GAHC010049032017

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.A./16/2017

SMC GLOBAL SECURITIES LTD.
HAVING ITS REGISTERED OFFICE AT 11/6B, SHANTI CHAMBERS, MAIN PUSA ROAD, NEW DELHI 110005

VERSUS

MR PIYUSH KHEMANI and ANR
C/O MAHESHWARI @ COMPANY MISSION ROAD, TINALI, MARGHERITA, TINSUKIA, ASSAM 786161

Advocate for the Appellant : Mr. S. Kumar, petitioner-in-person

Advocate for the Respondents : Mr. S. Chamaria, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 01.08.2024

Date of Judgment : 01.08.2024

JUDGMENT AND ORDER (ORAL)

The instant Appeal is an Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') challenging the order dated 14.08.2017 passed in Misc.(J) Case No.149/2014 whereby the application filed

under Section 34 of the Act of 1996 was dismissed.

2. The brief facts leading to the filing of the instant Appeal are that the respondent No.1 herein had opened a Trading and Demat Account with the Appellant Company by executing a member client agreement. On the basis thereof, the respondent No.1 was given a Unique Client Code being CXO 0075. It is relevant to mention that the respondent No.1 had opened the Trading and Demat Account with the Appellant Company through its authorized person (AP) one Swapna Rani Paul. However, the business of the said authorized person was looked after by one Swarup Paul, her son. It is the further case of the respondent No.1 that he applied for initial public offer of Coal India Limited through the Appellant Company in October, 2010 and he was allotted 100 shares of Coal India Limited which was lying in his Demat Account with the appellant Company. It was alleged that the authorized person requested the respondent No.1 to transfer his earlier investments so made in his Demat Account lying with the Stock Holding Corporation to the Demat Account with the Appellant Company. The respondent No.1 agreed to transfer the same as he found no conceivable reason to mention two Demat Accounts. It was not a direct transfer of the said shares of the Respondent No.1 but took the shape of sale and buy back transaction which was done through the Demat Account of the respondent No.1 maintained with the appellant Company. It was alleged that after the stocks were transferred to the appellant Company, the authorized person made massive and erratic trading, mainly in currency derivatives and equity derivative segments, that too, without the consent of the respondent No.1. In view of the actions on the part of the authorized person who as per the Respondent No.1 unauthorizedly did it, there were huge losses. The authorized person in order to make good the said losses, sold the existing stocks of the

respondent No.1 in the month of August, 2012 and that too without his consent. The respondent No.1 sensing that something was wrong, in the first week of November, 2012, requested the authorized person to provide his transaction details and holding statement which was however not provided inspite of various requests. The respondent No.1 thereupon enquired in the Office of the Appellant Company situated at Kolkata and Delhi about his holdings and was shocked to learn that majority of his investments have been wiped out due to huge trading losses and they sent him the relevant documents showing the transactions since July, 2012. As per the respondent No.1, the said transactions occurred sometime in the month of July, 2012 to December, 2012. The respondent No.1 thereupon approached the authorized person who assured that the losses so suffered by the respondent No.1 would be made good. However, the respondent No.1 sensing that there were certain fraudulent and unauthorized trading activities in his Account, lodged a complaint before the Appellant Company on 05.04.2013 as well as the NSE Investor Grievance Cell on the 22.04.2013. In response to the complaint so filed, the Appellant Company defended the actions of the authorized persons and dismissed the complaint stating that all the transactions were done with the due knowledge of the respondent No.1. It is under such circumstances, the arbitration proceedings were initiated.

