

Authorised Signatory  
Bandra (E) Branch

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



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INDIA STAMP DUTY MAHARASHTRA

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

**Before the Appellate Tribunal  
Comprising of**

**Mr. Jasbir Saluja - Presiding Arbitrator**  
**Mr. Ashok Kumar P Bakliwal - Co-Arbitrator** ✓  
**Mr. H. C. Parekh - Co-Arbitrator**

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

**BETWEEN**

**M/s. Globe Capital Market Limited,  
609, Ansal Bhawan,  
16, Kasturba Gandhi Marg,  
Kconnaught Place, New Delhi-110001**

**...Appellant  
(Original Applicant)  
(Clearing Member-NSCCL)**

**AND**

**HRIM Finance and Securities Pvt.Ltd.  
325, Madhu Mansion, 1st Floor,  
Room No. 106. Kalbadevi Road,  
Mumbai - 400 002**

**...Respondent  
(Original Repondent)  
(Trading Member-NSEIL)**

**Appearances:**

**Appellant: Dr. Anurag kr. Agarwal, Advocate**  
**Mr. Pawan Hira, Authorized Representative**  
**Mr. Harvinder Singh, Authorized Representative**

**Respondent: Mr. Hitesh Daga, Director**

**1.0 CLAIM**

1.1 This is an Appeal filed by M/s. Globe Capital Market Ltd. the Appellant /Clearing Member registered with NSCCL, challenging the Award dated 14-01-2014, passed by the Lower Arbitral Tribunal consisting of Mr. Uttam Gramopadhye - Presiding Arbitrator, Mr. D.P. Roy - Co-Arbitrator and Mr. Shailesh R. Ghedia - Co-Arbitrator, under the Rules, Byelaws and Regulation of National Stock Exchange of India Ltd.(NSE), partly allowing the claim of the Appellant/Clearing Member, to the tune of Rs.68,37,813.48 (Rupees Sixty-Eight Lacs Thirty-Seven Thousand Eight hundred Thirteen and paise Forty Eight only) with interest @ 12% p.a. from 12-11-2012 out of the total claim of Rs.1,07,23,934.91(Rupees One Crore Seven Lacs Twenty Three Thousand Nine Hundred Thirty Four and paise Ninety One only) against the HRIM Finance & Securities Pvt. Ltd. Respondent/Clearing Member-NSEIL, and completely rejected the counter claim of Rs.10,65,02,924/- (Rupees Ten Crores Sixty Five Lacs Two Thousand Nine Hundred Twenty Four Only) of the

Agreement

N.S.E  
CLAIM

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Respondent against the Appellant. Whereas, Mr. Shailesh R. Ghedia dissented with the Award passed by the majority, and instead, passed a separate Award dated 14-1-2014 partly allowing the claim of the Appellant to the tune of Rs.1,36,739.02 against the majority Award allowing Rs.68,37813.48 along with interest @ 12% from the date of Application till the date of payment/realization. The Ld. Arbitrator also dissented with complete rejection of the counter claim by majority award and thereby passed a separate award partly allowing the counter claim of the Respondent.

## **2.0 BACKGROUND:**

- 2.1 M/s. Globe Capital Market Ltd., the Appellant had preferred a claim for Rs.1,07,23,924.91 along with 18% interest p.a. from 31-05-2012 till realization of the said amount against HRIM Finance & Securities Pvt. Ltd. the Respondent/Trading Member of the Appellant as per the statement of account kept and maintained by the Appellant in the ordinary course of its business, arising out of clearing activities of Respondent/Trading Member for their clearing and settlement obligation in F&O and Currency Derivative Segment in NSE as on 25<sup>th</sup> September, 2012.
- 2.2 On 5-09-2013, the Respondent, HRIM Finance and Securities, the Respondent/Trading Member, filed their Statement of Defense to the Statement of Claim along with their Counter claim for Rs.10,65,02,924/- against the Appellant, inter alia, completely denying the claim of the Appellant, being vague, guilty of suppressio veri and suggestion falsi as alleged in their Statement of Defense and their Counter Claim during 2012.
- 2.3 The claim and the counter claim were heard by the Lower Arbitral Tribunal appointed by NSE between 6<sup>th</sup> September, 2013 and 14-1-2014 and the said Lower Arbitral Tribunal by an Award dated 14<sup>th</sup> January, 2014 partly allowed the claim of the Appellant to the tune of Rs.68,37,813.48 as against claim of Rs. 1,07,23,934.91, and completely rejected the counter claim of Rs.10,65,02,924/- of the Respondent against the Appellant. Whereas, one of the Co-Arbitrator, Mr. Ghedia dissented with the Award passed by the majority, and instead, passed a separate Award dated 14-1-2014 partly allowing the claim of the Appellant to the tune of Rs.1,36,739.02 against the majority Award allowing Rs.68,37813.48 along with interest @ 12% from the date of Application till the date of payment/realization. The said Ld. Arbitrator also dissented with complete rejection of the counter claim by majority award and thereby passed a separate award, partly allowing the counter claim of the Respondent.
- 2.4 Aggrieved by the said Awards both the Applicant and the Respondent filed Appeal and Cross Appeal against the said Award.



