

पश्चिम बंगाल पश्चिम बंगाल WEST BENGAL

V 922278

ARBITRATION AWARD

**In the matter of Arbitration in terms of the Bye-laws and Regulations of
Metropolitan Stock Exchange of India Limited (formerly known as MCX
Stock Exchange Limited)**

REGIONAL ARBITRATION CENTRE, KOLKATA

Before the Arbitral Tribunal Panel Comprising of:

Mr. Sanwar Mal Gupta (Presiding Arbitrator)

Mr. Vasudeo Agarwal (Co-Arbitrator)

And Mr. Chandan Kumar Basu (Co-Arbitrator)

Arbitration Matter No. KOL-01/2016

Sold To.....
Name.....
Address.....
Rs.....
27 APR 2016
C.M.M. Court,
2, Bankshall Street, Kol-1

13329.

S. M. Gupta

P-15 Bentwick St

941

37/001

ABANISH KUMAR DAS
Govt. License Stamp Vendor
C.M.M. 'S Court
2, Bankshall Street, Kol-1

Between

Purti Vanaspati Private Limited

Corporate office at:
14, Netaji Subhas Road,
4th Floor,
Kolkata – 700 001

...Applicants

AND

Karvy Stock Broking Limited

Having its Registered Office at:
Karvy House,
46, Avenue 4, Street No.1,
Banjara Hills,
Hyderabad – 500 034

...Respondents

Dates of Hearing: 15.02.2016 and 08.03.2016

ARBITRATION AWARD

The Applicants in this matter, M/s Purti Vanaspati Private Limited, hereinafter referred to as the “Applicant” or “CLIENT” or “Petitioner” or “Purti” filed this Arbitration application on or about 13.01.2016 in Form No. 1 being the Arbitration application pursuant to Chapter 14 of Bye laws, Rules and Regulations of the Metropolitan Stock Exchange of India Limited (MSEI), hereinafter referred to as the “Exchange”, against the Trading Member Karvy Stock Broking Limited, hereinafter referred to as the “Respondent Company” or the “Member” or “Stock-Broker” or “Broker” or “Karvy”, which was numbered as KOL-01/2016.

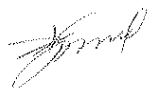
- Purti Vanaspati Private Limited (CIN U51109WB2008PTC128595) is a company limited by shares and registered with the Registrar of Companies, Kolkata on 18.08.2008 as a private limited company. The authorised capital of the company is Rs. 10,25,00,000 and the paid up capital is Rs. 8,03,55,000. The directors/Key Managerial Personnel are as follows

- Amit Agarwal - Director
 - Kishore Kumar Agarwal - Director
 - Pallab Das – Company Secretary
- Karvy Stock Broking Limited (CIN U67120TG1995PLC019877) is a company limited by shares and registered with the Registrar of Companies, Hyderabad on 30.03.1995 as a public limited company. The authorised capital of the company is Rs. 6,00,00,000 and the paid up capital is Rs. 2,25,60,790. The directors/Key Managerial Personnel are as follows:
- Yugandhar Meka – Director
 - Bhagwan Dass Narang – Director
 - Comandur Parthasarathy – Managing Director
 - Ashish Agrawal – Director
 - Jyothi Prasad – Director
 - Yalamanchili Sailaja – Company Secretary

Briefly stating the case of the Applicant is as follows:-

(A) Case of the Applicant

- 1) The Applicant which is a private limited company has filed this application being aggrieved with the order dated 16.12.2015 as passed by the Investor Grievance Redressal Centre (IGRC Panel) or IGRP claiming an amount of Rs. 1,24,23,171/- plus cost and incidentals as applicable on account of alleged unauthorised and uninstructed trades said to have been done by Karvy in the account of Purti. The order of the Ld. IGRC is reproduced here below:
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METROPOLITAN STOCK EXCHANGE OF INDIA LIMITED
(Formerly known as MCX Stock Exchange Ltd.)**INVESTOR GRIEVANCE REDRESSAL COMMITTEE (IGRC)**

Ref. No. : ISC-14/2015 Date: December 16, 2015

IGRC Panel : Prof. Dilip Shah, Mr. N P Sengupta, Mr. Udayan Basu

Complainant : Purti Vanaspati Private Limited

Respondent : Karvy Stock Broking Limited

Appearance

From Complainant : Mr. Sudipta Biswas and Mr. Neeraj Chaturvedi authorized representatives from Purti Vanaspati Private Limited

From Respondent : Mr. Ramesh Wadekar, Mr. Debajyoti Biswas and Mr. Muthuswamy Iyer others authorized representatives from Karvy Stock Broking Limited

ORDER**NOTE:**

As per SEBI circular no: CIR/MRD/DSA/03/2012 dated January 20, 2012, the IGRC shall comprise a single person for claims up to Rs. 25 lakh, whereas, for claims above Rs. 25 lakh, the IGRC shall comprise three persons.

Since the claim of the complainant in the aforesaid matter is more than Rs. 25 lakh, the same has been referred to 3 persons. The parties are also informed that the Exchange currently has only the aforementioned 3 members empaneled as IGRC member to redress investor complaints and hence the matter has been referred to them. The parties do not have any objection to the same.

Background and proceedings of IGRC meeting:

The present IGRC meeting is the continuation of the earlier meeting held on 18th November, 2015 which was adjourned to enable both parties to come up with further inputs/ documents.

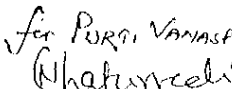
Complainants statement:

Apart from unauthorized trades, Complainant raised various procedural issues such as


Prof. Dilip Shah
(IGRC Member)


Mr. N P Sengupta
(IGRC Member)


Mr. Udayan/Basu
(IGRC Member)


for PURTI VANASPATI PVT. LTD.
Signature of Applicant


Name of Respondent

delayed dispatch of copy of executed KYC, closing balance of a day not matching with the opening balance of the next working day, Calculation of interest which they had claimed etc. However the Complainant was categorical in not wanting to settle the dispute amicably.

Respondents reply:

In defending their position, against the above, Respondent referred to many documents which were submitted later. In the course of the discussion the Respondent submitted a letter dated 16th December 2015 address to the Exchange along with a copy of the notice dated 13.12.2015 U/s 41A of Cr. P.C from the Hare Street police Station, which was received them on 15th December 2015. The notice stated that the Respondent must report within 7 days to the Police station against case number 650 dated 29th October, 2015 which was initiated by Mr. Sajjan Agarwal of Puri Vanaspati Pvt. Ltd. In view of the above the Respondent requested to discontinue the proceedings at IGRC.

Conclusion:

At the time of initial hearing, when the Trading Member referred to the Police complaint lodged by the Complainant, the Complainant stated that the Police had treated this as an ordinary GD and not a FIR and also that there is no development in regard to that matter. However, the notice received by the Trading Member, a copy of which has been submitted to The Exchange, reveals a different position. While the Complainant has submitted, in terms of its letter dated 16th December, 2015, that they have also come to know of this development only today after seeing the copy of the notice received by the trading Member.

In the circumstances the panel feels that the matter can not be considered at this forum as of now since a Police case number 650 dated 29th October 2015 U/S - 406/420/467/468/471/120B IPC is already subsisting.

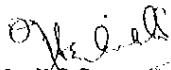
It has already been pointed out that the Trading member made a request for closure of the case at IGRC. In view of the forgoing the panel decides to dismiss this matters.

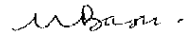
Claim Admissible:

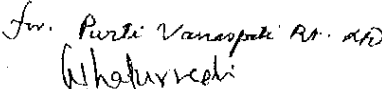
Matter dismissed.

