which may, inter alia, include restriction on further trading and close-out of open positions of the Trading Member or withdrawal/disablement of trading facility of the Trading Member by making necessary requests to NSEIL/NSCCL for initiating such action or appropriating the money by selling the securities including other collaterals and other assets held with the Clearing Member as the clearing member may deem fit and on which the Trading Members shall not claim any right"*

The applicant in his statement has enclosed emails exchanged between the Applicant and the Respondent with reference to releasing of shares against payments to be effected by the Respondent against his debit balance. It has been observed that the Respondent although gave a sum Rs. 3,00,000/- towards release of shares of his clients' the Respondent had failed to provide any concrete payment schedule towards his debit balance and hence the Applicant went ahead and liquidated all the Shares held as collateral.

In the light of the above mentioned clause of TM-CM agreement, we are of the opinion that the Applicant was justified in his act of liquidating the collaterals given by the Respondent in form of Shares, Bank FDR and Bank Guarantees.

**Further we would also like to mention that on scrutiny of the above mentioned emails exchanged between the Applicant and the Respondent as submitted by the Applicant and the submission of the Respondent, it has been observed that the Respondent had pledged the shares of his clients to the Applicant towards margin requirements, which is a gross violation as per the NSE Regulations.**

7.6 The Respondent in his Statement of Defense has also contended that a sum of Rs. 3,86,121.43 pertaining to the USE CDS Segment was transferred and recovered from the NSEIL CDS Segment (point no. 85 Pg. 46). The Applicant has stated in his submissions dated 03/10/2013 on pg. 22, that same was done as there was a running account maintained by the Respondent across all the exchanges. We are of the opinion that the





Applicant maintained a running account and adjusted the balance of other Exchanges obligations against the NSE obligations of the Respondent from a convenience point of view. The NSE rules and regulations do not permit such adjustment of balances unless it is specifically authorized by the constituents. **In absence of documentary proof of such specific authorization by the Respondent to the Applicant the Applicant's claim shall stand reduced by an amount of Rs. 3,86,121.43.**

7.7 The Respondent in his submissions has also contended that during the course of the business, the Applicant without any authority from the Respondent had transferred an amount of Rs.35,00,000/- to an account of the Respondent jointly held with Globe Fincap Limited, a subsidiary Company of the Applicant. The Respondent in his submissions (Vol III , Pg 218) has also enclosed the bank statement of the said account which reflects the said transfer of Rs. 35,00,000 on 02/12/2011. The said amount was further transferred to the account of Globe Fincap Limited. The Respondent has also contended that he has authorized the Applicant to transfer a sum of Rs. 2,15,00,000 on 27/04/2012 and has supported the same by giving documentary evidence in his submissions (Vol. III page. 219 to 223). The Applicant has not produced any documentary evidence supporting the transfer of Rs. 35,00,000 on 02/12/2011 to the said account was duly authorized by the Respondent. **We are of the opinion that the said transfer was without any authority and hence the claim of the Applicant shall stand reduced by Rs. 35,00,000.**

7.8 After having partially allowed the claim of the Applicant we further move on to adjudicate on the counter claim made by the Respondent.

**a) Counter Claim No. 1: Rs. 85,64,073.69-Ledger Balance of the Respondent as on 16/05/2012.**

The Respondents claim for Rs. 85,64,073.69, which was equal to the ledger balance as on 16/05/2012 is denied as the Respondent himself on 17/05/2012 squared off the open position in NSE CDS segment due to Margin violations and suffered a loss of Rs. 8,70,04,407.50. Subsequent to the squaring off the Respondent's account reflected a net payable of Rs. 7,84,40,333.81 to the Applicant. We have already dealt with this squaring off in point no. 7.4, and hence this counter claim of the Respondent is rejected.

**b) Counter Claim No. 2: Rs. 2,00,000 – Interest free security deposit to be released in NSEIL F & O Segment**

The Applicant vide his rejoinder to the Reply of Respondent has submitted a financial ledger of F&O transactions (Page. 282 of Annexure P-54). The said amount of Rs. 2,00,000 has been credited to the said account on 25/09/2012 and thereafter closing credit balance of the said F&O account has been transferred to NSE CDS account on 25/09/2012. Since the Applicant has given credit for the said Rs. 2,00,000 the counter claim of the Respondent is rejected.

**c) Counter Claim No. 3: Rs. 1,80,000– TDS Credit for the financial year ended 31.03.2011**





The Applicant vide his submission dated 29/10/2013 and vide his Rejoinder to Reply of Respondent dated 03/10/2013 has submitted a ledger of NSE CDS transactions (Page. 276 of Annexure P-53) and submitted form 26AS (Page. 275 of Annexure P-52). The said 26AS reflects that the Respondent has deducted a sum of Rs. 2,05,346 towards TDS from the Applicant which includes the claimed amount of Rs. 1,80,000. The Applicant has accordingly given the credit of Rs. 2,05,346 in the ledger of the Respondent on 31/03/2011 and hence the counter claim is rejected.

**d) Counter Claim No. 4: Rs. 1,02,027.40 – Interest for the period of 01/04/2012 to 19/04/2012**

The Applicant vide his submission in the Rejoinder to Reply of Respondent has submitted a copy of Bank Statement wherein the Bank has recovered a sum of Rs. 4,56,114.08 towards Interest recovery for pre-maturity of the FDR done by the applicant. The Applicant had already given credit for the Interest which was credited prior to 31/03/2012 and hence question of receipt and credit of interest for the period of 01/04/2012 to 19/04/2012 is not relevant as there is a pre-maturity withdrawal charges levied by the bank and no interest has been credited by the bank and hence the claim is rejected.

**e) Counter Claim No. 5, 6 and 7: Rs. 3,05,695.59 and Rs. 1,16,714.23 – Unjustified Excess Clearing Charges / Transaction Charges debited till 16/05/2012, Rs. 10,095.34 and Rs. 4,341.82 – Demat Charges debited till 16/05/2012, Rs. 7,05,513.41 and Rs. 2,13,397.31 – Late pay-in Charges**

The Applicant has submitted copies of ledgers, Agreement and Charges Schedule. The Applicant has also provided P.O.Ds of the copies of Debit Notes dispatched to the Respondent. The Respondent has been making payments towards pay-outs and other obligations on basis of ledgers and Debit notes submitted to the respondent. The conduct of the Respondent to settle his account and make payment towards these charges and to deduct TDS on such amounts clearly reflects that the Respondent had accepted these charges levied by the Applicant and hence the counter claim of the Respondent 5, 6 and 7 appears to be an after thought and hence rejected.