2.5 Based on the selection of the Central Arbitrator Appointment Process (CAAP), NSE appointed the present Appellate Arbitral Tribunal consisting of Mr. Jasbir Saluja, Mr. Ashok Kumar P. Bakliwal and Mr. HC. Parekh to adjudicate on the Appeal and the first hearing was fixed on June 05, 2014.

### **3.0 STATEMENT OF CASE:**

3.1 The Appellant is a Corporate Stock & Share Broker registered as Clearing Member with NSE and duly registered with SEBI having registration number M50302 for Capital Market Segment, F&O Segment and Currency Derivative Segment. The Appellant 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 Appellant in F&O and Currency Derivative Segment. Whereas, the Respondent is a Corporate Trading Member of NSE and duly registered with SEBI. The Respondent executed 'Clearing Member - Trading Member Agreement on 28-4-2010 with the Appellant and became a Constituent of the Appellant 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 clients' business, on whose behalf it carries out transactions in Currency Derivative Segment at the relevant time from its office/s.

3.2 The Appellant further 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. The Appellant further states that the Respondent used to deposit equity shares in DEMAT mode as collateral for and towards open positions, debit balance etc. in currency derivative segments. Respondent also used to deposit funds and withdraw funds/securities from time to time depending upon the requirements of the margins. Respondent never objected to or raised any of the grievances with the Appellant during the course of dealings.

3.3 The Appellant further stated that the Respondent had a debit balance of Rs.7,84,40,333.81 as on 17-05-12 in its ledger account. Appellant repeatedly asked Respondent to deposit further margin money and to clear its debit balance. Appellant had sent various emails to Respondent in this regard, but Respondent neither made the payment nor gave a satisfactory payment schedule. Hence, due to non-payment of the obligations by the Respondent, Appellant sold the shares amounting to Rs.88,44,619/- lying as collateral securities with the Appellant. Appellant informed NSCCL vide its letter dated 29-05-2012 regarding selling of all the share lying with the Appellant as collaterals due to non-payment of obligations by the Respondent.

- 3.4 The Appellant further stated that the Bank Guarantees of Rs.4,50,00,000/- lying with the Appellant towards margin obligations were also invoked by the Appellant from Indusind Bank, Mumbai vide Appellants letter dated 18-5-2012. A letter dated 29-05-2012 in this regard, also informed the NSCCL. Despite the steps taken by the Appellant, Respondent still had a debit balance of Rs. 1,09,22,713.59 as on 31-05-2012 That despite repeated reminders and demand, Respondent failed and neglected to make the said payment. Appellant, further submitted that as per the statement of account kept and maintained by the Appellant in the ordinary course of its business, Respondent was therefore, liable to pay a sum of Rs.1,07,23,934.91 to the Appellant as on 25-09-2012.
- 3.5 The Respondent, filed its Statement of Defense dated 5-9-2013 to the Statement of Claim along with Statement of Counter – Claim for Rs. 10,65,,02,924/-, contending that Appellant is guilty of suppressio veri and suggestion falsi and on this ground alone the Appellant is not entitled to any relief, much less the alleged relief claimed by the Appellant in their Statement of Case. Respondent further stated that Appellant had suppressed certain vital facts/documents which have a strong bearing on the case of the Appellant and clearly disentitle the Appellant from any relief and that the Appellant's case against the Respondent ought to be dismissed in limini.
- 3.6 The Respondent further submitted that the purported appeal, reflects that the Appellant has resorted to malafide tactic of producing documents which were not a part of the arbitral proceedings even though the Appellant without seeking liberty of the Lower Arbitral Tribunal continued to file additional documents and information gradually after the closure of arbitral proceeding and before issuance of impugned arbitral award. The Respondent further stated that these additional documents filed by the Appellant are false and fabricated and self manufactured and that the Respondent had not signed these documents and are also tampered with and therefore the documents are invalid and illegal on the face of it.
- 3.7 The Respondent further contends that the impugned arbitral awards are totally contrary to and in violation of the tenets and requirements laid down by the Bye-laws and Regulations of the NSEIL/NSCCL, SEBI circulars for Arbitration, Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, Arbitration and Conciliations Act, 1996, Public Policy, Constitution of India and the principles of natural justice. The Respondent further contends that comparison of the impugned majority award with the impugned minority award clearly implies that to the extent, the impugned minority award dissents with the impugned majority award. The Ld. Arbitrators have capriciously pronounced the impugned arbitral award with glaring errors on fact and law.