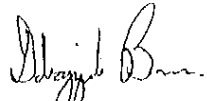
Signature


Prof. Dilip Shah
(IGRC Member)


Mr. N. P. Sengupta
(IGRC Member)

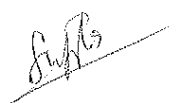



Mr. Udayan Basu
(IGRC Member)


Signature of Applicant


Name of Respondent

2) The Applicant has inter alia made this application on the following grounds and reasons and his case briefly stated is as follows:-

- This application is directed against order dated 16.12.2015 passed by the Ld. IGRC.
- The Amount claimed by the Applicant in this application is Rs. 1,24,23,171/- plus cost and incidentals as applicable.
- Before the IGRC, Karvy had made prayer to discontinue the proceedings on the pretext of a police complaint filed by Purti resulting in FIR to investigate the fraudulent documents, etc and the Ld. IGRC dismissed the matter on this ground alone.
- The Ld. IGRC ignored all the merits and submissions of Purti made before them which amounted to gross miscarriage of Justice.
- The trading member Karvy had prepared fraudulent documents and ledgers to facilitate its act of unauthorised trade to siphon away client funds (client means Purti) and even after objection and request for internal probe, Karvy en-cashed the Bank Guarantee (BG) and did not accept the request of Purti to withhold encashment of the BG till final probe.
- Purti thought that it was duty bound to report illegal acts of Karvy to law-enforcing agencies to protect themselves as well as other innocent clients from such illegal activities of Karvy.
- Purti had submitted before the Ld. IGRC panel that the Police complaint was made on 10.10.2015 which was prior to the complaint made to SEBI and the corresponding Exchange.
- Police complaint was made for investigation of fraudulent activities of Karvy and not for recovery of money. Claim for recovery of money was made before the Ld. IGRC.
- Subject matter before the Ld. IGRC was of unauthorised trade by Karvy in the account of Purti and the Police was not competent to look into violation of SEBI and Exchange Rules and laws. At the same time, the



Ld. IGRC could not decide upon the matter of preparation of fraudulent documents and duplicate set of ledger statements and hence two separate remedies were sought by Purti.

- There are two different causes of action and will have to be decided with two different statutory bodies as per the law of the land.


3) Purti also stated that the Ld. IGRC panel had overlooked the following facts mentioned before them:

1. Unauthorised and unstructured trade done by Karvy in account of Purti.

- Purti has annexed copies of telephone bill to show that during 08.10.13 to 15.10.13 the client was out of India and had not made any call to Karvy nor received any call from them. During this period, huge trades in client's account were done resulting in huge loss to Purti and revenue generation to Karvy by brokerage earning.
- The team of Karvy had accepted the trades done by them without instructions from Purti and to show this Purti has submitted telephonic conversation recording of 30.09.15 and audio-video recording of 05.10.15.

This Arbitral Tribunal has neither heard the recorded telephonic conversation nor seen the audio-video recording as it was not considered necessary.

- Karvy has also submitted a transcript for one telephonic conversation on 28.03.14 which appears to be related with an instruction for a purchase of a 200 lot @ spot 60/- but according to Purti, Karvy has done huge trade pursuant to that instruction and has purchased futures 2,50,000\$ @60.35 and sold futures 7,50,000\$ @60.2167 and purchased options 10,00,000\$ and sold options 12,50,000\$ resulting a net sale of 5,00,000 USDINR in futures and 2,50,000 USDINR in options. This was an example of



violating client instructions and carrying out uninstructed and unauthorised trades.

- d. Karvy prepared and submitted two sets of ledgers. One was handed over to them by Karvy Kolkata and the other submitted by Karvy to the Exchange in their reply. Both of them do not tally with each other.
- e. Comparison of these two ledgers shows huge and wilful modifications of data as per the choice of Karvy.
- f. Karvy manufactured and produced three sets of daily margin statements as follows:
 - i. First daily margin statement from 01.09.15 to 29.09.15 was showing cash balance as zero, BG as Rs 8 crore with intermediate as Rs 2 crore in NSE and zero in MSEI and showing exposure and excess/shortfall in margin as zero at both Exchanges meaning thereby no trade at all.
 - ii. Second set of daily margin statement shows cash balance ledger, BG as Rs 2 crore in NSE and zero in MSEI and showing exposure and excess/shortfall in margin with some figures.
 - iii. Third set showing cash balance as available in second set of submitted ledgers and BG as Rs 2 crore in NSE and as Rs. Nil in MSEI and showing exposure and excess/shortfall in margin with reduced and different figures.
- g. Karvy could not refute the above and only said that they had used the limits within limits and had not crossed the same.
- h. Karvy prepared these three types of statements one after another to facilitate and cover up the act of uninstructed and unauthorised trade.

2. Trade during negative ledger balance:

Purti submitted that the ledger account submitted by Karvy from 11.09.2013 was in negative and hence as per rule Karvy should not



have carried out any trade but Karvy kept on doing uninterrupted trades in complete violation of law.


3. Trade without required margin:

The daily margin statements submitted by Karvy from 06.08.2013 onwards show that Karvy was carrying on trades without sufficient and required margin in complete violation of law.

4. Non issuance and even issuance of Incomplete/erroneous/ Electronic Contract Notes (ECN) and non production of even the Post Trade Confirmations.

Purti submitted that tape recorded conversations were unreliable as tampering is suspected as per the Indian Evidence Act, 1872. Moreover, the authorised representative denied having any order instruction proof but produced a CD after first hearing containing only 10 voice recording all of which were post trade confirmations and then they filed 11 more recordings but all these recordings proved as follows:

- i. The trading member has facility of voice recording system which he should implement for all the clients.
- ii. Karvy cannot be choosy towards giving any documents partially.
- iii. Not a single conversation tallied with the actual trades as shown in the Electronic Contract Notes (ECN) produced by Karvy.
- iv. There was no mention whether the executed trades were pre instructed by the client.
- v. The voice recording is not acceptable to Purti as the same are not complete (from first trading day to last trading day).
- vi. Purti denied the voice captured on the CD as it contained altered/manufactured portion of the tape recorded conversations and also pointed out that Karvy had produced only 21

recordings against 658 ECN issued by Karvy. Purti questioned as to where were the balance recordings.

vii. Purti submitted that even the recordings were not proof enough of any instruction of trading as they did not disclose specific request for trade and the time of call was also questionable.

viii. Purti also claimed that most of the calls were inaccurate, false, incomplete and misleading.

5. Non issuance of SMS alerts as alleged.

On this subject, Karvy has stated that they were not able to retrieve the SMS log for the transactions in MSEI segment at present due to technical issues.

6. Non issuance of Mandatory Daily Margin Statements.

7. Issuance of Fabricated/Erroneous/Inflated and non disclosing utilised and required Margin in issued Daily Margin Statements-

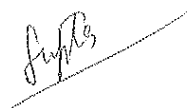
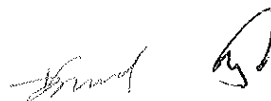
It was admitted by Karvy that since 01.09.2014 to 31.08.2015 the Daily Margin Statement as prepared by them were showing the BG in NSE as Rs. 8 crore and the utilised and required margin was showing as NIL. Daily Margin Statements were showing the BG as Rs. NIL and utilised and required margin was also showing NIL meaning thereby that there was no trade and no position at all.

Karvy defended this error as inadvertent as the correct BG was only Rs.2 crore. But Purti did not accept this as inadvertent because different statements were showing different BG figures at Rs. 2 crore and Rs. 8 crore at different places.

8. Non settlement of client's account with trading member on an agreed quarterly period by pay in and pay out or written confirmation of the account along with the confirmation of any positions on hold.