**f) Counter Claim No. 8: Bank guarantee charges assured to be refunded.**

The Respondent has claimed that the Applicant had assured to refund bank guarantee charges of Rs 4,50,000 levied by Indusind Bank Ltd on shifting from self clearing membership for F&O trades to clearing the trades through the Applicant. The Respondent has however not produced any documentary evidence in support of such claim and hence the claim of the Respondent stands rejected.

**g) Counter Claim No. 9: Rs. 1,85,432.11 - Excess Service tax debited on Charges mentioned in Claim No. 5, 6 and 7**

The Respondent has claimed excess service tax debited on unauthorized Service Charges, Late Payment charges etc. as mentioned in counter claim no. 5, 6 and 7. The said counter claim i.e. Claim no. 5, 6 and 7, of the Respondent has been rejected therefore there is no question of refunding the service tax component on the charges levied by the Applicant.



**h) Counter Claim No. 10: Rs. 28,50,255.86 and Rs. 1,66,692.88 - Illegal and unauthorized penalty charges**

The Applicant vide its submissions has provided the details of the penalty charges levied by the Applicant in the Respondent's account. The Applicant has also provided details of charges levied by NSE which reflects that the Applicant has not overcharged the Respondent. The statement provided by the Applicant also reflects that the penalty charges have been debited in the Respondent's account since September 2011 to May 2012. The Respondent has not provided any evidence of raising any objection to levy of such penalties in his account. It is only after the Applicant had filed his claim that the Respondent has raised this issue of penalty charges hence the claim of the Respondent deserves no consideration and stands rejected.

**i) Counter Claim No. 11: Rs. 3,00,000 towards release of client shares**

The Applicant has given credit for the said payment made by the Respondent in the accounts of the Respondent on 24/05/2012. Since credit has already been given the claim of the Respondent is rejected.

**j) Counter Claim No. 12 and 13: Rs. 4,50,00,000 – Invocation of Bank Guarantee and Rs. 1,50,00,000 – Release proceeds of Bank FDR**

The Applicant's act of Invocation of Bank guarantee and liquidation of Bank FDR were justified as mentioned in point no. 7.5 as mentioned above. The Applicant has appropriately given credit for Rs. 4,50,00,000 and Rs. 1,50,00,000 in the ledger of the Respondent and hence the counter claim of the Respondent stands rejected.

**k) Counter Claim No. 14: Rs. 35,00,000 – Unauthorized siphoning of fund of the Respondent**

The Respondent has stated in his submissions that there was an unauthorized transfer of funds of Rs. 35,00,000 to the Applicant's subsidiary company namely Globe Fincap Ltd. on 02/12/2011. We have in point no. 7.7 as stated above have already reduced the claim of the Applicant to the tune of Rs. 35,00,000. The counter claim of the Respondent is hence rejected.

**l) Counter Claim No. 15: Rs. 1,70,85,273.25 – Interest @ 18%p.a. on amounts claimed on claim no. 1 to 14 for the period of 01/06/2012 to 20/08/2013**

The Respondents counter claims under claim no. 1 to 14 are rejected hence there is no question of awarding interest and hence claim of the Respondent stands rejected.

**m) Counter Claim No. 16: Rs. 1,09,65,583.35 – Value of the shares of the Respondent's Clients' given on pledge.**

The Applicant has liquidated the shares pledged as collateral towards the margins by the Respondent as there were margin violations. The said liquidation was within the ambit of Rules and Regulations of NSEIL and TM-CM agreement as mentioned in point no. 7.5 as stated above and credit of the liquidated amount was given in the Respondent's account on 31/05/2012. The Respondent's claim of notional value of shares as on 30/11/2012 is hence rejected.



**n) Counter Claim No. 17: Rs. 1,16,919.30 – Dividend accrued on pledged shares for the period till 30/11/2012**

The Applicant's act of liquidation has been justified as mentioned in response to counter claim no. 16, counter claim for the notional dividend for the period after liquidation is baseless and stands rejected.

**o) Counter Claim No. 18: Rs. 4,80,908.46 – Penalty charges levied by NSCCL directly to the Respondent**

The Respondent has claimed Rs 4,80,908.46 towards penalty charges levied directly by NSCCL on the Respondent. The Applicant was authorized under the TM-CM agreement to alter the exposure limits of the Respondent. It was the duty of the Respondent to ensure that the trading undertaken by the Respondent was within limits set by the Applicant. The NSCCL has levied penalty on the Respondent as the Respondent traded beyond the exposure limits. NSCCL is a " Self Regulating Organization" SRO which regulates the conduct of its members. The penalty levied by NSCCL is towards violations done by the Respondent and hence the Respondent shall solely be liable to incur the same as per TM-CM agreement hence the claim of the Respondent stands rejected.

**7.9 Before we part with the Award we would like to bring on record that the Applicant and the Respondent have made additional submissions subsequent to the last date of hearing held on 28<sup>th</sup> October 2013. The said submissions have been made by Applicant/ Respondent vide their submissions dated 8<sup>th</sup> December 2013 and 11th December 2013 respectively. The Applicant /Respondent in their submissions have stated that the said submissions were made as per the directions of the Arbitral Tribunal. We reiterate that the Tribunal had not issued any such directions to the Applicant/ Respondent and hence the Tribunal has not taken cognizance of these submissions.**

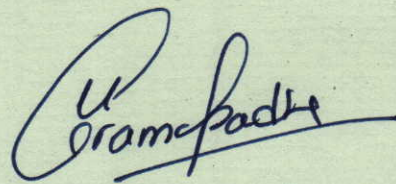
**7.10 In view of the observations and findings stated above, We have come to the conclusion that the Applicant's claim is partially maintainable and the Respondents counter claim stands to be rejected.**

  
**AWARD** 

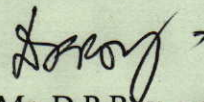


1. The Respondent to pay a sum of Rs. 68,37,813.48 (Rs. Sixty Eight Lacs Thirty Seven Thousand Eight Hundred Thirteen and Forty Eight paisa only) to the Applicant.
2. The Respondent to pay interest @ 12% p.a. on the award amount of Rs. 68,37,813.48 from the date of receipt of arbitration application i.e. from 12<sup>th</sup> November, 2012 till the date of payment/ realization.
3. The counter claim of Respondent for Rs 10,65,02,924/-stands rejected
4. No order as to costs.