3.8 The Respondent further stated that the conclusions in the impugned awards have seriously vitiated on account of gross misreading of the materials on record as well as due to conspicuous omission to draw necessary and lawful inferences, inevitably flowing from the indisputable materials as well as findings recorded by the Ld. Arbitrators themselves and that the impugned award per se prove flagrant violation of the principles of law governing the very award. The Respondent further submitted that the impugned majority award dated 14-01-14 should be set aside completely and that the impugned minority award dated 14-01-2014 should be upheld to the extent it allows the Respondent's counter claim and should be set aside to the extent it wrongly allows the Appellant's alleged claims and wrongly disallows the Respondent's counter claims.

#### **4.0 GROUNDS OF APPEAL:**

4.1 The Appellant filed a Memo of Appeal dated February 11, 2014 listing among other things the Grounds of Appeal for setting aside the Impugned Award dated 14<sup>th</sup> January, 2014 of the Lower Arbitral Tribunal.

4.2 The Appellant in their Grounds of Appeal contained in para 7, from 1 to 6 has listed many points which allege that the Impugned Award has not taken into consideration several contentions listed in this Appeal which also were brought out in the various written and oral submission before the said Lower Arbitral Tribunal.

#### **5.0 PROCEEDINGS:**

5.1 The hearing of the Appeal was held on several dates and the last hearing being on 27-8-2014 wherein the Appellant was represented by their Counsel Dr. Anurag Kumar Agarwal and authorized representatives Mr. Pawan Hira & Mr. Harvinder Singh. Vakalatnama on behalf of the Appellant and letter of Authority from the Appellant Company was taken on record.

5.2 The Respondent was represented by Mr. Hitesh Daga Director of the Respondent Company.

5.4 The Appellant & the Respondent were also reminded that this being an Appellate Arbitral Tribunal, the submission and arguments should focus only on Law/facts which in the Appellants' views were placed before the Lower Arbitral Tribunal but allegedly not taken into consideration by the said Lower Arbitral Tribunal while passing the Impugned Award being challenged at present.

5.5 The Respondent filed its reply dated 17-4-2014 to the Statement of Appeal raising various contentions, allegations and statements and prayed for setting aside the impugned award of the Lower Arbitral Tribunal and to allow its counter claim.

- 5.6 The Respondent filed an Application dated 5-7-2014 under Section 19(2) and Section 28 of the Arbitration and Conciliation Act, 1996 and also relied upon the provisions of Bye-law 12 & 19(a) Chapter XI of NSEIL, Regulations 5.12A & 5.21(b) of Chapter 5 of NSEIL Currency Derivatives Regulations contending that Respondent will not be representing its case through an Advocate and therefore in view of the provisions of bye-laws and relevant provisions under the Arbitration and Conciliation Act, 1996, the Appellant cannot appear through an Advocate since both are the Trading Members of NSEIL and secondly without prejudice, since NSEIL through its various letters has been considering the Respondent as a constituent in the present proceedings, the Appellant can appear and represent through Advocates only if the Respondent appears and represents its case through the Advocates. The Appellant filed its reply to the said application of Respondent.
- 5.7 The Appellant filed affidavit dated 23-7-2014 enclosing certain relevant documents. Thereafter the Respondent filed its reply dated 1-8-2014 to the said Affidavit of the Appellant contending that the Appellant has introduced additional new alleged irrelevant, unauthenticated and manufactured documents as per its own whims and fancies and that too, at this stage of the proceeding which should not allowed.
- 5.8 Pursuant to the directions of this Appellate Arbitral Tribunal on 8-7-2014, Appellant and Respondent have filed their respective affidavits dated 23-7-2014 and 1-8-2014 duly notarized, relating to the authenticity of document dated 10-5-2011 filed with the appeal paper book at page 318.
- 5.9 Parties have filed related compilation of documents filed and relied upon by them before the Lower Arbitral Tribunal.

## **6.0 FINDINGS:**

- 6.1 With regard to the objection raised by the Respondent allowing the Appellant to appear through Advocate/Counsel before this Appellate Tribunal, after perusal of the application of the Respondent and reply of the Appellant and after hearing their contentions, the Respondent heavily relied upon bye law 12 of Chapter XI of NSEIL, the extract of which is reproduced herein below

“Appearance in arbitral proceeding by counsel, attorney or advocate (12) In arbitral proceeding where both the parties are Trading Members, the parties shall not be permitted to appear by counsel, attorney or advocate but where one of the parties is a Constituent, then the Constituent shall be permitted to appear by counsel, attorney or advocate. If the Constituent chooses to appear by counsel, attorney or advocate, the Trading Member and Issuer shall also be granted a similar privilege.”