9. Encashment of collateral BG.

Karvy was doing transactions in the account of client in continuation even when the clients ledger Balance was in negative



during several period/months and Karvy never demanded any payment from the client for such alleged shortfall and continued trade without invoking BG but rushed to invoke the same when the client detected un-instructed and un-authorised trade in his account and made complain to them, provided proofs and requested Karvy to investigate up to the satisfaction of the client and with further request to not invoke the BG and keep it under hold, till then. But, Karvy without making full and proper investigation and to save its own illegal interest and to save its corrupt Management and employees, declared the complaint of its Client as null & void and rushed and en-cashed the BG, which is a complete mockery of SEBI/Exchange and also Law of land.

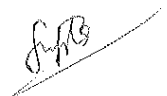
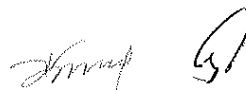
10. In view of the above, Purti made a prayer for an award in his favour as per the application on the above grounds.

(B) Case of the Respondent

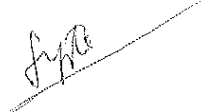
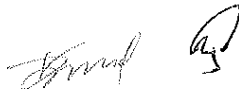
In reply filed by Karvy, it inter alia defended its case on the following grounds which are briefly stated here in after:

Preliminary objections

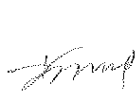


- 1) Purti is a broking client of Karvy since August 2013 and registered with its Kolkata branch in West Bengal with Unique client code 1392698.
- 2) Karvy submitted that Purti was in the business of export of Vanaspati oil and was therefore trading on the NSE and MCX (now - MSEI) in currency Exchange instruments. This was an attempt to hedge its losses on account of foreign Exchange fluctuations.
- 3) Karvy submitted that Purti has executed various transactions in NSE (CDS) segment and MSEI (CDS) segment since August 06, 2013. Purti used to transact in currency derivatives by contacting the concerned dealers at Kolkata branch office of Karvy over telephone.
- 4) Karvy submitted that the transactions executed by Purti in its account were duly confirmed to them vide ECN which were sent to the email ID sajjan@purti.net. This ID was registered in the records of Karvy.



- 5) First complaint from Purti was received on 09.10.2015 which was replied to on 12.10.2015 denying all allegations raised in the complaint. Karvy also requested the Applicant Purti to clear the debit balance on or before 13.10.2015 in order to avoid invocation of BG which was provided by the Applicant to the Respondent as Margin.
- 6) Karvy submitted that the Arbitral panel should take note that Purti filed a Police complaint on 10.10.2015. The Applicant after raising the first complaint with the Respondent on 09.10.2015 through email filed a complaint with the police authorities on 10.10.2015.
- 7) Karvy received complaint of the Applicant forwarded through MSEI Kolkata on 19.10.2015 and replied denying the allegations on 28.10.2015.
- 8) Karvy received a rejoinder from Purti through MSEI on 05.11.2015 and Karvy replied to the said rejoinder on 14.11.2015.
- 9) The Applicant filed the police complaint on 10.10.2015 against the Respondent and its officials at Hare Street police station at Kolkata alleging criminal conspiracy, misappropriation of funds, fraud and cheating. The case was registered on 29.10.2015 by the police and the matter is presently under investigation.
- 10) Thereafter, IGRC proceedings were undertaken at MSEI in respect of the complaint filed by the Applicant. In the IGRC meeting held on 16.12.2015, Karvy produced the letter received from Hare Street police station and the IGRC panel subsequently passed an order not admitting any claim. The Ld. IGRC ruled that since the police have registered a case and are investigating into the matter, the IGRC could not proceed with the matter and therefore, the claim filed by the Applicant was dismissed.
- 11) Karvy further submitted that even the present arbitration proceedings cannot be proceeded with since the investigations into the same allegations are being conducted by the police and the fairness of police investigations shall be jeopardised. Karvy craved leave to rely upon necessary judgments in support of this.



- 12) Karvy submitted that on 18.11.2015 at the hearing before the IGRC, Purti had stated that the police complaint filed by them at the Hare Street police station was a General Diary and no case was registered but on 15.12.2015, Karvy received a letter dated 13.12.2015 from the Hare Street police station intimating that a case no. 650 was registered against Karvy on 29.10.2015 under sections 406/420/467/468/471/120B of Indian Penal Code. By this letter Karvy's employee was also summoned to the police station. The IGRC thereafter rightly concluded by not admitting the claim of Purti.
- 13) Karvy submitted that Purti made false statements before the IGRC and kept the panel members in dark about the case being registered before the police with the sole intention of misleading the IGRC panel to gain monetary relief through Redressal process and at the same time, simultaneously engage the police to intervene in the matter.
- 14) Karvy submitted that in such a scenario when the police were already seized of the matter, there was no scope for the IGRC to redress the same and hence the IGRC panel rightly concluded on the complaint.
- 15) Karvy submitted that this Arbitral Tribunal to take note of the misrepresentation, concealment of facts and false statements made by the Applicant before the IGRC panel. Karvy further submitted that Purti has accepted the transactions by receipt of ECN, trade confirmation SMS, daily trade confirmation emails sent by the dealer and quarterly statement of accounts.
- 16) Karvy submitted that the Applicant had on its own free will and volition renewed the BG on multiple occasions and had also exchanged receipt/payment of funds in its account towards the outstanding obligations.
- 17) The Respondent further submitted that it is the Applicant who is solely responsible for the losses in its trading account and the Respondent is not liable to pay any amount whatsoever to the Applicant nor can any

burden of the losses sustained by the Applicant be fastened onto the Respondent.

Para wise replies to the application:

- 1) At the outset, the Respondent denied all allegations made by the Applicant in the statement of claim and submitted that it had produced necessary documents to disprove the allegations of the Applicant.
- 2) Karvy submitted that on producing the letter received from police authorities the IGRC panel had accepted their plea and after considering the misrepresentation, concealment of facts and false statements made by the Applicants, the Ld. Panel passed the order without admitting any claim of the Applicant.
- 3) Karvy vehemently denied the claim of Rs. 1,24,23,171/- as made by the Applicant and submitted that the same was baseless and inadmissible. The Applicant itself is solely liable for the losses in the Applicant's trading account. Such losses cannot be saddled on to the Respondent by raising false and vexatious allegations.
- 4) Karvy submitted that merits of the case have also been discussed during the IGRC hearings and the Respondent produced various documentary proofs to negate the false allegations of the Applicant. After considering all the documentary proofs submitted by the Respondent and police case filed by the Applicant, the IGRC panel has concluded not to admit any claim.
- 5) Karvy submitted that it vehemently denied the allegations of Purti who raised serious allegations such as fraudulent documents, ledger and illegal activities on the part of the Respondent. The Applicant is repeatedly raising serious allegations against Karvy and this Arbitral Tribunal should dismiss the claim of Purti since such serious allegations levelled by Purti should be investigated with furtherance of detailed evidence by both parties before a court of Law.
- 6) Karvy submitted that the present arbitration reference before this Tribunal squarely falls beyond the purview of the Tribunal.



- 7) Karvy submitted that Purti cannot litigate before multiple Forums seeking monetary relief on the same allegations. This behaviour of the Applicant was noted by the IGRC and eventually they decided to not admit any claim of the Applicant.