3. Pursuant to the said the arbitration proceedings being filed, the Appellant Company submitted its defence stating inter-alia that the respondent No.1 had due notice of all the transactions inasmuch as the Appellant Company duly informed the respondent No.1 through SMS as well as through contract notes. At this stage, it is relevant to take note of that the Arbitration mechanism under the National Stock Exchange of India Ltd. is mentioned in Chapter-XI of the

Byelaws of the National Stock Exchange of India Ltd. As per the mechanism, the Arbitration proceedings are to be carried out in a two tier system. It stipulates that the sole Arbitrator shall initially decide the dispute and if any party is aggrieved may prefer an Appeal to the Appellate Arbitral Tribunal in terms with Byelaw No.19 of the said Byelaws. It is only against the Appellate Arbitral Award, that an application can be filed under Section 34 of the Act of 1996. In the above backdrop, let this Court further proceed with the narration of the facts leading to the filing of the present Appeal.

4. The sole Arbitrator vide an Award dated 06.03.2014 rejected the claim of the respondent No.1 holding inter-alia that there is no sum to be payable by the Appellant Company to the respondent No.1. The Appellant Company also had filed a counterclaim which was dismissed.

5. Taking into account that the arbitration Clause stipulated an Appellate Forum against the award passed by the sole Arbitrator an appeal was preferred by the respondent No.1 before the Appellate Arbitration Tribunal. The learned Appellate Arbitration Tribunal passed the Appellate Arbitration Award on 25.07.2014 holding inter-alia that the award which was passed by the sole Arbitrator is bad in law, and accordingly, liable to be set aside and the respondent No.1 herein would be entitled to an amount of Rs.4,50,000/- from the Appellant Company for unduly selling his shares. It is seen that the learned Appellate Arbitration Tribunal decided the arbitration proceedings in favour of the respondent No.1 on various grounds including no compliance by the Appellant Company to Clause 4.4.11 of the NSEIL Regulation (F&O segment) which required the Appellant Company to provide the constituent with a copy of the trade confirmation slip generated on the trading system. The learned Appellate Arbitral Tribunal came to a finding that the respondent No.1 herein did

not receive any confirmation at the post trade stage in respect of any of the trades in question. It was observed that the Appellant Company further failed to produce any proof by way of trade confirmation slips dispatched to the respondent No.1, and under such circumstances, the learned Appellate Arbitral Tribunal came to a categorical opinion that it is difficult to hold that the trades were executed with the consent of the respondent No.1. In addition to that, the learned Appellate Arbitral Tribunal also observed that the case set out by the Appellate Company before the Arbitral Tribunal that all closeout/liquidation/rollover orders were in accordance with the instructions of the respondent No.1 herein could not be believed as there was no evidence to show that the Appellant Company ever made a demand for margin shortfall/any type and thus complied with the requirements contained in Clause 3.10 (a) and 3.10(b) of the said Regulations.

The Appellate Arbitral Tribunal also held that the Respondent No.1 also had his share of blame in as much as the respondent No.1 should have advised the Appellant Company on receipt of the authorization form through the welcome kit, that the pre-printed email Id was not his, and that he did not want a fresh ID through a third party. However, the learned Appellate Arbitral Tribunal came to an opinion that investors are considered gullible always for such action, and accordingly, reduced the compensation from Rs.5,00,000/ to Rs.4,50,000/-. In addition to that, the Appellate Arbitral Tribunal also directed corporate payment of Rs.6,192/- subject to production of original information materials from each of the concerned entities.

6. Being aggrieved, a proceedings under Section 34 of the Act of 1996 was filed before the learned District Judge, Tinsukia. Although the application filed under Section 34 of the Act of 1996 is not a part of the Memo of Appeal, but

however, during the course of the hearing, a copy thereof was submitted before this Court. This Court has duly perused the said application filed under Section 34 of the Act of 1996.

7. The learned District Judge, Tinsukia vide the impugned order dated 14.08.2017 dismissed the application on the ground that it was not a fit case for interference under Section 34 of the Act of 1996. On the question of fraud which was argued only during the course of the arguments but not a part of either the pleadings before the Arbitral Tribunal or in the application under Section 34 of the Act of 1996, the learned District Judge, Tinsukia opined that the said aspect could not be taken into account in as much as the fraud element was brought within the fold of Section 34 of the Act of 1996 only by the Arbitration and Conciliation (Amendment) Act 2015. Being aggrieved with the rejection of the application under Section 34 of the Act of 1996, the instant Appeal has been filed under Section 37 of the Act of 1996.