The Award is signed and issued in three originals. NSEIL may retain the stamped original and forward one original each to the Applicant and the Respondent.



Mr. Uttam Gramopadhye  
(Presiding Arbitrator)



Mr. D.P. Roy.  
(Co-Arbitrator)

Place: Mumbai,

Dated: this 14<sup>th</sup> day of January, 2014



**Per Arbitrator: SHRI SHAILESH R. GHEDIA**

### **AWARD**

The present Reference is assigned it us under the Rule, Bye-laws and Regulations of the National Stock Exchange Limited.

In the present Reference, the Award passed by the Arbitral Tribunal Bench in favour of Applicant for a sum of Rs. 68,37,813.48/-, which I differ on the following grounds:

A. Forcible squaring off: - Looking at the margin statements and the ledger statements, it is seen from the beginning that the Respondent was allowed to trade in spite of non fulfilling of the shortfall in margin. The scrutiny of the ledger in details reveals that the Applicant was comfortable with the Respondent for short payment of M to M and other margin requirements.

The following dates will reveal the facts looking at the combined ledger for NSE transactions:

Sr. No.	Date	outstanding amount.
		(Rs. In Lacs)
1.	22.09.2011	1124.49
2.	04.07.2011	670.93

This clearly shows that the Applicant was comfortable with the Respondent in spite of the facts that there was a shortfall in the margin requirements. However my learned colleagues on the panel have looked into the margin statements for the period from 01/05/2012 to 16/05/2012, only instead of looking it globally under the principles of natural justice, the case is required to be looked into in toto and/or from the beginning to understand the dispute.

The ledger statements and margin statements clearly show that the Respondent have on many occasion not fulfilled the margin requirements. The question here is why the applicant did not take the recourse during those time is an important issue. The Applicant has never in the past sent an email to square off the positions within a period of few minutes for want of margin. This itself proves that the Respondent was forced to square off their position on 17.05.2012 The clause no. 4, 5 and 8 of the "Rights of clearing Members" of TM-CM agreement is always subject to stipulations from NSCCL from time to time. However in this case the Applicant has allowed the Respondent to carry on business from the beginning without any stipulation of the fulfillment of margin; this itself proves that the Respondent was forced to square off the position within a period of 20-25





minutes which otherwise the exchange would have acted and the Respondent would have incurred heavy loss. In the relation between the broker and clients; the broker shall have to give time till next day (start of market on next day) to fulfill the requirements of margin and cant not force/advice to the client to square off on the spur of the moments.

On Scrutiny of the ledger, it was further found that the Respondent was paid huge amount by the Applicant, inspite of having debit balance by the applicant.

Sr.No	Date	Dr. Bal as per Ledger (Rs.Lacs)	Amt Pd. (Rs. In Lacs)
1.	29.06.2011	305.10	200.00
2.	14.09.2011	205.56	204.03
3.	09.09.2011	494.99	132.00
4.	28.04.2012	485.57	215.00

This clearly shows that the Applicant has never cared to look into the shortfall of margin at any point of time during continuance of Respondent's business.

On closure scrutiny of the ledger, it is found that the Respondent had credit balance of Rs.85.64 Lacs on the opening day of 17.05.2012. Considering the credit balance, the Applicant was comfortable considering the past, wherein there was huge debit balance and still the applicant paid money to the Respondent. Considering these past, I am of the opinion that the Respondent have been forced unnecessarily for squaring off the position for the reason best known to the Applicant. In regulated market such type of action are considered as bad-in-law, looking at business relations between the parties, documented through the ledger submitted by the Applicant.

In the circumstance in my humble opinion the Respondent was forced to square off the position; which is not correct and in my considered opinion the same may be considered as and in law and I allow the plea of the Respondent that the forcible squaring off the position is not owned.

However, it is also important to note that the Respondent has not come out with alternative squaring off the open position and also not quantified the result of squaring off the position, Hence no claim is allowed to Respondent on this count. The Respondent's counter claim to the extent of loss incurred on squaring off, is not allowed due to reason explained above.

B. The Applicant have claimed Rs.1,07,23,934.91 together with interest @18% p.a from 31<sup>st</sup> May 2012 till the date of realization and the Respondent have counter claimed Rs.10,65,02,924 together with interest @18% from 20<sup>th</sup> August 2013 till the date of realization.



In my considered opinion and looking at the award of my learned colleagues, I have the reason shown for each of the counter claim of the Respondent shown separately.

In the ledger balance as on 16.05.2012 for Rs 85,64,073.69 (Cr) after considering the credit of previous days margin, Now I go ahead with the counterclaim of the Respondent and the claim of the Applicant.

Considering the above explanation with reference to squaring off position, the amount debited by the Applicant in the Respondent's ledger to the extent of Rs.8,70,04,407.50 is allowed to the Applicant in absence of the Respondent's Counter claim for squaring off the position.

The Applicant have claimed Rs. 1,07,23,934.91 and I further reduce the claim by Rs.1,05,87,195.89 for the reason as explained below.

1. As regards unauthorized transfer/ adjustment of funds:

I agree with the observation made by my colleagues and to that extent Applicant's claim stands reduced by,

- I. Rs. 3,86,121.43/- pertaining to transfer to NSE CDS Segments and recovered from NSEIL CDS Segment.
- II. The amount is further reduced by Rs. 35,00,000/- Being transfer to an account of the Respondent jointly held with Globe Fincap Ltd. a subsidiary co. of the Applicant.

2. (i) **COUNTER CLAIM NO. 2: RS. 2,00,000 – INTEREST FREE SECURITY DEPOSIT TO BE RELEASED IN NSEIL F & O SEGMENT.**

&

(ii) **COUNTER CLAIM NO. 3: RS. 1,80,000– TDS CREDIT FOR THE FINANCIAL YEAR ENDED 31.03.2011**

I agree with observation made by my colleagues in rejecting counter claim No. 2 & 3 above.

3. **COUNTER CLAIM NO. 4: RS. 1,02,027.40 – INTEREST FOR THE PERIOD OF 01/04/2012 TO 19/04/2012**

- i. It is the case of the Respondent that the Respondent had provided FDR NO: 05985050080130 and 05985050080140. Totaling Rs. 2 crores and on 18/04/2012, the Respondent had requested the Applicant to release the said FDR from margin in NSE CDS Segment. Though the Applicant had provided the interest for the period till 31/03/2012, the Applicant failed to provide interest for the period from 01/04/2012 to 19/04/2012 for the above FDR which were at 9.8 % p.a. and the interest amounted to Rs. 1,02,027.40.