Point wise/topic wise replies:

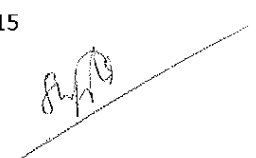
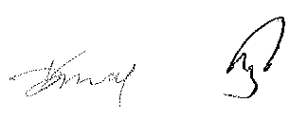
1) Unauthorised and uninstructed trade done by Karvy in the account of Purti

- a. There have been no unauthorised or uninstructed trade carried out by the Respondent in the account of the Applicant. The Applicant has conveniently omitted to mention various trade related discussions that it has had with the employees of Karvy and has also not mentioned about the multiple trade confirmation calls made by the employees of Karvy. There are various telephonic recordings of trade confirmation along with transcript which have been provided at IGRC hearing on 24.11.2015. Karvy has submitted 21 voice recordings along with transcript that the trades have been authorised by Purti. Further, 434 ECN were sent by Karvy to the registered email ID of Purti.
- b. As a part of the client registration documents, the Applicant has agreed as under:

Order Placement Instructions

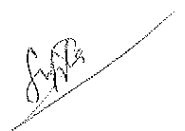
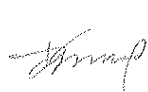
"I understand that you require written instructions from me for placing/modifying/cancelling orders. However, since it is not practical for me to give written instructions for placing/modifying/cancelling order. Even if I have facility to trade online through internet and wireless technology, I may have to place orders by physically visiting/calling/Emailing the call centre/branch specified for the said purpose by KSBL in case of breakdown of internet connectivity or other similar reasons.

I hereby request you to kindly accept my, my authorised representative or mandate holder's verbal order/instructions, in person or over phone and execute the same. I understand the risk associated with placement



of verbal orders and accept the same. I shall not disown orders under the plea that the same were not placed by me provided I am sent ECN/Physical contract notes or trade confirmations through SMS and other modes. I indemnify KSBL and its employees against all losses, damages, actions which you may suffer or face, as a consequence of adhering to and carrying out my instructions for orders placed verbally."

- c. Karvy referred to point 1(a) of Statement of claim filed by Purti and submitted that Purti gave a pay-in cheque of Rs.20,00,000 on 08.10.2013 after verifying its transactions and ledger balances in its account. If they were unaware of the transactions executed in their account during the period from 08.10.2013 to 15.10.2013, what stopped them from raising a complaint at that point of time on receipt of ECN to the registered email ID and why the Applicant has renewed the BG in favour of Karvy after the said period. This shows clearly that Karvy wants to sensationalise its complaint and is raising such allegations before the arbitration Forum. Purti is expected to peruse the contract notes and SMS confirmations sent to it and contact Karvy for any discrepancy/dispute within 24 hours of receipt of such documents. In the event that the Applicant failed to contact the Respondent for the transactions, it is deemed that the Applicant has accepted the respective transactions. Considering the acceptance of the transactions by the Applicant upon receipt of the ECN and trade confirmation SMS and also renewal of the BG given as margin, none of the trades in the Applicant's account can be deemed as uninstructed.
- d. Karvy referred to point no 1(b) of statement of claim filed by Purti and vehemently denied the statement made by Purti that Karvy had accepted that transactions were executed without their consent. Karvy vehemently objected to the production and admissibility of any unauthorised phone or video recording of any conversation with any officer of Karvy and the authenticity of such recording is disputed by



Karvy. The Respondent submits that the possibility of the recordings being tampered with cannot be ruled out and hence the same ought not to be entered into evidence. Further, the voices of the speakers are distorted and unclear and hence, no reliance can be placed on the same. The recording is not corroborated by any other purported evidence presented by the Applicant and deserves to be rejected at the threshold. The authenticity of such a recording needs to be proved in a Court of Law and it is humbly submitted that the present Arbitration Forum does not have the jurisdiction to examine the authenticity of such a recording and hence the same cannot be relied upon.

- e. Karvy referred to point no 1(c) of the application and submitted that all the 21 recordings pertaining to trade confirmations by them pertain to trades authorised by Purti and confirmed at the end of the day. Karvy denied that any uninstructed trades were carried out in Purti account. Karvy further submitted that Purti did not seem to have the gumption to absorb the losses sustained in its trading account, and, is therefore, making bald and vile allegations to somehow wriggle out of such losses.

- f. Karvy prepared and submitted two sets of ledgers:

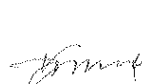

Referring to point no. 1(d) of the application, Karvy submitted that they did not maintain double set of books of accounts nor did they indulge in any wilful modification of data as alleged. Karvy further submitted that on account of a technical glitch/updation issue in the back office, there were certain inadvertent errors in some of the statements/records pertaining to the Applicant. Karvy became aware of these errors only when the client Purti filed a complaint. Karvy also submitted that neither they were benefitted out of such errors nor Purti was subjected to any loss. Quarterly ledgers sent by email to Purti and the ledger balances reported in the margin collection filed to the Exchange have matched with the ledger couriered to Purti and such

balances are genuine. Therefore, these facts clearly establish that Karvy has not indulged in any wilful modification of data.

g. Karvy manufactured and produced three set of daily margin statement.

Referring to point no. 1 (c) of the application, Karvy submitted as follows:

- i. The Respondent denies the statement of the Applicant that three sets of margin statements were issued by the Respondent. The Respondent submits that the BG value appearing as Rs. 8 crores instead of Rs. 2 crores was on account of inadvertent technical error in the back office/electronic document generation process. The Respondent submitted that the trading limits and exposure limits were given to the Applicant based on margin of Rs. 2 crores BG as available. Further, while reporting margin collected to the Exchange, the Respondent has mentioned the BG value as Rs. 2 crores.
- ii. The Respondent submits that this inadvertent technical error in the back office/document generation process has in no manner been detrimental to the interest of the Applicant nor the same has benefitted the Respondent in any manner. These errors also do not invalidate the trades executed by the Applicant and the Applicant continues to remain responsible for the obligations arising out of such trades. The Respondent had also demonstrated during the course of IGRC proceedings that the discrepancy in margin statements was on account of technical issue in the back office and it had impacted other clients of the Respondent as well. The Respondent re-iterates that the errors in the margin statements do not have a bearing on the trades executed by the Applicant since the Applicant was aware and in concurrence with all transactions executed in its account. The Respondent also reiterates that the trading and exposure limits given to be availed by the Applicant were based on the actual

margin of Rs 2 crore and the margins reporting to the Exchange in respect of the Applicant's account was based on such margin only.

- iii. The Respondent submits that, numerical errors in the margin statements cannot be a ground taken by the Applicant to disown losses in its trading account. The Respondent submits that it has proved beyond doubt that not only was the Applicant well aware and in concurrence with all the transactions in the account, it was also well updated about the correct margin positions which were clearly conveyed in the emails sent by the dealer.

h. Request for reduction of Brokerage.

Karvy has enclosed a copy of its letter dated 14.11.2015 which it wrote to Metropolitan Stock Exchange of India Limited in reply to the complaint of Purti which inter alia said as follows:

- Purti opened trading account with us to execute transactions in currency derivative segment.
- The purpose of such transactions executed by the client may be of speculative in nature or to mitigate the forex risk of the existing business of the client which is entirely as per client's discretion and beyond our purview and scope.
- We submit that in order to disown the losses incurred in their trading account and to cherrypick certain transactions which have been profitable, the client is now taking the stand that they have opened the trading account not to execute speculative transactions.
- We deny the statement of the client that brokerage was agreed at Rs.2 per lot and written in the KYC documents submitted by the client as 0.02%. The brokerage has been charged as per the rates agreed and signed by the client at the time of account opening.

- We submit that on 03.11.2014, we have reduced the brokerage slab of the client as 0.0035% for futures and Rs.2 per lot for options transactions.

2) Trade during negative ledger balance:

Karvy submitted that BG is considered as the cash equivalent and based on the balance in the ledger alone, it cannot be construed that trading was carried out during negative ledger balance. BG is a single instrument which can be used by Karvy as a broker towards margin across Exchanges. The allegation of the Applicant that Karvy executed uninterrupted trades in violation of law is without merit. Even assuming without admitting that there is a violation of the Exchange circular as cited above, it does not invalidate trades executed by the Applicant Purti. Purti continues to remain responsible for the obligations arising out of such trades. Moreover, the circular quoted by Purti is not applicable to currency derivatives segment at all.