8. I have heard the learned petitioner-in-person who was duly authorized by the Appellant Company to appear before this Court. The learned petitioner-in-person submitted that the learned District Judge, Tinsukia while rejecting the application under Section 34 of the Act of 1996 committed an error which goes to the root of the matter in not taking into account the question of fraud. The learned petitioner-in-person submitted that though the element of fraud was brought in specifically by the Arbitration and Conciliation (Amendment) Act 2015, but as fraud vitiates all proceedings, under such circumstances, the learned District Judge, Tinsukia could not have rejected the submissions as regards fraud. The learned petitioner-in-person, in addition to that, submitted that in terms of Section 34 of the Act of 1996, interference with an arbitral award is permissible if the award so passed is in conflict with the public policy of

India. He submitted that the question of giving due information and obtaining the consent only came into vogue on the basis of the Circular issued by the Securities and Exchange Board of India dated the 26.09.2017 which came into effect w.e.f. 01.01.2018. The question of obtaining a consent was not necessary at that relevant point of time and the learned Appellate Arbitral Tribunal grossly committed a perversity in allowing the claim of the respondent No.1 on the ground that providing proof of placement of order was not required as per the law prevailing at that point of time. He further submitted that a perusal of the circular dated 26.09.2017 categorically shows that the requirement of physical record written and signed by the client, telephone recording, email from authorized email log from internet transactions, record of SMS messages and any other legally verifiable record, only was made a requirement post the circular dated 26.09.2017. Further, the learned petitioner-in-person submitted that the learned Appellate Arbitral Tribunal did not construe Clause 4.4.11 in the proper manner and had only taken into account the first portion of the said Clause and thereby omitted to take note of the second portion of the said Clause. He submitted that the learned Appellate Arbitral Tribunal had only stated that a trading member shall provide the constituent with a copy of the trade confirmation slip as generated on the trading system forthwith on execution of the trade, but failed to take into consideration that the said requirement was only necessary if it was so desired by the constituent. Referring to the KYC application which was at Page No.86 of the Appeal Memo, the learned petitioner-in-person submitted that the respondent No.1 had duly waived his right to receive the trade confirmation slips to avoid unnecessary paperwork. The learned the petitioner-in-person therefore submitted that these were vital aspects of the matter which touches on the perversity in the Award passed by

the learned Appellate Arbitral Tribunal and this aspect of the matter ought to have been taken into consideration by the learned District Judge, Tinsukia while deciding the application under section 34 of the Act of 1996 for which the said order dated 14.08.2017 requires an interference.

9. On the other hand, Mr. S. Chamaria, the learned counsel appearing on behalf of the respondent No.1 submitted that the scope of a proceedings under Section 37 of the Act of 1996 is far more circumscribed than a proceedings under Section 34 of the Act of 1996. Referring to the judgment of the Supreme Court in the case of ***Associate Builders vs. Delhi Development Authority***, reported in ***(2015) 3 SCC 49,*** the learned counsel for the respondent No.1 submitted that an Award could be set aside if it is contrary to (a) fundamental policy of Indian law or (b) the interest of India or (c) justice or morality or (d) in addition, if it is patently illegal. He further submitted that the illegality has to go to the root of the matter and if the illegality is of trivial nature, it cannot be held that the Award is against public policy. Further referring to the judgment in ***Associate Builders*** (supra), the learned counsel for the respondent No.1 submitted that the award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. The learned counsel for the respondent No.1 further relied upon a recent judgment of the Supreme Court in the case of ***S.V. Samudram vs. State of Karnataka & Another***, reported in ***(2024) 3 SCC 623*** and placed reliance on the paragraph Nos.26 to 30. The learned counsel submitted that the merits of an award are only to be gone into in a proceedings under Section 34 of the Act of 1996 if the award is demonstrated to be contrary to public policy of India and further submitted that in the case of ***Associate Builders*** (supra), the Supreme Court categorically observed that the concept of public policy connotes some matter which concerns public good and in the

public interest. He therefore submitted that what is for public good or in public interest and what could be injurious or harmful to public good or public interest has evolved from time to time by judicial interpretation.