The Respondent further relied upon the provisions of Regulation 5.12A of chapter 5 of NSEIL Currency Derivatives Regulations, as well as bye-law 19(a) of Chapter XI of NSEIL, sub clause (d), Regulation 5.21(b) of chapter 5 of the NSEIL ,

**which to our mind, cannot deprive the legal rights of a person /parties to represent through a lawyer, attorney or an advocate.**

Whereas on the other hand, the Appellant argued that in terms of Section 30 of the Advocates Act 1961, our attention was drawn to the Notification No.SO1349(E) dated 9-6-2011 which clearly provides under "Right of Advocates to practice:- Subject to provisions of this Act, every Advocate whose name is entered in the State roll shall be entitled as of right to practice throughout the territories to which this Act extends

- i) In all Courts including the Supreme Court
- ii) before **any tribunal or person legally authorized to take evidence** and
- iii) before any other authority or person before whom such Advocate is by or under any law for the time being in force entitled to practice.

It was pointed out that the Bye Law 12 of Chapter XI of the NSE has become ultra-vires after the said notification of Section 30 of the Advocates Act, 196. Besides, the Appellant also relied upon Gujarat High Court Judgment in the matter of Mitesh Maubhai Sheth vs. Secretary , Govt. of India reported in **AIR1998 Gujarat 60**. Wherein the **Gujarat High Court** held in para 18 **"It is now well settled that, in an enquiry affecting the legal rights of person by a judicial or quasi-judicial or even administrative decisions, the party affected should be permitted to be represented through lawyer. Further, the statutory provisions are required to be in consonance of the principle of natural justice in as much as the rights of a person having serious civil and pecuniary consequences are not jeopardized, except by a fair procedure.**

The Appellant further relied on Kerala High Court judgment in the matter of C.P.Saji vs. Union of India & Ors. Reported in AIR 2012 Kerala 23, wherein in para 13 it was held that "In view of the notification dated 9-6-2011 to Section 31 of the Advocates Act, 196 **" all lawyer, have acquired a right to practice before all court/Tribunal and such other Forum of India as a matter of right, which provision is having all the traits and effect of a subsequent legislation to override the restrictive covenants as contained in Section 13 of the Family Courts Act, 1984, necessitating prior sanction of the said court has virtually become redundant.**

In Karmyogi Shelters Pvt. Ltd. vs. Benarsi Krishna Committee reported in 2010 (3) (Raj) 247 (Del), the Delhi High Court held in para 25 held that : **An Advocate under section 30 of the Advocate Act 1961, is entitled as of right to practice law inter-alia before any tribunal or person legally authorized to take evidence. An arbitrator is legally authorized to take evidence.( Section 7 (Section 27).**

Hence, it was submitted that the Bye Laws of the Exchange are only a delegated piece of legislation and in case of any direct conflict; the Act passed by Indian Parliament would prevail. We find substance in the argument of the Appellant and accordingly rejected the Respondent's application in this regard.

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- 6.2 In so far as the directions of 8-7-2014 given by this Appellate Arbitral Tribunal relating to the authenticity of document dated 10-5-2011 on page 318 of the Appeal Memo Book of the Appellant is concerned, both parties were directed by this Appellate Arbitral Tribunal to file their affidavit to the extent of the authenticity of the said document.. This Appellate Arbitral Tribunal after going through the affidavits of both the parties and after hearing their arguments at length on this issue, came to conclusion that the said document was signed by Respondent's Director namely Mr. Narsinghdas Daga, and that the said signature tallied and proved genuine with several other documents of the Respondent, exhibited by the Appellant in their reply, more particularly to the extent that the Axis Bank issued the certificate dated 7-2-2014 under the request of the Respondent Company, certifying that the Current Account No. 911020060784622 relates to bank account of HRIM Finance and Securities Pvt. Ltd. with Axis Bank since 25-11-2011 and therefore the same does not appear to be self-manufactured, false and fabricated, as alleged by the Respondent in their reply.
- 6.3 Further, with regard to the ground no. 1, 2 & 3 in the Appeal relating to Appellant's application u/s 12 of the Arbitration and Conciliation Act, 1996 is concerned, this Appellate Arbitral Tribunal after perusing the award dated 14-1-2014 impugned herein, the lower Arbitral Tribunal in para 7.2 of its award has dealt with the said application and rejected the plea of the Appellant. Hence, it does not call for interference by this Appellate Tribunal.
- 6.4 With regard to Ground No. 4 of the appeal, we have heard the parties at length and after examining the documents on record, we find that the Respondent was aware of the fact to the extent of transfer of the said R.35,00,000/- to the account of the Respondent jointly held with Globe Fincap Ltd, a subsidiary Company of the Appellant, only to reduce debit balance existing in the loan account of the Respondent to avoid levy of excess interest charges, which the Lower Arbitral Tribunal did not appreciate and overlooked the document on record and accordingly reduced the said amount from the claim of the Appellant.. Hence in our opinion, the award to that extent need to be modified. Accordingly, the impugned award to that extent stands modified.
- 6.5 With regard to Ground No.5 of the Appeal, relating to Rs.3,86,121.43 being wrongly transferred from USE CDS Segment to NSEIL CDS Segment, by the Appellant, we have heard the parties at length and although the NSE Rules and Regulations do not allow, but after perusing the relevant paragraphs in the affidavit of the Respondent admitting the fact that this arrangement sounds logical and favorable for the business of the Respondent, which the Lower Arbitral Tribunal did not appreciate and accordingly reduced the said amount from the Appellant's claim. In our opinion, we deem it fit to modify the same. Accordingly, we allow the same and the impugned award to that extent stands modified.