- ii. The Applicant has stated that the said FDR was prematurely encashed and as such the bank had debited an amount of Rs. 4,56,114.08 to the Applicant account.
- iii. On Scrutiny of the said FDR, it reflects that the FDR was credited in the account of NSCCCL A/c Globe Capital Market Limited.
- iv. The Applicant has failed to respond as to why this amount of RS. 4,56,114.08 was not recovered from the Respondent if the FDR was created at the instance of the Respondent.
- v. It is observed that the said premature debit of Rs. 4,56,114/08 pertains to the relation of the Applicant with HDFC Bank since the said FDR's were directly created by the Applicant as the release proceeds also have been credited to the Applicant's bank account.
- vi. The Applicant has admitted the same since an amount of Rs. 4,56,224.08 has not been debited by the Applicant in the Respondent's account.
- vii. However, the Respondent is entitled for reduced rate of interest as applicable for premature withdrawal of FDR @7.8% p.a (i.e 9.8% Minus 2%)
- viii. **In view of the same, the Respondent's counter claim pertaining to bank interest is allowed for a sum of Rs. 81,205/-**

**4. COUNTER CLAIM NO. 5: RS. 3,05,695.59 UNJUSTIFIED EXCESS TRANSACTION CHARGES in NSE CDS Segment.**

- i. It is the case of the Respondent that the agreed terms and conditions were Rs.10/- per crore subject to maximum of Rs. 50,000/- per month per exchange.
- ii. It is the case of the Applicant that the same was agreed to be Rs. 20/- per crore without any limit till Oct, 2010 and from Oct. 2010, it was agreed to be capped at Rs. 50,000/- per month per exchange.
- iii. Neither of the parties has anything recorded in writing. Hence, I go on the basis of the circumstantial evidences, the code of conduct between the parties and the business prudence to decide this issue and the charges paid earlier by the Respondent. The first issue which I decide is whether the ceiling of Rs. 50,000/- per month was applicable from July, 2010 or from Oct, 2010.
- iv. The Respondent has stated that Rs. 1,52,976.77 was reversed in the month of Oct, 2010 for the charges pertaining to September, 2010 in NSE CDS Segment. Also, Rs. 4,89,480.09 was reversed for the transaction charges for the period 20/09/2010 to 30/09/2010 in USE CDS Segment.
- v. From the ledger provided by the Respondent, it is observed that the Applicant had charged a sum of Rs. 2,04,402.92 for transaction charges for September, 2010. However, the Applicant reversed a sum of Rs. 1,65,315.41 for transaction charges for the period of October, 2010 to bring it to net Rs. 50,000/- but at the same time has also reversed a sum of Rs. 1,52,976.77 on 26/10/2010. Therefore the transaction charges charged for the month of September, 2010 amounts to a sum of Rs. 51,426.15. While reversing the transaction



charges for Rs. 1,52,976,77, the Applicant had failed to reverse the service tax on the same as is observed from the ledger. It seems that the Applicant reversed the part charges after the disputes and complaints were raised by the Respondent.

vi. It is therefore concluded that the ceiling of Rs. 50,000/- was not applicable from Oct, 2010 but was applicable since inception of the business relations between the Applicant and the Respondent. It is also observed from the email sent by the Applicant that the ceiling on the transaction charges of Rs. 50,000/- per month was applicable from July, 2010 onwards.

vii. However, for the month of July, 2010 the Respondent has contended that the maximum amount was Rs. 37,100/- since the clearing activities began from 08/07/2010. I agree to the same since the transaction charges can be apportioned and made applicable from the date of the start of the business.

viii. It was also observed that the Applicant was already having a relationship with ISSL wherein the Applicant paid a flat fee of Rs. 50,000/- per month per exchange to ISSL.

ix. I now have to deal with the second aspect of the charges viz. the dispute related to Rs.10/- per crore of Rs. 20/- per crore for reaching the ceiling of Rs. 50,000/- per month . Rs. 20/- per crore seem to be unacceptable to us on various reasons. Firstly, ISSL was initially offering the Respondent a variable slab of Rs. 15/- per crore which was later scaled down to Rs. 50,000/- per month. Secondly looking at the volume of the Respondent, it would have made no sense, since an average volume of Rs. 2500 crores would have easily hit the ceiling of Rs. 50,000/- per month (2500\*20) and as prudent business person, it would have made no sense to shift to the Applicant since the Respondent was already having an average monthly turnover of more than 2500 crores as seen from the turnover provided by the Respondent for the F.Y. 2009-10 in its pleadings. The Respondent while shifting its business would have benefited only if the maximum ceiling of Rs. 50,000/- would not be hit in some months. I therefore agree with the Respondent's contention of Rs. 10/- per crore subject to a maximum of Rs. 50000/- per month per exchange.

x. **The Respondent's counter claim for excess transaction charges in NSE CDS Segment is allowed for a sum of Rs. 3,05,695,59/-**

**5. Counter claim No.5: Unjustified/excess Transaction charges in NSE F & O Segment – amount Rs. 1,16,714.23.**

i. It is the case of the Respondent's that the agreed terms and conditions were Rs. 50/- per crore in future and Rs. 1000 per crore on the premium value in options.

ii. The Applicant has not disputed this nor has come out with its version of the charges.

iii. The Applicant has also not denied the turnover statement for NSE F&O Segment provided by the Respondent in Exhibit-AD.



iv. I have computed the transaction charges payable as per the turnover sheet attached by the Respondent and have compared the same with the transaction charges debited by the Applicant for NSE F & O

v. Accordingly, I allow Rs. 1,16,714.23 as per Respondent claim.

vi. **The Respondent's counter claim for excess transaction charges in NSE F & O Segment is allowed for a sum of Rs. 1,16,714.23.**

**6. Counter claim No.6: Demat charges Rs. 4341.82 & Rs. 10,095.34.**

i. It is the case of the Respondent that there was no additional charges payable by the Respondent to the Applicant other than the transaction charges agreed upon. However, the Applicant has debited additional demat charges without authorization of the Respondent.

ii. The Applicant has stated that the said charges were pertaining to the charges levied by the custodians who are depositories in respect of pledge shares in favor of NSCCL.

