

dr
Authorised Signatory
Bandra Branch

The North Kanara G. S. B. Co-op.
Bank Ltd., Bandra Branch, Zapurza,
Sahitya Sahawas, Kalanagar,
Mumbai-400 051.
D-5/STP(V)/C.R. 1042/02/05/1300 to
1303



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BEFORE THE ARBITRAL TRIBUNAL COMPRISING OF

Justice Dr. Pratibha Upasani (Retd.) – Presiding Arbitrator

Justice S.K. Shah (Retd.) – Co – Arbitrator

Mr. Pawan KR Agarwal – Co – Arbitrator

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

Arbitration Matter No.: F&O/M-0036/2014

Between

IL&FS Securities Services Limited

Plot No. 14, IL & FS House,
Raheja Vihar, Chandivali,
Andheri (East),
Mumbai – 400072

**....Applicants
(Clearing Member)**

And

Vasanti Share Brokers Limited

Vasanti Share Brokers Limited
45, Whistling Wood 2nd Floor,
Tagore Road Opp Bhargava Nursing Home,
Santacruz (West), Mumbai - 400023

**....Respondents
(Trading Member)**

Appearances

For Applicant: Mrs. Smruti Kanade, Advocate
Mr. Vikram Chibber, S V President
Ms. Mangala Deshmukh, Legal Counsel

For Respondent: Mr. Rishabh Jogani, Advocate (Counsel)
Mr. Yashodhan Gavankar, Advocate

This is an arbitration reference submitted before us under the bylaws, Rules and Regulation of the National Stock Exchange of India limited (NSE) vide reference number F&O/M-0036/2014.

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PDH

(Name of Document)	
(Date)	Registrable / Not Registrable
(Serial No. of S.R.O)	
(Form No.)	
(Brief description in brief)	
(Face value)	100/-
(Name of Issuing Party)	National Stock Exchange
(Name of Issuing Party)	ILP FS Securities Services Ltd
(If through Agent)	Exchange Plaza Bandra Kurla Complex Bandra (E) - 400 051
(Amount)	one hundred RS only.
(Signature & Seal)	



The applicants herein are a clearing member on the equity and currency derivatives segment of the NSE and are also a member of the National Stock Clearing Corporation Limited. The respondents are trading member on the futures and options segment of the NSE and are engaged in the business of acting as brokers in respect of the stocks and/or shares.

Pursuant to the clearing member-trading member agreement entered into by and between the applicants and the respondents, the applicants were providing clearing and settlement services as a clearing member in the derivatives segment of the exchange in accordance with and subject to the rules, bylaws and regulations of NSE. Under the said agreement, the respondents were required to maintain margin with the applicants in the form of cash deposit's/collateral securities in the form of securities or otherwise for the purpose of taking trading exposure.

It is the case of the applicants that somewhere in February/ March 2014, the respondents could not fulfill their obligation to maintain the margin and therefore the applicants after giving due notice, initiated the process of encashment of cash deposits and the collateral deposit made by the respondents. According to the applicants, a sum of Rs.1 0,37,17,326/- which was outstanding and payable to the applicants, they could realize a sum of Rs.10,37,15,440.94 leaving a sum of Rs.1,885.06.

Applicants have averred that during the process of liquidation of the cash deposit and collaterals of the respondents, the applicants on 15th of March 2014, inadvertently and erroneously transferred the following shares to the D-mat account of the respondent.

Symbol	ISIN	Security Name	Qty
CIPLA	INE059A01026	Cipla Limited	1000
INFY	INE009A01021	Infosys Limited	1063
LT	INE018A01030	Larsen & Toubro Limited	1920
RELIANCE	INE002A01018	Reliance Industries Limited	950
TATA STEEL	INE081A01012	Tata Steel Limited	1125

According to them, on the same day they requested the respondents over telephone and through e-mail to retransfer the shares to the applicants' depository account. The respondents allegedly agreed to retransfer the shares to the D-mat account of the applicants on or before 18 March 2014. However, on 18th of March 2014 the applicants were informed by the respondents that the said shares were transferred by them to the D-mat account of the respondent's clients.

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The Applicants further mention that to meet their trading obligations they had no option but to purchase the equivalent number of the said shares from the market at the cost of Rs.7533962.85. Admittedly, the respondents subsequently deposited 100003 shares of Alang industrial gases limited as and by way of collateral security against the aforesaid liability. The respondents requested the applicants to hold the shares until they were paid off. However the respondents could not settle the said liability and aggrieved by the same, this reference to arbitration has been submitted claiming an amount of Rs.7533 962.85 along with interest at the rate of 18% per annum on the principal amount.

The respondents have filed their reply to the claim of the applicants on 1st of October 2014 and the applicants have filed their rejoinder on 13 October 2014. The pleadings were thus complete and after seeking adjournments from time to time, the matter was finally heard on 2nd of February 2015.

On the date of the final hearing on 2 February 2015, the advocate appearing on behalf of the respondents sought an adjournment on the ground that the reply dated 30th September 2014 (filed on first of October 2014) which was already on record was not satisfactory and that they be permitted to file additional reply.