3) Trades without margin:

Karvy submitted that most of the instances when Purti traded, the margin was sufficient and the same was reported to the Exchange. The margin shortages which have a reason on account of failure of Purti to maintain the same were few and far between and negligible in comparison to the total margin requirement. Relevant penalty was levied by the Exchange on Karvy for such margin shortage. Such margin shortage does not invalidate the trades executed by the Applicant and the Applicant continues to remain responsible for the obligations arising out of such trades.

4) Non issuance & even issuance of incomplete/erroneous ECNs:

- a. Karvy submitted that ECN were issued to Purti on all the dates when they had transactions. A total of 378 ECNs were issued to the client during 06.08.2013 to 29.09.2015 and no erroneous ECN was issued. This does not invalidate the trades executed by the client and they continue to remain responsible for the obligations arising out of such trades.

b. With reference to allegations made by Purti for quantity difference and rate difference in closing and next day opening, Karvy submitted that such points do not have any bearing on the losses sustained by the Applicant in its trading account. The Applicant was well aware of all the trade positions, margin positions and the losses in its account and the present allegations are merely ploy to somehow disown its trading losses. As regards bills showing debit balances without any trade details, Karvy submitted that such bills were towards brokerage payable by them towards its transactions.

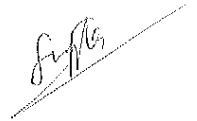
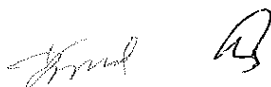
c. Karvy further submitted that 21 recordings provided were played during the IGRC hearing which clearly indicated Purti's awareness to option transactions and intra-day transactions. Karvy mentioned that since the day the client has lodged a complaint, its authorised signatory, Mr. Sajjan Agarwal has feigned ignorance to option transactions and intra-day transactions and has tried to mislead the Forum by masquerading as a gullible investor. Karvy submitted that absence of order trade confirmation calls does not in any manner invalidate the transactions which was accepted by Purti via receipt of ECN, trade confirmation SMS, trade confirmation email and quarterly statement of accounts. Karvy submitted that Purti had on its own free will and volition renewed the BG on multiple occasions and had also Exchanged receipt/payment of funds in its accounts.

5) Non issuance of SMS alerts as alleged:

Karvy submitted that issuance of SMS alerts is not a laid down regulatory requirement and that it has issued ECN and sent daily confirmation emails to the Applicant which clearly suffice the requirement.

6) Non issuance of Mandatory daily margin statements:

Karvy submitted that due to some technical reason the logs pertaining to the margin statement issued during the period 29.08.2014 to 14.04.2015 did not feature in the logs submitted by them to the Exchange. However,



this does not invalidate the trades executed by the client and they continue to remain responsible for obligations arising out of such trades.

7) Issuance of fabricated/ erroneous/inflated & non disclosing utilised and required margin in issued daily margin statements.

Karvy denied that any fabricated or inflated statements were issued by them. As regards the BG value appearing at Rs. 8 crores instead of Rs. 2 crores, Karvy clarified that it was on account of inadvertent technical error in the back office/electronic document generation process. Karvy also submitted that trading limit and exposure limit were given to the client based on margin of Rs.2 crore BG as available. The same figure of Rs. 2 crore was reported to the Exchange for margin collection. Inadvertent technical error in the back office/document generation process was in no manner detrimental to the interest of the Applicant nor have they benefitted the answering Respondent. Moreover, these errors do not invalidate the trades executed by Purti and Purti continued to remain responsible for the obligations arising out of such trades.

Purti submitted that it was not maintaining two or more set of accounts nor had it indulged in illegal activities.

8) Non settlement of client accounts:

Karvy submitted that the Applicant gave BG of Rs 2 crores towards margin and other obligations and since BG is a cash equivalent the same could be adjusted towards such obligations. Moreover, as pr SEBI circular dated 03.12.2009, quarterly settlement is not required in case of funds received from the client towards collaterals/margin in the form of BG/FDR.

9) Encashment of collateral BG:

- a. Karvy submitted that Purti alleged execution of unauthorised trades solely with the intention of disowning their trading losses, securing the BG and saddling such trading losses on Karvy. Purti was well aware of all transactions executed by it and while they showed an appetite for absorbing losses, they were unable to fathom trading losses and have

therefore filed this complaint and indicated their intention to not clear the dues standing to their account.

b. Karvy submitted that when Purti had not cleared its debit balance despite repeated reminders and has instead chosen to raise baseless allegations of transactions without consent to disown the losses, Karvy was left with no option but to invoke the BG in order to recover the dues owed by Purti. Karvy further submitted that in letter dated 12.10.2015, Karvy had requested Purti to clear the debit balance in their trading account on or before 13.10.2015 and waited till 15.10.2015. Since Purti failed to clear the debit balance up to 15.10.2015, Karvy invoked the BG to recover its dues on 16.10.2015. Karvy further submitted that they provided enough time to Purti to clear the debit balance and the invocation of BG was the only option left before Karvy to recover their dues.

c. Karvy re-iterated that BG was a cash equivalent recognised by the Exchanges and therefore mark-to-market obligations can be virtually adjusted against such BG and such BG are exempted from the quarterly statement also. Karvy also submitted that the circular quoted by Purti pertains to equity market statement and was not relevant to the instant arbitration application.

10) Prayer:

Karvy submitted that Purti had made a false statement before the IGRC panel about the police case with the sole intention of misleading to gain monetary relief through Redressal process and simultaneously engage the police to intervene in the matter. Karvy re-iterated that from the time when Purti lodged the first complaint before NSE and MSEI, it had alleged fraud, misappropriation, malafide intent against Karvy and also alleged that such acts of Karvy coupled with purported unauthorised transactions have caused it the trading losses. Purti also filed a police complaint at the Hare Street police station citing same allegations and the complaint is pending.



Karvy humbly submitted that the present Forum is an Arbitration Forum and the complaint filed by the Applicant and pending before this Forum is not only about purported trading losses/unauthorised trades but also about purported acts of fraud, misappropriation, fabrication, siphoning of clients funds coupled with purported unauthorised trades resulting in trading losses. Therefore, Karvy humbly submitted that the present complaint of the Applicant can only be settled/decided in Court through furtherance of detailed evidence by both parties. Karvy re-iterated that when the police were already seized of the matter, there was no scope for the IGRC to attempt to redress the present complaint and the IGRC panel have correctly dismissed the matter. Karvy has requested this Tribunal to dismiss the present arbitration matter filed by the Applicant as the matter is under investigation by the police department.

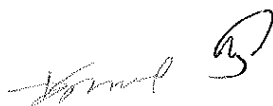
- 11) Karvy reproduced the submission of Purti with police authorities as below in its further documents and also read at the time of hearing to bring this to the notice of the Tribunal members:-

“That Amit Rastogi as Regional Manager of Karvy, kept in regular touch with me. As and when I placed orders from trading, Amit Rastogi would promptly inform me of the result and the balance in the company’s account. Amit Rastogi and other officers of Karvy namely Debajyoti Biswas as Zonal Head would often visit me at our office. In this manner over this period of 2 years, Amit Rastogi and his team of officers at Karvy obtained our trust and confidence. For this reason I never checked any mails or correspondence which I received from Karvy except the yearly and half yearly account ledger statements”.