iii. The Respondent has contended that the Applicant has not produced any documentary evidence relating to the debit of such charges.

iv. The Applicant has also failed to produce document authorizing the Applicant to pledge the securities given by the Respondent NSCCL as it required under SEBI Circular No: MRD/DoP/SE/Cir-11/2008 dated 17/04/2008.

v. I have observed that though the Applicant has stated that the said demat charges were with respect to the custodians for creating pledge in favor of NSCCL, the Applicant has not produced any documentary evidence wherein the said demat charges were indeed paid to the custodian

vi. On scrutiny of the records, it was observed that in NSE F & O Segment the Applicant was levying a minimum sum of Rs. 25/- subject to a maximum of Rs. 30/- as demat charges for each security, however, the demat charges in NSE CDS Segment worked out to 0.03 % and hence, there was a serious discrepancy in the charges levied by the Applicant

vii. It is the case of the Respondent that ISSSL had agreed to levy a sum of 0.01 % on the value of the security pledged subject to a minimum of RS. 25/- and maximum of RS.150/- as collateral charges.

viii. In view of absence of documentary evidence regarding authorization given by the Respondent to pledge its share with NSCCL and in view of absence of any documentary evidence with regards to the payment of Demat charges to third party, the Respondent's counter claim pertaining to Demat charges need to be allowed.

ix. There are total 97 instances of pledge of securities in NSE F & O Segment and 13 instance in NSE CDS Segment. I make it clear that I disallow the Demat charges to the extent which the Applicant would have incurred for releasing shares back to the Respondent.





Segment	Amount Claimed by Respondent
NSE CDS	4,341.82
(+) NSE F & O	10,095.34
Less : 110 instances of releasing shares at RS. 25/- per instances	(-) 2,750.00
Allowable:	11,687.16

- x. **The Respondent's counter claim pertaining to the demat charges amounting to a sum of Rs. 14,437.16 is allowed to the extent of Rs. 11,687.16**

**7. Counter claim No.7: Late pay-in-charges in NSE CDS Segment of Rs.7,05,513.41 and NSE F & O Segment of Rs.2,13,397.31**

- i. It is case of Respondent that no late pay-in-charges were agreed because unlike ISSL, the Applicant did not offer any interest on the margins given in the form of cash component to the Respondent. It was observed that prior to shifting the business with the Applicant, ISSL was offering 9% on the cash component of margin given by the Respondent, and in case of shortfalls, ISSL was levying late-pay-in charges @ 0.07% per day.
- ii. It is the case of the Respondent that since the Applicant did not offer any interest, it was mutually decided that no late pay-in-charges will be levied.
- iii. The disputes relates to the mechanism on the basis of which the late-pay-in charges were levied in the Respondent's account and whether it could at all levied under the law,
- iv. The dispute started in the month of January, 2011 with regards to the late-pay-in charges. It was also observed that the Applicant did not levy any late payment charges for the month of September, 2010, November, 2010, April, 2011, July, 2011, to May, 2012 in NSE CDS Segment and for the month of May, 2011 to August, 2011 and April, 2012 in NSE F & O Segment. In the aforesaid months, it was observed that the Respondent's account was running into debits at few instances, but the Applicant has not levied any late-in charges.
- v. SEBI Circular No: MIRSD/SE/Cir-19/2009 dated 3<sup>rd</sup> December 2009, clearly specifies the criteria for levy of late-pay-in charges: viz. rate and period should be agreed in writing by either parties and it must not result in funding. Moreover, the said document is a compulsory document for levying late-pay-in charges.



- vi. As far as delayed charges are concerned the same is not trade on the exchange, the same is not an instruction to buy or sell security-option-derivatives nor notes. It mean that the constituent has paid money or given security. These are normally charges by broker to the constituent for providing the finance during the period of operation. However the SEBI as per circular dated 3<sup>rd</sup> December, 2009, vide their circular no. MIRSD/SE/Cir-19/2009 stated that **“Imposition of penalty/delayed payment charges by either party, specifying rate and period (this must not result in funding by the broker in contravention of the applicant laws)”** this is a mandatory document.
- vii. NSE Circular No: NSE/INSP/20638 dated 26/04/2012 read with Rule 8 (1) (f) and Rule 8 (3) (f) states that if the client fails to clear the debit balances and further exposure is granted, it would be construed as funding violation. Even if it is assumed that the Applicant could have levied late payment charges in violation to the aforesaid circular, the Applicant was not able to provide any communication as to whether it demanded any shortfall in margin from the Respondent, and if the shortfall was demanded, whether the Respondent refused or did not pay the shortfall. In the absence of any documents in writing, we are of the view that the late-pay-in charges, if any could have been levied subject to the above conditions of demand and non-fulfillment of demand thereto.
- viii. On scrutiny of the documents and calculations enclosed by the emails of January, 2011, it reflects that the Applicant has issued payments to the Respondent on the days when the Applicant claimed to have levied late-pay-in charges in the Respondent's account. For example, on 14/07/2010, the Applicant has issued a payment of Rs. 30 lakhs to the Respondent, and for that very same day, the Applicant has annexed a calculation for levy of late-pay-in charge amounting to Rs. 6,516/- Again on 28/07/2010, the Applicant has issued a payment of Rs. 51,66,235/- to the Respondent and has levied the late-pay-in charge amounting to Rs. 6,193/- Similar instance was again observed on 25/10/2010, wherein the Applicant has released a sum of Rs. 6,00,000/-, but in the calculation sheet provided, it reflects that the Applicant has levied a sum of Rs. 6,027/- for 25/10/2010. This is absolutely unconscionable and untenable on fact and in law both as it entails to a clear cut case of funding and therefore the said charges cannot be covered under the Trading Member-Clearing Member Agreement. If there was a margin shortfall, the Applicant could not have released the payment to the Respondent and on the same date debit late-pay-in charges.
- ix. The Applicant has also not produced a single email sent to the Respondent either monthly or half yearly intimating the calculation details to the Respondent nor was any email sent to the Respondent informing about levy of the late payment charges on its account. On scrutiny of the records, it was found that there was no calculation sheet provided by the Applicant for the late-pay-in charges pertaining to the period of 01/04/2011 to 31/08/2011 which means that there was no late-pay-in charge to be levied and hence, the same needs to be reversed.