- 6.6 Having considered all the issues and the documents and submissions on record, and in the light of our observation made herein above, we deem it fit to modify the impugned Award and accordingly the impugned Award stands modified to that extant.
- 6.7 The majority Impugned Award dated 14<sup>th</sup> January, 2014 in terms of the aforesaid Appeal reducing the claim to the extent of Rs.38,86121/-stand modified. Hence the following order.

## 7.0 ORDER

- 7.1 Majority Impugned Award in terms of the aforesaid Appeal, reducing Rs.38,86,121.43 from the Appellant's claim is modified accordingly. Hence, we direct the Respondent to pay an amount of Rs. 38,86,121.43 (Rupees Thirty-eight lacs eighty six thousand one hundred twenty one and paise forty three only) to the Appellant, in addition to Rs.68,37,813.48 payable to the Appellant as directed by Lower Arbitral Tribunal in terms of its majority Award dated 14-1-2014 along with interest @ 12% p.a. on the award amount from the date of receipt of arbitration application i.e. from 12-11-2012 till the date of payment/realization.
- 7.2 No order as to costs.
- 7.3 The Award is given in -3- originals, one each for the Appellant, Respondent and one for the record of NSE.

Mumbai,

Dated this 9<sup>th</sup> Day of October, 2014



**Ashok Kumar P. Bakliwal**  
(Co-Arbitrator)



**H.C. Parekh**  
(Co-Arbitrator)



**Jasbir Saluja**  
(Presiding Arbitrator)

The North Kanara G.S.B.Co-op.  
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**Mr. H. C. Parekh - Co-Arbitrator**

**Cross Appeal No. : CDS/M-0001/2013**

**BETWEEN**

**HRIM Finance and Securities Pvt.Ltd.**  
**325, Madhu Mansion, 1st Floor,**  
**Room No. 106, Kalbadevi Road,**  
**Mumbai - 400 002**

**...Appellant**  
**(Original Repondent)**  
**(Trading Member-NSEIL)**

**AND**

**M/s. Globe Capital Market Limited,**  
**609, Ansal Bhawan,**  
**16, Kasturba Gandhi Marg,**  
**Kconnaught Place, New Delhi-110001**

**...Respondent**  
**(Original Applicant)**  
**(Clearing Member-NSCCL)**

**Appearances:**

**Appellant: Mr. Hitesh Daga, Director**

**Respondent: Dr. Anurag Agarwal, Advocate**  
**Mr. Pawan Kumar Hira, Authorized Representative**  
**Mr. Harvinder Singh, Authorized Representative**

**1.0 CLAIM**

1.1 This is a Cross Appeal filed by M/s. HRIM Finance & Securities Pvt. Ltd. the Appellant/Trading Member-NSEIL, challenging the following impugned Arbitral Awards

i) Award dated 14-01-2014, passed by the Lower Arbitral Tribunal consisting of Mr. Uttam Gramopadhye, Mr. D.P. Roy and Mr. Shaileh Ghedia, under the Rules, Byelaws and Regulation of National Stock Exchange of India Ltd.(NSE), directing the Appellant herein to pay a sum of Rs.68,37,813.48 with interest @ 12 p.a. on the said amount to the Respondent Company- M/s Globe Capital Market Limited

ii) Award dated 14-01-2014 of same Arbitral Tribunal, rejecting Appellant's counter claim of Rs. 10,65,02,924/- against the Respondent.

Agreement

N.S.E  
CLAIM



iii) The Ld. Arbitrator Mr. Ghedia dissented with the Award passed by the majority, and instead, passed a separate Award dt. 14-1-2014 allowing the claim of Respondent for a sum of Rs.1,36,739.02 with interest @ 12% p.a. from date of Application till date of payment/realization.

iv) Impugned Order dated 3-03-2014 passed by the Lower Arbitral Tribunal dismissing the Appellant's application dated 10-02-2014 under section 33 of the Arbitration and Conciliation Act, 1996, allegedly for rectification of the errors apparent in the majority award dated. 14-01-2014 passed by the said Lower Arbitral Tribunal.