(C) **REJOINDER by PURTI to the reply of Karvy:**

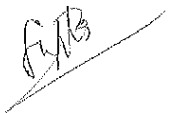
Purti being the Applicant filed its rejoinder on 15.02.2016 to the reply of the Respondent (Karvy) and the same is briefly stated hereinafter:

- At the very outset, Purti objected to the allegations and/or contention and/or submissions contained in the reply and stated as follows:



1. Purti did not open the trading account in order to hedge the losses of foreign Exchange fluctuations in terms of exports. Purti was an importer. Copy of the KYC (enclosed with the reply) was a document got signed by Karvy through its agent on their behalf. The handwriting in the said document by which the details have been filled was not of the Claimant but was of the employee of Karvy Mr. Digambar Kumar Sahu who was the introducer and had shown to have done in-person verification. Many columns of the said KYC form were blank at the time when the Claimant had signed it as the Claimant was not afforded any opportunity to go through the terms of the said document. No copy of the KYC application form was given prior to the same being disclosed for the first time to the IGRC proceedings. It appeared from the KYC document disclosed by Karvy that when Digambar Kumar Sahu had signed the KYC as introducer of the Claimant this column was left blank at the time when the Claimant signed the said document. It is apparent on record from the KYC disclosed that now Mr. Sahu is the assistant manager of Karvy branch office and had deliberately avoided to disclose his identity in the 'Status of the introducer' column. The Claimant does not accept the correctness of the particulars filled in or implication of signatures put in on the KYC without the Claimant's authority and consent as stated above.

Purti stated that Karvy in a desperate attempt to avoid the liability is trying to falsely implicate the Claimant by stating that the Claimant used to transact in the currency derivative segment by contacting with the concerned dealers of Karvy office over telephone which is denied and disputed. In spite of several reminders, Karvy failed to produce any record or document to show that it had obtained instructions from the Claimant before placement of orders in the system for the execution of trades and such non production proves that no such instructions of trades were given by the Claimant.



2. The purported authorisation letter for electronic communication (attached with the Reply) disclosed by Karvy is devoid of credibility as is reflected from the letter where the Claimant's signature and name written are distinctly different from his handwriting.

The authenticity, validity and genuineness of ECN log (attached with the Reply) are denied and disputed by the Claimant. These documents have been generated by Karvy to suit the purpose in these arbitration proceedings. Karvy has made unauthorised transactions in breach of trust and is not entitled to realise/recover any money from the Claimant. Purti claimed that on one hand Karvy made unauthorised transactions causing loss to the Claimant to wipe off his investments and on the other hand, Karvy has realized huge sums of money as commission against such unauthorised transactions thereby making double benefits and causing double jeopardy to the Claimant. The purported Client Status Report showing that between 01.04.2013 to 31.08.2014 Karvy delivered 232 mails disclosing contract notes to the Claimant and such alleged documents show that though in between this time period, numerous unauthorised transactions were carried out by Karvy, the first date when the contract note was sent by Karvy to Purti was 06.08.2013. Contract notes were required to be sent latest by the next working day of the trade as per the Rules but the same was not done.

Moreover, none of the purported mails sent during the said period were read and/or reconciled by the Claimant. After the Claimant came to know about unauthorised trades, it downloaded the ECNs from the email and found that in between 27.01.2014 to 31.08.2014 (over 8 months) Karvy did not furnish any ECN. Further, it came to the knowledge of the Claimant that since 01.09.2014 till date, the trades were defective due to non disclosure of 'type of trade'. It was not mentioned whether it was call or put.

3. Purti submitted that after the complaint dated 09.10.2015 as made by them to Karvy in respect of unauthorised transactions, Karvy deliberately and with malafide intentions invoked the BG to clear the debit balance in the said account although the ledger balance was showing continuous shortfall for a considerable period of time but Karvy never demanded any payment from Purti during that entire period of shortfall but rushed to invoke the BG as soon as Karvy was put to question in respect of unauthorised trades being conducted. Such conduct of Karvy speaks loud of their malafide intention to make wrongful gain.

Purti accepted that a police complaint was lodged by them with the Hare Street police station against Karvy but the same was not proceeded with by the police and a copy of the police complaint dated 09.10.2015 was duly annexed with the original complaint filed by Purti with IGRC. Thereafter, Purti filed an application under section 156(3) of the CrPC before the Ld. Metropolitan Magistrate, Bankshall Court and after hearing the Ld. Advocate for Purti, the Hon'ble court directed the police station to register a specific case against the Respondents u/s 406/420/467/468/471/120B of the IPC and the same is under investigation.

4. Purti denied that the IGRC passed an order admitting no claim. Purti stated that IGRC have not dismissed the matter on merits in its order dated 16.12.2015. It is clear that the Respondent has been trying to cover its guilt on the ground that once police case was registered by the Claimant against Karvy, during pendency of the said case the IGRC cannot consider the claim of the Claimant. From a plain reading of the order passed by the IGRC on 16.12.15, it is seen that they decided to dismiss the claim merely on the basis of the request for closure of the case as was made by the Respondent and that too when the representative of the complainant refused in writing during the hearing to withdraw police complaint.

Purti submitted that it was a settled position of law that Civil liability was independent of criminal liability and both can be proceeded with simultaneously. The Respondent in order to avoid and escape the liability of the claim is trying to mislead the Forum by making incorrect statements and is trying to set improper precedents of law before the Ld. Forum. Purti denied that the claim of the Claimant cannot be adjudicated through arbitration by the instant Hon'ble Arbitral Forum of MSEI on the ground that a complaint has been filed and the same is pending before police authorities for enquiry and investigation. The Arbitral Forum has ample authority and jurisdiction to decide the matter on merit through arbitration and the same involves allegations of unauthorised transactions by the Respondent. It is well established principle of law that to shut out the arbitration at the initial stage itself would destroy the very purpose for which the parties had entered into arbitration and that there is no inherent risk or prejudice to any of the parties in permitting the criminal proceedings to simultaneously proceed with the arbitration. The registering of a police case by the police authorities on the basis of the complaint made by the Claimant does not create any bar on the Hon'ble IGRC panel or the instant Hon'ble Arbitral Forum to conduct the hearing of the case and decide the matter on merit. Purti denied that they had suppressed the fact of registering of the police complaint from the Hon'ble IGRC panel. Moreover, it is for the police authorities to register complaint and take cognisance of the same and to deal with it in accordance with law. Purti denied that it made any false statement before IGRC about police complaint. Purti submitted before IGRC about registration of police complaint on 10.10.2015 prior to reference of the unauthorised transactions conducted by Karvy to the MSEI and/or SEBI. Purti submitted that Karvy in order to suppress their illegal, arbitrary and wrongful acts of unauthorised trades on account of Purti is trying to mislead this Forum from conducting the hearing of the case on merits



on the pretext of pendency of police complaint. Criminal liability is independent of Civil liability and there is no legal embargo on the part of the Arbitral Forum to conduct the hearing of the arbitration and to pass a reasoned award. The Applicant would rely upon several judicial pronouncements of the Hon'ble Supreme Court in the light of his submission in this regard.