- x. The Respondent has also drawn our attention to the calculation and comparison of late-pay-in charges on three days viz. 09/07/2010, 02/09/2011 and 03/10/2011. On scrutiny of the calculations for the three dates referred above, it was observed that the ledger balance used to calculate the delayed payment charges did not tally with the Respondent's ledger in the Applicant's books. The comparison of the calculation of late-pay-in charges for the above three dates shows:

PARTICULARS	09/07/2010	02/09/2011	03/10/2011
Exposure Limit (A)	22,500,000	94,000,000	98,500,000
Span Margin (B)	5,190,620	70,443,366	90,967,736
M to M (C)	1,864,583	25,952,056	16,456,822
Ledger Balance * (D) *[after debiting (B) & (C)]	(2,555,203)	(84,400,296)	(99,942,924)
FDRs (E)	-	31,600,000	31,600,000
Securities (F)	-	18,076,731	15,188,694
Other form of margins (G)	-	300,000	200,000
Ledger balance after reversal of Span Margin (B) and Exposure Margin (C)	4,500,000	11,995,126	7,481,634
Actual shortfall (H)= A-D-E-F-G	25,055,203	128,423,565	151,454,230
** Amount for calculation of LPC/ Interest = (H) – (B)	19,864,583	57,980,199	60,486,494
LPC calculation by the Applicant on:	19,864,583	3,423,565	1,954,230
LPC Amount	19,592	3,377	642

- xi. From the table, it reflects that there is no consistency in the formula used by the Applicant itself. The Respondent also pointed out that in the calculation; it reflected that there was a unilateral increase or decrease in the Exposure columns. Example, on 11/08/2010 exposure was Rs. 3,00,00,000/- and on 12/08/2010 exposure was Rs. 1,20,00,000/- and again on 18/08/2010, exposure was Rs. 1,90,00,000/- and on 20/08/2010 exposure was Rs. 2,50,00,000/-
- xii. The Respondent also pointed out that on 09/07/2010 against the total funds with the Applicant for a sum of Rs. 45,00,000/- the Exposure limit was Rs. 2,25,00,000/- and against the total funds with the Applicant for a sum of Rs. 6,19,71,857/- on 02/09/2011, the Exposure limit was Rs. 9,40,00,000/- Though as per the Applicant's own ledger, the funds available on 09/07/2010 was Rs. 55,00,000/-
- xiii. It is the case of the Applicant that against the Respondent's email dated 17/01/2011, the Applicant had only levied a sum of Rs. 7,92,272.11/- as late-pay-in charges. It is the case of the Applicant that the late-pay-in charges were levied on a



consolidated basis for all exchanges together. However, I have observed that the Applicant had failed to provide the calculations exchange wise and segment wise.

- xiv. The Respondent interalia has stated that the email dated 17/01/2011 was one of the communications from the Respondent based on false information provided by the Applicant over phone and the Applicant wishes to rely upon the said email pertaining to the late-pay-in charges but wants to set aside the issues related to the transaction charges in the very said email.
- xv. It is the case of the Respondent that till March, 2011, the dispute related to the charges was not resolved as the Applicant again in March, 2011 sent the same calculation sheet without any rectification. The Respondent has stated that if the late pay-in charges were correctly calculated by the Applicant in January, 2011, in fact, it should not have sent the same email again in March, 2011. On the contrary, it should have sent an email for the charges pertaining the January, 2011 to March 2011. I further state that the same sheet was sent by the Applicant in March, 2011 and hence, the late-pay-in charges were not agreed by the Respondent on account of subsequent exchange of emails pertaining to the said disputes.
- xvi. It is the case of the Respondent, that though the Applicant's software provides for calculation of late-pay-in charges exchange wise, the Applicant only to complicate the calculation has provided consolidated calculation for all the Exchanges.
- xvii. It the case of the Respondent that if the transaction charges are levied Exchange and segment wise, even the late-pay-in charges should have been levied Exchanges wise and segment wise. The Tribunal was of the view that the late-pay-in charges pertaining to one Exchange cannot be debited to an account pertaining to a separate Exchange and the same is also contrary to the provisions of the Clearing Member-Trading Member agreement and there are different agreements for each segment and each Exchange.
- xviii. It was also observed by me that in the email sent in the month of March, 2011, the late-pay-in charges calculated by the Applicant was Rs. 9,61,167.68/- for the period till December, 2010, however, the Applicant debited a sum of Rs. 7,92,272.11/- across the Exchanges for the period till December, 2010. This leaves an air of mystery and also whether the charges were indeed settled by the parties.
- xix. It is further seen that even on 30/04/2012, when the Respondent demanded calculation of late-pay-in charges for the period of 01/04/2011 to 31/03/2012, the Applicant provided the calculation of consolidated late-pay-in charges only for the period of 01/09/2011 to 31/03/2012.
- xx. It is further observed that there were serious discrepancies in the calculation sheets provided in pleadings to which the Applicant has neither clarified nor denied. It was also observed that in the month of April, 2012 and especially in the month of May, 2012 when the positions were squared off, the Applicant has not levied any late-pay-in charges in the account of the Respondent.





- xxi. In the aforesaid circumstances, due to absence of any consistent formulae, logic and basis of calculation of late-pay-in charges, due to absence of compulsory documents specifying the rate and period for levy of late payment charges, due to absence of any demand or communication to pay the shortfall of margins, I conclude that the late-pay-in charges levied is adhoc in nature and more so has been levied arbitrarily and an after-thought.
- xxii. I would have allowed the late-pay-in charges @specific rate. to the Applicant in case of margin shortfalls at the end of the day which were not paid by the Respondent on the second day, provided applicant would have given necessary documents and calculations, I under the above circumstances late-pay-in charges charged by Applicant is rejected & Respondent counter claim on this account succeed.
- xxiii. **The Respondent's counter claim pertaining to late-pay-in charges for Rs. 7,05,513.41/- in NSE CDS Segments and for Rs. 2,13,397.31/- in NSE F&O Segment is allowed.**

**8. COUNTER CLAIM NO. 8: BANK GUARANTEE CHARGES ASSURED TO BE REFUNDED.**

I agree with the observation of my colleagues and reject counter claim of the Respondent

**9. COUNTER CLAIM NO. 9: RS. 1,85,432.11 - EXCESS SERVICE TAX DEBITED ON CHARGES MENTIONED IN CLAIM NO. 5, 6 AND 7:**

Services tax on various services charges has been recovered from the Respondent and presumably been paid into Govt. Treasury by the Applicant as statutory dues and simultaneous credit claimed by the Respondent in their service tax liability, the same has not been allowed and hence rejected.