The learned counsel for the Respondent No.1 therefore submitted that taking into account the limited scope available under Section 34 of the Act of 1996, the learned District Judge did not commit any error in passing the impugned order.

The learned counsel further submitted that though the learned petitioner-in-person had raised the issue of fraud, but there is no element of fraud alleged in the statement of defence or even in the proceedings before the learned Appellate Arbitral Tribunal. He submitted that even upon a perusal of the application under Section 34 of the Act of 1996 filed by the Appellant Company would also show that there is no allegation of fraud. The fraud element is sought to be brought in only for the first time during the course of hearing in the proceedings under Section 34 of the Act of 1996. He further submitted that the element of fraud has been rightly rejected by the learned District Judge, Tinsukia in passing the impugned order.

The learned counsel further referring to Clause 4.4.11 which was one of the basis on which the learned Appellate Arbitral Tribunal had passed the award submitted that the remaining portion of the said Clause, i.e. "if so desired by the constituent" could only be applicable with regard to the contract notes for the trade executed. However, for the purpose of providing of a copy of the trade confirmation slip, the same has to be provided to the trading member.

10. I have heard the learned petitioner-in-person as well as the learned counsel appearing on behalf of the respondent at great length and duly given

my anxious consideration to their submission. At the outset, this Court finds it relevant to discuss on the contours of the jurisdiction of this Court while decide an Appeal under Section 37 of the Act of 1996. It is seen from the provision of Section 34 of the Act of 1996 that the jurisdiction so conferred upon the Court as defined in Section 2 (e) of the Act of 1996 is limited to the grounds set out in the said provision. It is also no longer res-integra that the Court deciding an application under Section 34 of the Act of 1996 is required to decide the said application within the grounds set out in Section 34 of the Act of 1996 and nothing more. Now the question arises as to whether this Court while deciding an Appeal from an order passed in an application under Section 34 of the Act of 1996 can go beyond the prescription contained in Section 34 of the Act of 1996. The answer to the said question would be available upon taking into consideration the basic and fundamental principles of the Act of 1996 and the volition of the parties to take recourse of the Arbitration than the normal Courts. The intention of the parties to get their disputes settled by way of Arbitration and not in the normal Courts of laws has to be respected and for this, it would be seen from a reading of Section 5 as well as Section 34 of the Act of 1996, that judicial interference to an Arbitration proceedings or an award is kept at the minimal. Therefore, the logical conclusion that follows that an Appeal arising out of an order passed in an application under Section 34 of the Act of 1996 has to be limited only to see as to whether the Court exercising jurisdiction under Section 34 of the Act of 1996 had done so as per the mandate of Section 34 of the Act of 1996 and nothing more. In this regard, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***S.V. Samudram*** (supra) and more particularly paragraph Nos.45 to 50 which are quoted herein below:

"***45.*** *Moving further, we now consider the judgment impugned before us i.e. the order of the High Court upholding such modification, under the jurisdiction of Section 37 of the A&C Act.*

46. *It has been observed by this Court in MMTC Ltd. v. Vedanta Ltd.*

> "*14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."*
>
> *(emphasis supplied)*

47. *This view has been referred to with approval by a Bench of three learned Judges in UHL Power Co. Ltd. v. State of H.P. In respect of Section 37, this Court observed:*

> "*16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."*

48. *This Court has not lost sight of the fact that, as a consequence to our discussion as aforesaid, holding that the judgment and order under Section 34 of the A&C Act does not stand judicial scrutiny, an independent evaluation of the impugned judgment may not be required in view of the holding referred to supra in MMTC. However, we proceed to examine the same.*

49. *We may also notice that the circumscribed nature of the exercise of power under Sections 34 and 37 i.e. interference with an arbitral award, is clearly demonstrated by legislative intent. The Arbitration Act, 1940 had a provision (Section 15) which allowed for a court to interfere in awards, however, under the current legislation, that provision*

has been omitted.