## **2.0 BACKGROUND:**

- 2.1 M/s. Globe Capital Market Ltd., the Respondent Clearing Member-NSEIL herein, preferred a claim for Rs.1,07,23,924.91 along with 18% interest p.a. from 31-05-2012 till realization of the said amount against HRIM Finance & Securities the Appellant/Trading Member-NSEIL of the Respondent as per the statement of account kept and maintained by the Respondent in the ordinary course of its business, arising out of clearing activities of Appellant/Trading Member for their clearing and settlement obligation in F&O and Currency Derivative Segment in NSE as on 25<sup>th</sup> September, 2012.
- 2.2 On 5-09-2013, HRIM Finance and Securities, the Appellant/Trading Member, filed their Statement of Defense to the Statement of Claim of the Respondent along with their Counter claim for Rs.10,65,02,924/- against the Respondent, inter alia, completely denying the claim of the Respondent, being vague, guilty of suppressio veri and suggestio falsi as alleged in their in the Statement of Defense and their Counter Claim during 2012.
- 2.3 The claim and the counter claim were heard by the Lower Arbitral Tribunal appointed by NSE between 6<sup>th</sup> September, 2013 and 14-1-2014 and the said Lower Arbitral Tribunal by an Award dated 14<sup>th</sup> January, 2014 partly allowed the claim of the Respondent to the tune of Rs.68,37,813.48 as against claim of Rs. 1,07,23,934.91, and completely rejected the counter claim of Rs.10,65,02,924/- of the Appellant/Trading Member, against the Respondent /Clearing Member. Whereas, one of the Arbitrator, Mr. Ghedia dissented with the Award passed by the majority, and instead, passed a separate Award dated 14-1-2014 partly allowing the claim of the Respondent to the tune of Rs.1,36,739.02 against the majority Award allowing Rs.68,37,813.48 along with interest @ 12% from the date of Application till the date of payment/realization. The said Ld. Arbitrator also dissented with complete rejection of the counter claim passed by majority award and thereby passed a separate award, partly allowing the counter claim of the Appellant.
- 2.4 Aggrieved by the said Awards the Appellant filed the present Cross Appeal.
- 2.5 Based on the selection of the Central Arbitrator Appointment Process (CAAP), NSE appointed the present Appellate Arbitral Tribunal

consisting of Mr. Jasbir Saluja, Mr. Ashok Kumar P. Bakliwal and Mr. HC. Parekh to adjudicate the Cross Appeal.

### **3.0 STATEMENT OF CASE:**

- 3.1 The Appellant is a Corporate Trading Member of NSE and duly registered with SEBI. The Appellant executed Trading Member – Clearing Member Agreement on 28-4-2010 with the Respondent and became a Constituent of the Respondent for the purpose of inter alia, clearing and settlement of its obligations on NSE for Currency Derivative Segment. The Appellant 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. Whereas the Respondent is a Corporate Stock & Share Broker registered as Clearing Member with NSE and duly registered with SEBI having registration number for Capital Market Segment, F&O Segment and Currency Derivative Segment. The Respondent 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 Respondent in F&O and Currency Derivative Segment.
- 3.2 The Appellant further submits that they filed an application dated 10-2-2014 under section 33 of the Arbitration and Conciliation Act, 1996 requesting the Lower Arbitral Tribunal to provide clarifications and rectify the errors in terms of the date of square off, which was observed as 17-5-2012 instead of the correct date being 16-5-2012 in the impugned arbitral award dated 14-1-014. The Appellant also prayed that under the provisions section 33(4) of the Act, to consider the cyclical effect of the unauthorized transfer and the effect of wrong adjustment on the illegal late pay-in and penalty charges and reduce the impugned the majority award amount by a sum of Rs.23,58,450.37, which was without accepting the impugned observation of the Lower Arbitral Tribunal. The Lower Arbitral Tribunal passed an Award dated 5-3-2014 dismissing the Appellant's application under Section 33 of the Act, whereas the said award passed by the Ld. Arbitrators was dissented by one of the Arbitrator who by a separate Award dated 5-3-2014 allowed the said application under section 33 of the Act rectifying the apparent error in said majority award.
- 3.3 The Appellant further submitted that the Respondent's alleged claim of debit balance at the foot of ledger account are as per the self-manufactured books of accounts and the same being contrary to the provisions of NSCCL Rules, Bye-laws and Regulations. The Appellant further submitted that their counter claim for a sum of Rs.10,65,02,924/- related to in terms of reversal of the Respondent's levy of unjustified and excess transaction charges, unauthorized and illegal levy of late pay-in charges, demat charges and penalty charges, excess service tax. Bank interest on FDR not credited by the Respondent, TDS credit for the F.Y. ended 31-03-2011 not provided by the Respondent, unauthorized transfer of funds from the Appellant's account, release of ledger balance as on 16-5-2012, proceeds of FDRs and amount of bank guarantee wrongly encashed by the Respondent, amount paid by the Appellant to the Respondent towards release of client's shares, penalty charges debited upon the