**10. COUNTER CLAIM NO. 10: RS. 28,50,255.86 AND RS. 1,66,692.88 - ILLEGAL AND UNAUTHORIZED PENALTY CHARGES:**

- i. It is the case of the Respondent that the penalty charges levied by the Applicant in the Respondent's account in NSE CDS and NSE F&O Segment, pursuant to SEBI Circular No.: CIR/DNP/7/2011 dated 10/08/2011 was not applicable in the case of Trading Member- Client Relationship and was applicable only in the case of Clearing Member-Trading Member. The Respondent has stated that the said SEBI Circular clearly states that the penalties are for *"Short-collection/non-collection of client margins."* Though the Respondent followed up with the Applicant consistently, the Applicant failed to redress this critical issue. It is the case of the Respondent that the Applicant did not levy such penalties in USE and MCXSX Segments.
- ii. The Respondent therefore approached SEBI seeking clarifications on the aforesaid SEBI Circular. SEBI through its letter dated 25/03/2013 Ref. No.: SEBI/MRPD/DRMNP/7286/2013 informed the Respondent that *"The said SEBI Circular prescribes penalty structure for penalty on Trading Member in case of short-collection/non-collection of margin from clients. Further, pursuant to discussions with exchange on common compliance criteria of the above circular, it was decided that*



*same penalty structure is applicable on Custodial participants and from their TMs for proprietary positions of TMs."*

- iii. The Applicant has stated that the circulars issued by statutory authorities are required to be interpreted in the manner they expressly prescribe their area of operation and as such, these circulars can neither be supplanted or supplemented by other means. It is the case of the Applicant that they had only passed on the penalties which were levied by the Exchange on shortfall in margin in the account of the Respondent.
- iv. I am of the view that the said SEBI Circular is very clear with regards to its implementation and which clearly specifies it to be between a Trading Member- Client Relationship. The Applicant has also not produced bank statement to verify whether the said penalties were indeed levied by the Exchanges. Assumed if they were levied by the Exchanges, it was levied on account of non-compliance by the Clearing Member for short collection of margins. Assumed if the Applicant was entitled to recover the same from the Trading Member, the Applicant has not produced the relevant documents specifying the intimation of shortfall in margins and the demand for the said shortfall. Also, of the penalties were indeed applicable between the Applicant and the Respondent, the said SEBI clarification letter dated 25/03/2013 would not have been issued by SEBI to the Respondent. I therefore conclude that the penalties indeed were not applicable between the Trading Member – Clearing Member relationship and could be made applicable only if the Trading Member had proprietary positions. It is the case of the Respondent that the Respondent was Trading on behalf of its clients only. The Applicant has not denied the same. Hence, the penalties could in no manner be levied upon the Respondent.
- v. I am also of the view of that even if it is assumed that the Applicant could have recovered the penalties from the Respondent since it was levied by the Exchange, the same could not have been recovered by the Applicant since the SEBI Circular clearly states that it is not applicable between the Respondent and the Applicant. It is for the Applicant to take the same with the Exchange since there is no tripartite relationship between the Exchange, the Applicant and the Respondent. The Applicant cannot recover adhoc penalties from the Respondent at its discretion.
- vi. It was also observed in the specific cases between 01/05/2012 and 16/05/2012 based on the margin reports provided by the Applicant and on comparison of the same with the penalties debited by the Applicant in the Respondent's account, that the Applicant has not debited the penalties for the trade dated 04/05/2012, 07/05/2012 and 16/05/2012. Also, in 16/05/2012, though there is a margin shortfall as per the Applicant, there is no penalty levied in the Respondent's account. Therefore, the Applicant by its own contentions is not having a consistent stand.
- vii. It was also observed that adhoc charges have been levied by the Applicant in the Respondent's account. Reporting wrong margins by levying excess and unauthorized unjustified charges is untenable and upon that, levying penalties and recovering the same from the Respondent is uncalled for.



viii. It is to be noted that the Applicant who is responsible for the penalties since the deficiency in margins alleged to have been reported by the Applicant was itself not correct.

ix. In view of the above supported by the SEBI clarification letter, I am of the view that the penalty charges need to be awarded to the Respondent in full.

x. **Therefore the Respondent's counter claim pertaining to the penalty charges debited in NSE CDS Segment for an amounting of Rs. 28,50,255.86/- and in NSE F&O Segment for an amounting of Rs. 1,66,692.88/- is allowed.**

11. (i) COUNTER CLAIM NO. 11: RS. 3,00,000 TOWARDS RELEASE OF CLIENT SHARES

(ii) COUNTER CLAIM NO. 12 AND 13: RS. 4,50,00,000 – INVOCATION OF BANK GUARANTEE AND RS. 1,50,00,000 – RELEASE PROCEEDS OF BANK FDR

I Agree observation made by my colleagues in rejecting counter claim No.11 &12 above of the Respondent since the credit is already effectively by Applicant.

12. COUNTER CLAIM NO. 14: RS. 35,00,000 – UNAUTHORIZED SIPHONING OF FUND OF THE RESPONDENT:

As disused above, the Respondent counter for an amount of Rs. 35,00,000/- need to be allowed.

13. COUNTER CLAIM NO. 15: RS. 1,70,85,273.25 – INTEREST @ 18%P.A. ON AMOUNTS CLAIMED ON CLAIM NO. 1 TO 14 FOR THE PERIOD OF 01/06/2012 TO 20/08/2013

This is dealt separately in my award.


14. COUNTER CLAIM NO. 16: RS. 1,09,65,583.35 – VALUE OF THE SHARES OF THE RESPONDENT'S CLIENTS' GIVEN ON PLEDGE:

i. It is the case of the Respondent that the Applicant has illegally sold off the share of the Respondent's clients though it had no authority in law to withhold and/or dispose of the shares of the Respondent's clients; more so particularly after the clarification from the NSE Circular No. : NSE/INSP/20638 dated 26/04/2012. It is also the case of the Respondent that the Respondent was not liable to pay any monies to the Applicant and in such circumstances; the action of the Applicant is vitiated in law.

ii. The Respondent has mentioned about an email dated 21/05/2012 where in order to circumvent its illegal Acts Applicant had asked the Respondent to provide an undertaking that the share pledged were owned by the Respondent only and were free from any prior lien or encumbrance. The Respondent in its various emails has informed the Applicant that the shares given to the Applicant that the shares given to the Applicant were the shares owned by the Clients of the Respondent and not owned by the Respondent.