5. After receiving ledger on 29.09.2015 from the Kolkata office of Karvy, Purti came to know about unauthorised trades being carried by the Respondent. Purti also reconciled its emails received from Karvy and came to know about the said unauthorised transactions. Purti found that since 27.01.2014 to 31.08.2014 there was no ECN record and on perusal of all the ECN from 01.09.2014 till date the Claimant found that Karvy had carried trades without instructions which were contrary to the Rules and Regulations of MSEI and SEBI. No SMS were received by Purti. When Purti sought for production of SMS logs, Karvy failed to produce the same and replied that sending of SMS is not mandatory and hence the claim of Karvy for sending SMS to Purti is a false statement and is an attempt to mislead the arbitration panel. The daily trade confirmation emails are also disputed and denied by Purti and it is submitted that post trade confirmation emails reveal that all transactions made have not been set out in those emails though there have been regular unauthorised trades on Purti account. The CD relied upon by Purti to show knowledge of trades is also disputed as it contains altered and/or manufactured excerpts of the tape recorded conversations. The alleged voice and time of call are also disputed and questioned. Purti also denied receiving of quarterly statement of accounts and will refer the copy of log sheet submitted by Karvy before the IGRC panel to prove that such statement of Karvy was false. Moreover the Consent of Maintenance of Running Account Form enclosed by the Respondent to their reply clearly shows that the same at its bottom which required the own handwriting of the client was

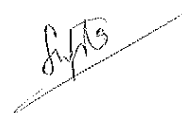
The bottom of the page features three handwritten marks. On the left is a signature that appears to be 'S. M. S.'. In the center is a stylized initial or mark resembling a 'G' or 'S'. On the right is a signature that appears to be 'S. M. S.' written over a diagonal line.

filled by some agent of Karvy as per the fancy of the Respondent who most negligently dealt in filling up the form. The name of the Claimant mentioned is "Sanjay Agarwal" instead of "Sajjan Agarwal."

Purti disputed that they had renewed the BG on repeated occasions and had exchanged receipt/payment of funds in their accounts towards outstanding dues with full knowledge. On the contrary, it is now revealed that the Respondent by conducting unauthorised trades had eaten up entire amount of his investments. Ledgers also reveal that there were times when there had been unauthorised trades inspite of negative balance. However, even at that time, Karvy did not invoke the BG but rushed to invoke the same when the Claimant sought for clarification and questioned unauthorised trade activities.

Purti submitted that no one but the Respondent is liable for the loss sustained by the Claimant for the act of the Respondent and the Respondent have to make payment of the amount as prayed for in the application for unauthorised trades conducted by it.

6. Purti submitted that criminal litigations are not to recover money but to punish the accused if found convicted of the offence whereas civil litigation is resorted to by a litigant to recover his financial loss which can be dealt either by instituting money suit or by filing arbitration proceedings. In the instant case, the Claimant has filed arbitration proceedings before this Hon'ble Forum pursuant to the reference made to MSEI/SEBI for recovery of a sum of Rs. 1,24,23,171 from the respondent for the loss suffered by it due to the unauthorised trades conducted by the respondent on the trading account of the Claimant.
7. Purti stated that Karvy had failed to produce any record to show that there had been trading instructions before placement of orders on the system for execution of the trade. The telephonic recordings of trade confirmations as also the transcript relied by Karvy are denied and disputed by Purti for want of authenticity and genuineness. The alleged 21 trade confirmations, telephonic calls and so called 434 ECNs and



thousands of alleged trade orders have been denied and disputed by Purti.

Purti reiterated that between 08.10.2013 and 15.10.2013 the Claimant was out of India and there was no communication from both ends during that period but trade records reveal that Karvy had executed numerous unauthorised trades in the trading account of Purti causing huge wrongful financial loss to Purti and making wrongful financial gain to Karvy. ECNs are shown to have been purportedly delivered on random dates though trades were executed on a regular basis by Karvy. Even one unauthorised transaction done by Karvy renders the entire transaction ipso facto illegal, unauthorised and void-ab-initio and hence the Respondent Karvy is guilty of unauthorised trades and is liable to pay the amount of claim set out as against it in the prayer.

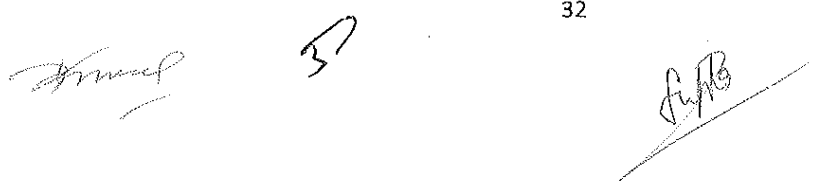
Moreover, the client registration kit is a document which was got signed through its agent by Karvy. The handwriting in which the details were filled is not that of the Claimant. Many columns in the kit were blank when the Claimant signed the same and he was neither afforded any opportunity to go through the agreement nor was explained about its importance by Karvy or its agent. No copy of the said kit was made over to the Claimant after its completion. The intention of Karvy is not bonafide as Karvy hurriedly obtained signatures of the Claimant on the kit in order to commit unauthorised trades. Now, it appears that Karvy in desperate attempt to avoid all its liabilities is trying to justify its unfair trade practice on the ground that the Claimant had executed his signature in the registration kit giving full authority to Karvy to conduct the trades on his behalf.

Purti submitted that the Respondent has tampered with the ECN logs which is highly objectionable and illegal and further proves that Karvy is not maintaining the logs in mandatory non-tamperable form. Purti submitted that it had submitted a CD bearing the telephonic conversations as well as the audio video recordings held between the

Claimant and Respondent's agents and the same has been enclosed to the statement of claim along with an affidavit declaring the same as untampered and genuine. The CD is a conclusive evidence to prove the act of unauthorised transactions being admitted to have been committed by the Respondent on the trading account of the Claimant. Purti submitted that Karvy has not denied the telephonic conversations held between it and the Claimant on 28.03.2014 @9:28 and has admitted the trades being carried on by it despite specific orders from the Claimant thereby causing immense financial loss to Purti.

Purti submitted that Karvy has submitted two sets of ledger books so as to indulge in wilful modifications of data as per their wish. The Claimant was handed over with one ledger by the Karvy Kolkata office and the same was denied when the objections was raised at the first instance by Purti. It was later found that when complaint was made to the Exchange, Karvy submitted a completely different set of ledger before the Exchange in their reply to the complaint made by Purti before the Exchange. The Respondent Karvy is trying to take shelter of technical glitch/up gradation in the back office and inadvertent errors in some of the records/statements pertaining to the applicant and such casual reply of Karvy is not and cannot be sustainable in law specifically in the case of allegation of unauthorised trades.

Purti submitted that Karvy is a trading member registered under SEBI and is bound by the Rules, Regulations and Bye-laws of the Exchange. Karvy is blaming the technical errors in the back office/electronic document generation process and Purti submits that generation of such cooked document is absolutely in the control of the fingertip of Karvy who operates the electronic device and hence no one but the Respondent is responsible and accountable for the huge financial loss caused to Purti due to the arbitrary, unauthorised trade activities committed by Karvy. Karvy has not denied, rather admitted the generation of such confusing cooked data on the ground of technical

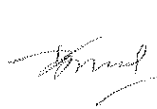
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issues in the back office and has also admitted their trading activities which impacted their other clients as well.

The above excuses cannot be condoned by this Ld. Arbitral Forum as the records speak otherwise.

Purti submitted that Karvy has run out of reasons/logic and has made statements which are self detrimental and damaging. Purti further submitted that the business of trading in stock Exchange market relates to NUMERICAL and in this business NUMBERS reveal everything and the entire business is with NUMBERS. The casual reply of Karvy that "Numerical errors in the margin statement cannot be a ground to disown losses in the Trading account" speaks loud of the ill-conduct of the Respondent in dealing with the trading account of the Claimant.

8. Purti submitted that since 11.09.2013 the ledger balance of the Claimant was in negative due to uninterrupted, unauthorised trades being conducted by Karvy on Purti's account and moreover the BG was under utilisation in NSE at that juncture. As a result no limit was available to the Respondent since 11.09.2013 but the Respondent relies on the fact that BG was held as margin and the same could be used towards margin across Exchanges but Purti denied this. According to them such statement of Karvy is not supported by any bye-laws of the Exchanges. Karvy has failed to show that it has acted in accordance with the Rules and Regulations of the Exchanges. Purti submitted that Karvy have failed to give reply on the question pertaining to trade without required margins. Purti submitted that it downloaded ECNs from its registered email and found that since 27.01.2014 to 31.08.2014 and intermediately Karvy had not issued any ECN. On further perusal it was found that the ECNs were not complete and were erroneous. Finally Purti submitted that there was no such element which conclusively proved that the subject trades were done on the instruction of the Claimant.