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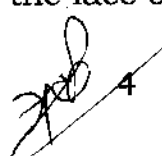
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Appellant by NSCCL due to illegal acts of the Respondent, release of security deposit given by the Appellant to the Respondent in NSE F&O Segment, bank charges assured by the Respondent to be refunded to the Appellant and Interest @ 18% p.a. on the Appellant's counter-claim.

- 3.4 The Appellant further submitted and requested this Appellate Arbitral Tribunal that the contents of the arbitration pleadings be referred as part and parcel of the present cross appeal memo and the same formed as Compilation, was taken on record. The Appellant further contented that there is an established real danger of biasness of the one of the Arbitrator of the Lower Tribunal and therefore this Appellate Tribunal should review the decision of the majority impugned award dated 14-1-2014. In support of this contention, Appellant relied upon Apex Court judgment in Jiwan Kumar Lohia v. Durga Dull Lohia, wherein the Apex Court held that "with regard to bias in relation to a judicial Tribunal the test that is applied is not whether in fact a bias has affected the judgment, but, whether a litigant could reasonably apprehend that a bias attributed to a member of the tribunal might have operated against him in the final decision" Besides, the Appellant also relied upon two other judgment of the House of Lords. The Appellant further pleaded in it Cross Appeal memo that the Ld. Arbitrator Shri D.P.Roy apparently continuously displayed a colorable exercise of power to the prejudice of the Appellant besides constituting continued biasness against the Appellant which is in gross violation of the laid down procedures and Rules and Regulations and the provisions of the Act and the SEBI Circular. The Appellant further stated that the Ld. Arbitrator Shri Uttam Gramopadhye while deciding the issue on the late pay-in charge ignored his on persuasive observation by asking the Respondent to prove, the alleged shortfall of margins in the Appellant account and whether Appellant was called upon by the Respondent to pay the alleged shortfall of margins and whether upon such alleged margin call, did the Appellant failed to do so.
- 3.5 The Appellant, filed its Statement of Defense dated 5-9-2013 to the Statement of Claim of the Respondent and also filed its Statement of Counter -Claim for Rs. 10,65,02,924/-, contending that Respondent is guilty of suppressio veri and suggestion falsi and on this ground alone the Respondent is not entitled to any relief, much less the alleged relief claimed by the Respondent in their Statement of Case. Appellant further pleaded that Respondent had suppressed certain vital facts/documents which have a strong bearing on the case of the Appellant and clearly disentitle the Respondent from any relief and that the Respondent's case against the Appellant ought to be dismissed in limini.
- 3.6 The Appellant further submitted that the purported appeal, reflects that the Respondent has resorted to malafide tactic of producing documents which were not a part of the arbitral proceedings even though the Respondent without seeking liberty of the Lower Arbitral Tribunal continued to file additional documents and information gradually after the closure of arbitral proceeding and before issuance of impugned arbitral award. The Appellant further stated that these additional documents filed by the Respondent are false and fabricated and self manufactured and that the Appellant had not signed these documents and are also tampered with and therefore the documents are invalid and illegal on the face of it.