50. *The learned Single Judge, similar to the learned Civil Judge under Section 34, appears to have not concerned themselves with the contours of Section 37 of the A&C Act. The impugned judgment reads like a judgment rendered by an appellate court, for whom re-examination of merits is open to be taken as the course of action.*

11. The above quoted paragraphs would clearly show that the power available to this Court under Section 37 of the Act of 1996 is circumscribed. This Court cannot reexamine the issues as an Appellate Court. The jurisdiction is limited only to decide as to whether the Court exercising the jurisdiction under Section 34 of the Act of 1996 had done so as per the mandate of the said Section.

12. Therefore, taking into account the scope of the powers within which this Court can exercise its jurisdiction and the same has relevance to the permissible limits under Section 34 of the Act of 1996, this Court finds it appropriate to briefly take into account the scope of jurisdiction under Section 34 of the Act of 1996. It is well settled that Section 34 of the Act of 1996 limits a challenge to an award only on the grounds provided therein and nothing more. The Supreme Court in the case of ***Dyna Technologies Private Limited vs. Crompton Grieves Limited***, reported in ***(2019) 20 SCC 1*** categorically observed that arbitral award should not be interfered with a casual and a cavalier manner unless the Court comes to a conclusion with the perversity of the award which goes to the root of the matter without there being a possibility of an alternative interpretation which may sustain the arbitral award. It was observed that Section 34 of the Act of 1996 cannot be approached in a similar manner as in the case of a normal appellate jurisdiction. The mandate under Section 34 of the Act of 1996 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the

Courts were to interfere with the arbitral award in the usual course, on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated. It is also relevant to take notice of the various judicial pronouncements wherein it is held that Court should not interfere with an award merely because an alternative view on facts and interpretation of the contract exist. The Courts need to be cautious and should defer to views taken by the Arbitral Tribunal, even if the reasoning provided in the award is implied, unless such award portrays perversity unpardonable under Section 34 of the Act of 1996.

13. This Court at this stage finds it relevant to mention that the award in question is dated 25.07.2014 and as such for deciding the legality of the award has to be done in terms with the Act of 1996 as it stood prior to the Arbitration and Conciliation (Amendment) Act, 2015. In ***DDA vs. R. S. Sharma & Co.***, reported in ***(2008) 13 SCC 80***, the Supreme Court had listed the parameters upon which the Arbitral Award can be interfered with. Paragraph No.21 of the said judgment being relevant is reproduced herein under:-

"***21.*** *From the above decisions, the following principles emerge:*

(a) An award, which is

(i) contrary to substantive provisions of law; or

(ii) the provisions of the Arbitration and Conciliation Act, 1996; or

(iii) against the terms of the respective contract; or

(iv) patently illegal; or

(v) prejudicial to the rights of the parties;

is open to interference by the court under Section 34(2) of the Act.

(b) The award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality.

(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

With these principles and statutory provisions, particularly, Section 34(2) of the Act, let us consider whether the arbitrator as well as the Division Bench of the High Court were justified in granting the award in respect of Claims 1 to 3 and Additional Claims 1 to 3 of the claimant or the appellant DDA has made out a case for setting aside the award in respect of those claims with reference to the terms of the agreement duly executed by both parties."

