



पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL

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Award

In the matter of arbitration under the Chapter 14 & 14A of Bye-laws, Rules and Regulations of Metropolitan Stock Exchange of India Ltd.

Before the Arbitral Tribunal Panel comprising of

Shri Dilip Kumar Das, Smt. Priti Todi & Shri Mahesh Mathur

Matter No. APP/ARB/KOL-01/2016

BETWEEN

Purti Vanaspati Pvt. Ltd.

14 N.S Road, 4th Floor, Kolkata ---700001

Constituent

And

Karvy Stock Broking Limited

46 Avenue 4, Banjara Hills, Hyderabad --- 500034

Trading Member

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1. There is an Appeal and cross Appeal filed by both the Trading Member [herein after referred to as TM] and the Constituent Investor [herein after referred to as CI] contesting the Arbitral Award dated 30.05.2016 wherein CI's claim for Rs.1,05,69,314/- was admitted to the extent of 50%.
2. Karvy Stock Broking Limited [herein after referred to as TM] submitted an appeal on 24.06.2016 against Award dated 30.05.2016 by Tribunal comprising of Shri S. M. Gupta, Shri Vasudeo Agarwal & Shri Chandan Kumar Basu. holding both the parties equally responsible & accountable for the loss in the account of Constituent Investor [herein after referred to as CI] Purti Vanaspati Private Limited. Award required the TM & CI to share the loss of Rs.1,05,69,314/- equally between themselves. Purti Vanaspati Private Limited filed an Appeal on 08.06.2016. Award is contested in both the appeals on the ground that arguments & documents placed on record were omitted to be considered in proper perspective. CI's claim in Appeal is that it should be awarded compensation of ~~Rs.1,05,69,314/-~~ Rs.1,24,23,171/- on account of Rs.1,05,69,314/- being the amount of loss it suffered from unauthorised trade by the TM during August, 2013 to October,2015, Penalty of Rs.56,215/- and Interest amounting to Rs.17,97,642/-. The two Appeals are discussed and disposed by a consolidated order for the sake of convenience.
3. Case of the CI is that it should be fully compensated for the loss it suffered due to unfair practices of the TM like execution of (1)

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Unauthorised & unstructured trade, (2) Trade during negative ledger balance, (3) Trade without necessary margin. TM's handling of the account further suffered from (4) deficiencies in ECN issued from time to time, (5) Non issuance of SMS alert, (6) Discrepancies in daily margin statements forwarded. Services of the TM were grossly unsatisfactory in the matter of (7) Settlement of account. (8) Encashment of Bank Guarantee [BG] despite protest from the Client was thoroughly irregular & improper.

3.1 Grounds in CI's Appeal, briefly, are:

(a) Award is bad in law, (b) Award is against public policy, (c) Proper adjudication of evidence was lacking, (d) documentary evidence were not appreciated in proper perspective, (e) claims & allegations were omitted to be appreciated in proper perspective, (f) analytical objections & replies were not considered, (g) misconduct & fraud by TM were apparent & they could not avoid vicarious liability, (h) entire claim should have been admitted as transactions in the account were unauthorized & against will of the investor, (i) there cannot be any partial wrong or partial right & so sharing of losses amounts to compromise with justice, (j) Panel should have appreciated that TM had the intention of duping right from the beginning, (k) Panel acted on surmises & conjectures rather than on definite documentary proof, (l) penalty & interest should have been allowed, (m) Panel failed to apply judicial mind, (n) merit of CI's case was ignored sub-serving interest of justice, (o) Award is perverse suffering from material irregularity, (p) Award being bad in

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law is liable to be set aside granting full compensation along with penalty, interest & cost of litigation.

- 3.2 A number of documents & statements are submitted by the CI in support of the above grounds. Annexure A to CI's Rejoinder dated 05.08.2016 is an analysis of Voice Recorder. In Annexure B, CI refers to the law of evidence that amply justifies its stand. In view of judicial position narrated in Annexure C Panel should have adjudged the errors pleaded by the TM were intentional & not accidental. CI furnished computations vide Annexure D to argue that loss of Rs.76,40,769/- related to transactions for which there is no record of telephonic conversation. Similarly Annexure E displays loss of Rs.69,72,991/- as relating to transactions for which there is no record of telephonic conversation. It has further been pointed out that loss of Rs.23,69,786/- pertained to trades executed during 8th to 15th October, 2013 when CI's official was out of India.
- 3.3 In its rejoinder dated 05.08.2016 arguments advanced by the CI are : Intention of TM is clear from not indicating amount of undue brokerage earned while disputing figure of Rs.1.7crores. TM is silent on pre trade order instructions repeatedly mentioning post trade actions which admittedly suffered from errors/mistakes/technical glitches etc. TM failed to explain why BG was not revoked on 9th October, 2014 or 15th January, 2015 if debit balance or legal trades existed. About Ledgers stands have been contradictory & manipulation unexplained. Call timings have been erased from Voice Recording of 21 conversations now submitted. Consolidated Excel sheet submitted by CI clarifies the entire synopsis of the nature & the deliberate way of capturing the Constituent's voice

  