In our considered opinion this request for an adjournment was absolutely improper and unfair. The matter was pending since long. It was a very old matter and was scheduled to be heard finally on October 13, 2014. The reply was dated 30 September 2014 and the rejoinder was dated October 13, 2014. If the respondents felt that their reply was not satisfactory, they could have filed additional reply or submissions much earlier as there was plenty of time of more than 3 and half months but they never did so. Finally when this arbitral tribunal had assembled for final hearing, this request for additional reply was made which this arbitral tribunal rejected and the matter therefore was heard at length and exhaustively.

The advocate and the counsel appearing on behalf of the respondents, further, raised the issue of jurisdiction and mentioned that as per the bylaws of the NCCL, this tribunal has no jurisdiction to entertain the claim of the applicants. According to the respondents, the current dispute is on account of shares affected by the applicants' employee from its depository accounts to an erroneous account with CDSL and has no nexus to the deal executed between the applicant and the respondents. The applicants maintain that this Tribunal has the jurisdiction to decide the dispute and in support of these they have submitted the relevant extract of the bylaws of the NSCCL. Bylaws 1 in Chapter X which pertains to arbitration is relevant and is reproduced below:-

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"All claims, disputes, differences, arising between clearing members and constituents or between clearing members inter se and arising out of or related to deals admitted for clearing and settlement by the clearing corporation in respect of F and 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, bylaws and regulations of the national stock exchange of India limited if the deal or originated from it or in pursuance thereof.(emphasis supplied)"

It is an admitted position that the applicants were providing clearing and settlement services to the respondents in accordance with and subject to the rules, bylaws and regulations of NSE and NSCCL. When the respondents failed to meet their trading obligations and provide margins, the applicants liquidated the cash deposits and collateral deposits of the respondents. In the process, admittedly, the applicants inadvertently and erroneously transferred the said shares to the D-mat account of the respondent. It is difficult to accept the proposition as laid down by the advocate of the respondents that there is no nexus between the transfer of the said shares and the services of settlement and clearing provided by the applicants. The bylaws of the NSCCL are wide enough to cover such transactions. The bylaws clearly provide that all disputes in respect of F&O segment or with reference to anything done in respect thereto or in pursuance of such deals shall be subject to the arbitration rules of NSE. In our considered opinion, the objection on the ground of jurisdiction has been taken in a nebulous manner and is devoid of any merit. We, therefore, hold that this arbitral tribunal has jurisdiction to entertain the claim of the applicants.

As far as merit of the case is concerned, there is no dispute that above shares were transferred to the D-mat account of the respondent. The respondents in their reply to the claim dated 30 September 2014 have admitted that on 15 March 2014 the said shares were transferred to their D-mat account. They even provided collateral security by depositing 100030 equity shares of Alang Industrial Gases Limited. According to them they dispatched letters to their respective clients requesting them to return back the shares erroneously transferred to them. In response to the notice of the advocate of the applicant, the respondents replied this notice through their advocate's letter dated 12 July 2014. Paragraph 8 of the said reply states that after several meetings with the applicants the dispute was settled amicably and the applicants agreed to accept a sum of Rs.6000000/- for all the claims whether known or unknown and pursuant to that they had deposited 100030 equity shares of Alang Industrial Gases Limited. However no evidence has been submitted before us pertaining to the alleged settlement between the parties. It is difficult to digest that when such a settlement is arrived at nothing is put on record. No communication has been exchanged between the parties regarding the settlement either in writing or through e-mail.

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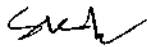
We have given our considered thoughts on the above issue but we are unable to convince ourselves that the alleged settlement took place. The respondents have not denied their liability and in fact they have admitted their liability by giving reference to the said settlement. We therefore, have come to the conclusion that the respondents are liable to compensate the applicants for Rs.75,33,962.85 which represent that value of the shares erroneously transferred to the D-mat account of the respondents. The applicants have also claimed interest at the rate of 18% per annum. According to us the rate of 18% is too high and we deem it fit to award interest at the rate of 12% per annum to meet the ends of justice. Hence we pass the following award.

THE AWARD

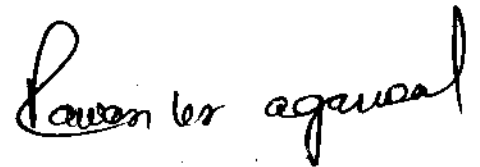
- (1) The Respondents are directed to pay to the applicants a sum of Rs.75,33,962.85(Rupees Seventy Five Lacs Thirty Three Thousand Nine Hundred Sixty Two & Paise Eighty Five only).
- (2) The Respondents to pay to the applicant interest on the amount awarded at the rate of 12% per annum from 15th of March 2014 till realization.
- (3) On the facts and circumstances of the case, there'll be no order as to costs.

Mumbai

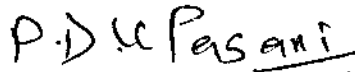
Dated this 12th day of March, 2015



Justice S. K. Shah (Retd.)
(Co-Arbitrator)



Mr. Pawan KR Agarwal
(Co-Arbitrator)



Justice Dr. Pratibha Upasani (Retd.)
(Presiding Arbitrator)