- iii. It is the case of the Respondent that the value of the shares has been crystallized vide its letter dated 04/12/2012 based on the closing price of NSE as on 30/11/2012.
- iv. I further states that in the sequence of emails from 23/05/2012 which is after the Applicant's email dated 21/05/2012, the Respondent had repetitively informed that the shares were owned by the Respondent's clients. The Respondent had also informed the Applicant that the Applicant was wrongly sold the shares of the clients of the Respondent and was wrongly mixing two issues viz. one pertaining to the release of client shares and the other pertaining to the ledger entries in the Respondent's account. The Respondent had informed the Applicant to reinstate/ release the shares sold wrongly by the Applicant.
- v. It is the case of the Applicant that the shares which were sold on 29/05/2012 to recover the shortfall in the margin and the proceeds thereof were credited to the account of the Respondent.
- vi. It is further submitted that the Applicant sold off the shares on 29/05/2012 to recover the shortfall on the margin account. However, as per the Applicant there was no open positions after 17/05/2012 and hence, the contention of the Applicant does not hold good. Also, NSE Circular No. : NSE/INSP/20638 dated 26/04/2012 stated that ***"In Equity Derivative Segment and Currency Derivative Segment Member are allowed to accept approval securities from clients for margin purpose However, Members can lodge their own securities only to the Clearing Corporation and not the client's securities"***. In view of the circular, the Applicant could not have sold the shares which were belonging to the client of the Respondent, unless specifically authorized to do so by the client. The Applicant also has not provided any trade details regarding the shares which have been sold by the Applicant.
- vii. I am also of the view that the Respondent had continuously informed the Applicant that the shares were belonging to the clients of the Respondent, and hence, it meant that it was not owned by the Respondent and had prior lien of the client of the Respondent and was therefore encumbered. The Tribunal observed that the Applicant was at all point of time aware of this and hence, had demanded an undertaking vide an email dated 21/05/2012 which was not provided by the Respondent. Hence in my view the Respondent in turn would have to repay the value of the shares to the clients.
- viii. Also, neither the Applicant nor the Respondent have come out with a tripartite agreement between the clients of the Respondent, the Applicant and the Respondent. The Applicant has also not sought any relief from this Tribunal in lieu of the Respondent's counter claim pertaining to the shares of the Respondent's clients.
- ix. Even as per the provision of Clearing Member-Trading Member Agreement, ***"the Trading Member shall authorize the Clearing Member for appropriating the money by selling the securities including other collaterals and other assets held with the Clearing Member as the Clearing Member may deem fit and on which the trading Member shall not claim any right in future."*** However, such separate authorization was also not produced by the Applicant.
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- x. In view of the above, the Respondent's counter claim pertaining to the shares of its clients amounting to a sum of Rs. 1,09,65,583.35/- is allowed However the credit to the extent of Rs. 88,32,589.63 has been given by the Applicant, Herein the balance amount of Rs.21,32,993.72

**15. COUNTER CLAIM NO. 17: RS. 1,16,919.30 – DIVIDEND ACCRUED ON PLEDGED SHARES FOR THE PERIOD TILL 30/11/2012:**


- i. It is the case of the Respondent that the Applicant had wrongly sold off the shares and of the counter claim pertaining to the shares is allowed, the dividend for the period between 01/06/2012 and 30/11/2012 should also be allowed. Since the Respondent has crystallized the value of shares as on 30/11/2012 in account of non reinstatement / non release of shares by the Applicant, the Respondent has calculated the dividend till 30/11/2012.
- ii. The Applicant stated that the Applicant sold the shares to recover its dues in the Respondent's margin account.
- iii. The Respondent has enumerated and calculated the details in Exhibit AL pertaining to the dividend declared by the companies for the period from 01/06/2012 to 30/11/2012. The same has not been denied by the Applicant.
- iv. In view of the above, since the counter pertaining to the shares is allowed, I also find it fit to allow the counter claim pertaining to the dividend declared for the period from 01/06/2012 till 30/11/2012 and hence, the counter claim for sum of Rs. 1,16,919.30/- is allowed to the Respondent.

C. In View of the Observations & Findings stated above, I have come to conclusion the Applicant's claim is partially maintainable and the Respondent's Counterclaim is partially allowed

**AWARD**

1. The Respondent To Pay Sum Of Rs.1,36,739.02 (Rupees. ONE LAC THIRTY SIX THOUSAND SEVEN HUNDRED AND THIRTY NINE AND TWO PAISE ONLY) To The Applicant.
2. The Respondent to pay Interest @12% P.a on the Award amount of Rs.1,36,739.02 from the date of Application till the date of payment/realization.
3. There shall be no order as to the costs.

ARBITRATOR:

  
SHRI SHAILESH R.GHEDIA

Place : Mumbai

Dated \_\_\_\_ day of January, 2014

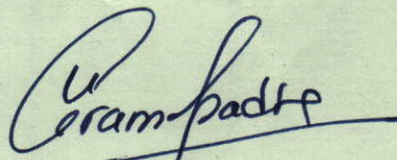


Since there is a difference of opinion, by majority, the following Award is pronounced:

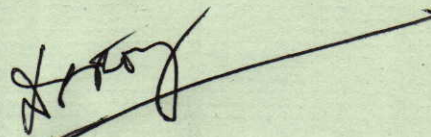
**MAJORITY AWARD**

1. The Respondent to pay a sum of Rs. 68,37,813.48 (Rs. Sixty Eight Lacs Thirty Seven Thousand Eight Hundred Thirteen and Forty Eight paisa only) to the Applicant.
2. The Respondent to pay interest @ 12% p.a. on the award amount of Rs. 68,37,813.48 from the date of receipt of arbitration application i.e. from 12<sup>th</sup> November, 2012 till the date of payment/ realization.
3. The counter claim of Respondent for Rs 10,65,02,924/-stands rejected.
4. No order as to costs.

The Award is signed and issued in three originals. NSEIL may retain the stamped original and forward one original each to the Applicant and the Respondent.



Uttam Gramopadhye  
(Presiding Arbitrator)



D.P. Roy.  
(Co-Arbitrator)



Shailesh Ghedia  
(Co-Arbitrator)

Place : Mumbai  
Dated: this 14<sup>th</sup> day of January , 2014