14. In Associate Builders (supra), the Supreme Court specifically dealt with the grounds when an Award is assailable before the Court under Section 34 of the Act of 1996. The principles so laid in the said judgment in detail were summarized by the Supreme Court in the case of ***Indian Oil Corporation Ltd. vs. Shree Ganesh Petroleum***, reported in ***(2022) 4 SCC 463*** in a very precise manner at paragraph no.42 and its subparagraphs which are quoted herein below:-

2. *In Associate Builders, this Court held that an award could be said to be against the public policy of India in, inter alia, the following circumstances:*

42.1. *When an award is, on its face, in patent violation of a statutory provision.*

42.2. *When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.*

42.3. *When an award is in violation of the principles of natural justice.*

42.4. *When an award is unreasonable or perverse.*

42.5. *When an award is patently illegal, which would include an award in patent*

contravention of any substantive law of India or in patent breach of the 1996 Act.

42.6. *When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court.*

15. In the backdrop of the law declared by the Supreme Court and taking into consideration the limited scope under Section 37 of the Act of 1996, this Court finds it relevant to deal with the respective submissions so as to adjudicate as to whether the Court under Section 34 of the Act of 1996 exercised it power within the parameters laid down as referred to above.

16. As noted above, the learned petitioner-in-person raised various objections to the impugned order. The first contention so submitted by the Appellant Company is as regards fraud. No doubt fraud vitiates all proceedings. In the words of Lord Denning in ***Lazarus Estate Ltd. vs. Beaslay***, reported in ***(1956) 1 All ER 341 (CA)***, "Fraud unravels everything". However, it is also equally well settled that for setting up a plea of fraud, there is the requirement of pleadings and on the basis thereof, evidence has to be adduced. In Section 19 of the Act of 1996, it is specifically mentioned that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 but then also when a plea of fraud is taken, the same require material facts constituting the allegation of fraud to be specifically pleaded. In absence of such allegations, neither any issue nor points for determination be framed nor any evidence can be led. In the instant case, it would be seen that there were no allegations of fraud alleged or proved during the arbitral stage. Even in the application under Section 34 of the Act of 1996, there was no such stand taken. It was for the first time brought in by way of written arguments which were placed before the Court dealing with the Section 34 of the Act of 1996 application. This Court is of opinion that if no material particulars constituting the allegation of fraud is pleaded before the Arbitral

Tribunal, the Court under Section 34 of the Act of 1996 or the Appellate Court under Section 37 of the Act of 1996 cannot go into the said aspect taking into account that the Court under Section 34 of the Act of 1996 is not sitting as an Appellate Court but is exercising a limited jurisdiction confined to the grounds mentioned in Section 34 of the Act of 1996. It is also pertinent herein to mention that in the instant case, the Appellant Company's submission herein is that the respondent No.1 made a fraudulent claim. There is no allegation that the making of the award by the Appellate Tribunal is induced or affected by fraud or corruption. Under such circumstances, to take into account the allegation of fraud committed by the respondent No.1 for the first time during the hearing of the application under Section 34 of the Act of 1996 or in the proceedings under Section 37 of the Act of 1996 would amount to allowing a totally new defence which is not permissible in the proceedings under Section 34 or Section 37 of the Act of 1996. Under such circumstances, this Court would reject the submission as regards fraud as submitted on behalf of the Appellant Company.

17. The second submission as contended by the learned petitioner-in-person is to the fact that the learned Appellate Arbitration Tribunal has sought compliance to certain requirements which were not required at that relevant point of time. It was submitted that such requirement was only made applicable w.e.f. 01.01.2018. This Court upon perusal of the arbitration award dated 25.07.2014 duly finds that the Appellate Arbitral Tribunal had laid emphasis on Clause 4.4.11 of the National Stock Exchange India Limited Regulation (F&O segment). The learned petitioner-in-person though tried to impress upon this Court on the basis of the Circulars dated 26.09.2017 and 22.03.2018 that the requirement of the brokers to execute the trade of clients only after keeping

evidence of the client placing such order only came into existence w.e.f. 01.01.2018 but there is no material to show before this Court as to what was the circular issued by the Security and Exchange Board of India during that relevant point of time in the year 2012 when the transaction had happened. In addition to that, a perusal of the Circular dated 26.09.2017 also shows that at Clause-I, it is mentioned that SEBI in the past had taken several steps to tackle the menace of Unauthorized Trades. Therefore, without such Circulars which were prevalent at the relevant point of time, not placed before this Court, it would not be proper to negate the Arbitral Award on the basis of these Circulars, that too when the same are only produced at this Appellate stage. Besides the said submission is totally misconceived and irrelevant as the learned Appellate Arbitral Tribunal had decide the proceedings on the basis of Clause 4.4.11 of the said Regulation.