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- 3.7 The Appellant further contends that the impugned arbitral awards are totally contrary to an in violation of the tenets and requirements laid down by the Bye-laws and Regulations of the NSEIL/NSCCL, SEBI circulars for Arbitration, Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, Arbitration and Conciliations Act, 1996, Public Policy, Constitution of India and the principles of natural justice. The Respondent further contended that on comparison of the impugned majority award with the impugned minority award clearly implies that to the extent, the impugned minority award dissents with the impugned majority award. The Ld. Arbitrators have capriciously pronounced the impugned arbitral award with glaring errors on fact and law.
- 3.8 The Appellant further stated that the conclusions in the impugned awards have seriously vitiated on account of gross misreading of the materials on record as well as due to conspicuous omission to draw necessary and lawful inferences, inevitably flowing from the indisputable materials as well as findings recorded by the Ld. Arbitrators themselves and that the impugned awards per se prove flagrant violation of the principles of law governing the very award. The Appellant further submitted that the impugned majority award dated 14-01-2014 should be set aside completely and that the impugned minority award dated 14-01-14 should be upheld to the extent it allows the Appellant's counter claim and should be set aside to the extent it wrongly allows the Respondent's alleged claims and wrongly disallows the Appellant's counter claims. The Appellant also prayed for allowing its counter claim against the Respondent for a sum of Rs.10,65,02,924/- (Rupees ten crores sixty five lacs two thousand nine hundred and twenty four only) along with interest @18% from 20-08-2013 till the date of realization of the payment of the amount.
- 3.9 The Respondent in reply submitted that the Award passed in other proceedings if some third parties relied upon by the appellant could not be considered as they are not judgments by the Court of Records and thus have no binding precedence or even persuasive value. Non-consideration of any material by the Arbitral Tribunal, ipso facto, does not imply bias. An element of bias is to be proved separately by leading cogent evidence. Mere non-consideration of any piece of material by the Arbitral Tribunal does not mean that the award is perverse. The award would be perverse if any material piece of evidence is left out of consideration which would shift the ultimate outcome of the proceedings and not otherwise.
- 4.0 As regards the Margin files and margin reporting, the issue relating to alleged non-supply of margin files to the appellant was duly dealt with by the Arbitral Tribunal in para 7.3 at page 87 (vol.1 of the paper book of cross-appeal). NSCL independently supplies MG-13 file to the Trading Member and MG-12 to the Clearing Member which are in relation to margin requirements. Clearing Member as well as the Trading Member are under an obligation to report Margin to the Clearing Corporation on daily basis. The print out of NSE web-site in relation to aforesaid requirement has already been placed on record during the course of hearing. The Respondent further submitted that



if margin files were not available to the appellant, then it was not possible for the appellant to report any margin on daily basis to NSCCL. NSE also flashes warning message when the margin falls short at the terminal of the Trading Member at 70%, 80%, 90% and 100% when trading terminal is suspended. (Refer flash messages in Vol. V in TM Code 11116 of the appellant at pg.1243,1248, 1257,1260, 1267, 1274, 1276, 1278 and 1281). Appellant executed transactions worth crores of rupees over a period of July,2010 to May,2012 (around 20 months). The execution of said trades was not

Possible if the margin files were not available with the Appellant. There are multiple pay in and pay outs around 100 during the aforesaid period and referred to page 1512 to 1514 Vol. VI. These pay ins and payouts were not possible if the Appellant was not aware of his margin position.

4.1 The Respondent further stated in their written submission that the all outstanding positions were squared off by the Appellant himself in view of shortfall in margin. There was continuous short fall in margin from 2nd May,2012 to 16<sup>th</sup> May, 2012 and referred page 1493 to 1503 Vol. VI. After squaring off all the positions, the shortfall in margins turns into debit balance and no further reporting of margin is required to the Exchange at this stage. Since there was no open position, therefore, there was no need of reporting of margin shortfall. The entire debit balance existing in the account of the Appellant as on 16<sup>th</sup> May, 2012 turns into debit balance on T+1 i.e. 17<sup>th</sup> May, 2012 which was Rs.7,84,40,333.81, referred on page 799 of Vol. III. Date of squaring off all open positions by the Appellant I 16<sup>th</sup> May, 2012 and it was posted on the next trading day i.e. T+1 by the Respondent in its ledger i.e. 17<sup>th</sup> May 2012 which was taken up by the by the Arbitral Tribunal in para-7.4 of the award at page 88 of Vol. 1 of the paper book of Cross-Appeal. Thus, there is no error in this regard in the award passed by the Arbitral Tribunal. As regards the penalties levied by the NSE on Appellant was towards short collection of margin on its part. These penalties were passed on to the Appellant by the Respondent. If any penalty is wrongly levied by the NSE , the action lies against the NSE and not against the Respondent. (Refer pages 1293 to 1340 of Vol. V against TM Code 11116 of the Appellant, and pages 1289 to 1292 Vol. V already dealt with by the Arbitral Tribunal in para 7.4 at page 87 Vol. 1). In any case the Appellant had never objected to such penalties any time before the filing of their reply before the Arbitral Tribunal. This aspect was dealt with by the Arbitral Tribunal while considering counter claim of the appellant under clause (h) at page 92 of Vol. 1.

4.2 The Respondent further submitted that the Appellant made a payment of 1.50 crore through two cheques of R.75 lacs each against the shortfall of margin on 4<sup>th</sup> May,2012. On 4-5-2012 there was shortfall of Rs.1,43,17,794.33, refer page 1495 of Vol. VI of the paper book of cross-appeal. At page 31 Vol. , the Appellant in their reply have admitted to have paid the said amount through the aforesaid two cheques on 4-5-2012. Appellant further admitted in their reply in para 27 at page 34 of Vol.1 The Appellant argued that the benefit of the said cheques should not have been considered on 4-5-2012 and therefore the Appellant cannot take the advantage of their own wrong. Once the Appellant assured the payment to the Respondent on 4-5-2012, their own act of depositing the said cheque at a later date of