18. The learned petitioner-in-person urged that Clause 4.4.11 of the NSEIL Regulation (F&O segment) was not correctly interpreted by the learned Arbitral Tribunal in as much as a perusal of the provision would show that trade confirmation slips are only to be issued, if desired by the constituent and in the instant case, the constituent by signing on the KYC form had authorized the Appellant Company not to provide the trade confirmation slip. For deciding the said contention, this Court finds it relevant to take note of Clause 4.4.11 of the said Regulation. The said Clause is extracted herein below:-

> "*4.4.11 The trading Member shall provide Constituent with a copy of the trade confirmation slip as generated on the trading system, forthwith on execution of the trade, if so desired by the Constituent; and with a contract note for the trade executed.*"

A perusal of the said Clause shows that the Trading Member is obligated to

provide the Constituent with a copy of the trade confirmation slip as generated on the trading system, forthwith on execution of the Trade. It is also seen that the said obligation is subject to the desire of the Constituent. In addition to the Trade confirmation slip, there is also an obligation upon the Trading Member to provide the contract note for trade executed. At this stage, if this Court takes note of the submission of the learned petitioner-in-person, it would be seen that he submitted that the respondent No.1 had signed a KYC form whereby he waived his right to receive the trade confirmation slips to avoid unnecessary paper work. This Court finds it relevant to take note of paragraph No.6.4 of the Award dated 25.07.2014 which specifically deals with the said aspect and the same being relevant is quoted herein below:-

> *6.4. With respect to the trades transacted in the F&O and the currency derivative segment, the question about the signing or ticking the relevant boxes in the KYC is only peripheral. The moot point is whether the Appellant placed the relative orders in the pre-trade stage. The Respondent could not produce any evidence for this. More importantly, clause 4.4.11 of NESIL Regulations (F&O Segment) requires the TM "to provide the constituent with a copy of the trade confirmation slip generated on the trading system…." and the positive averment made in clause 9.18.2 of Member client Agreement reading as "The Client shall not be entitled to presume an order having been executed, cancelled or modified until a confirmation from the Member is received by the client...". The Appellant did not receive any confirmation at the post-trade stage in respect to any of these trades in question. The Respondent failed to produce any proof by way of the "trade confirmation slip" dispatched to the Appellant. Absent this, in view of the denial of the Appellant that the orders were placed, it is difficult to establish that the trades were executed with his consent. Further, this also militates against the Respondent's contention that all closeout/liquidation/roll over orders were in accordance with the instruction of the Appellant. There is also no evidence to show that the Respondent ever made a demand for margin shortfall/any time and thus*

complied with the requirements contained in clauses 3.10 (a) & 3.10 (b) of the same regulations."

19. The above quoted observations made by the learned Appellate Arbitral Tribunal in respect to Clause 4.4.11 of the Regulation in question cannot be said to be one of patent illegality which goes to the root of the matter requiring interference by the Court under Section 34 of the Act of 1996. In addition to that, this Court finds it pertinent to observe that the interpretation so given by the learned Appellate Arbitral Tribunal is not such as interpretation which under no circumstances can be accepted. Under such circumstances, the said contention dealt herein is misconceived for which the same is rejected.

20. Consequently, this Court finds no merit in the instant Appeal for which the instant Appeal stands dismissed with cost of Rs.25,000/-.

JUDGE

Comparing Assistant