9. Purti submitted that when the Claimant sought for production of logs of SMS alerts, the Respondent did not and could not produce the same on the pretext that “they were unable to retrieve the SMS logs for the transactions in MSEI segment at present due to technical issues and that sending SMS is not regulatory”. Purti also submitted that Karvy is trying to evade the responsibility of production of the same as the same would transpire that no SMS alerts were sent to the Claimant informing them of trading positions.
10. Purti submitted that the Respondent did not produce the mandatory daily margin statements before the Exchange as the same would reflect the unauthorised trades being conducted by Karvy on the trading account of the Claimant. The Respondent has every time denied producing the documents which have been called for by the Claimant and they have been trying to justify their unauthorised trade activity always by blaming technical issues. As per the statement of Karvy non issuance of mandatory daily margin statement does not invalidate the trades executed by the Claimant. Purti submitted that when the complaint related to unauthorised trades the Respondent is duty bound to produce such alleged documents and adverse inference is to be drawn if such mandatory document is not produced. Moreover Karvy was doing unauthorised trades showing enhanced margins/collaterals and to avoid allegations of unauthorised trades at that juncture it avoided issuing such mandatory Daily Margin Statement and hence there are no indications in the Logs pertaining to these unauthorised trades.
11. Exhibit no. 6 & 7 produced by Karvy at this stage are not genuine and has been prepared to suit its purpose for the arbitration proceedings. Daily Margin Statements as prepared by Karvy show that for a considerable period of time i.e. 1st September 2014 to 31st August 2015 the BG in NSE was inflated by 400% (from Rs. 2 crore to Rs. 8 crore) and at the same time the utilised and required margin in the

trading account of Purti was shown as Nil. Moreover statements show that the BG was once for Rs. 2 crores and then Rs. 8 crores and then again Rs. 2 crores and again Rs. 8 crores which was a deliberate attempt to confuse the Claimant. None of the explanations of the Respondents are reliable and the same have been prepared to suit its purpose for arbitration proceedings. The same is not signed and/or sealed by the Respondent office and therefore such documents are devoid of credibility.

12. Purti submitted that at no point of time Karvy has paid in or paid out after 04.10.2013 as margin for M2M and no periodical confirmation of either ledger balance or of position held were duly confirmed. Purti denied that the SEBI circular dated 03.12.2009 (Exhibit 8) relied upon by Karvy has any manner of application in the instant case. Rather the consent for maintenance of running account form annexed by Karvy to their reply bears a column at the bottom of the page which deals with "Periodic Settlement of Funds and securities once in a" and such column was required to be filled up by the constituents in handwriting specifying "Monthly/Quarterly" settlements. The handwriting in the said document by which this detail has been filled up is not that of the Claimant. This column was blank at the time when the Claimant had signed the same and the Claimant was neither afforded the opportunity to go through the terms and conditions of the agreement nor was explained about its importance by the Respondent- Karvy. No copy of the said document was given to Purti prior to the same being disclosed in this arbitration proceeding. The Claimant has further stated that the validity and the authenticity of the handwritten particulars mentioned in the said form are denied by the Claimant as the same were not filled up by him and the same is not valid in law.
13. Purti stated that Karvy went on carrying unauthorised trades in their account even at times when Purti's ledger balance was in negative

for a considerable period of time. Purti denied that Karvy had given repeated reminders to them to clear the debit balance in respect of the said account. Rather the Respondent went on carrying unauthorised trades without giving any reminders to the Claimant. It is surprising to note that it was only after the complaint was made with regard to unauthorised/uninstructed trades being carried by Karvy that Karvy rushed to invoke the BG without investigating into the complaint as was made before them by the Claimant with a prayer not to invoke the BG. The BG of Rs. 2 crore was provided by Purti to Karvy towards margin money only and for M2M loss and gain. However, Karvy did not consider the complaint of the Claimant and without conducting free and fair investigation into the complaints as was alleged, Karvy dismissed the same at the outset as null and void and rushed to invoke the BG giving a total go by to the Rules, Regulations and bye-laws of SEBI and the Exchange. Purti stated that the renewal of BG was automatic and was renewed at same level of Rs. 2 crore and the renewal does not prove that the Claimant was aware of the trade positions and/or balance of the said ledger.

Purti submitted that Karvy executed huge trades in currencies such as EURINR, GBPINR, JPYINR and options sale and purchase of all currencies and intraday trades in USDINR and all such trades were unauthorised and not under the instructions of Purti and such fact of unauthorised trades was accepted by the Regional Manager and Zonal Manager of Karvy.

Purti stated that the allegations made by Karvy are contradictory and self defeating. No credence or reliance can or could be placed on the Written Objection which contains false statement to the knowledge of the Respondent and the deponent of the said Written Objection is liable to be held guilty of perjury.

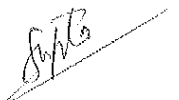
Purti submitted that they have neither suppressed any fact from this Ld. Forum nor made any false statement before the Ld. IGRC panel. Purti

reiterated that it is a settled principle of law that Civil proceedings are independent of Criminal proceedings and both can go simultaneously. Arbitration Proceeding is a Civil proceeding. The relief sought for by Purti in both these proceedings are independent and different from each other. In the Criminal Proceedings Purti had sought for investigation by the Police Authorities into the alleged offence made in the complaint and if the Respondent is found guilty of the alleged offence after completion of a Trial in a Criminal Court of Law, the accused will be convicted and punished accordingly. Whereas in the instant arbitration proceedings before this Ld. Forum, the Claimant has prayed for passing an Award of Rs. 1,24,23,171/- as against the Respondent for unauthorised trades conducted by the Respondent on the trading account of the Claimant causing huge financial loss to the Claimant.

14. Finally in its rejoinder Purti submitted that the relief as claimed in the Statement of Claim filed by them be allowed.

(D) Hearings of the matter:

The matter was heard twice on 15.02.2016 and 08.03.2016. The second was the final and concluding hearing. Orders passed by this Tribunal on both these dates are reproduced here below:



METROPOLITAN STOCK EXCHANGE OF INDIA LIMITED
(formerly known as MCX Stock Exchange Limited)

REGIONAL ARBITRATION CENTRE, KOLKATA

Minutes of First Hearing – Arbitration Matter No.: KOL-01/2016

Between

Purti Vanaspati Pvt. Ltd. (Applicant) Vs. Karvy Stock Broking Limited (Respondent)

Before the Arbitral Tribunal Panel Comprising of
Mr. Sanwar Mal Gupta (Presiding Arbitrator)
Mr. Chandan Kumar Basu (Co-Arbitrator)
and Mr. Vasudeo Agarwal (Co-Arbitrator)

Date of Hearing: - February 15, 2016

Time: 03.00 PM to 06.45 P.M.

Attendance:



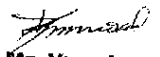
Investor: - Mr. Apratim Bhattacharya (Advocate), Mr. Sajjan Agarwal and Mr. Neeraj Chaturvedi authorized representative from Purti Vanaspati Pvt. Ltd.

Mr. Siddhartha Datta (Advocate), Mr. Ramesh Varakhedkar, Mr. Muthuswamy Iyer and Mr. Debajyoti Biswas authorized representative from Karvy Stock Broking Limited.

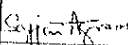
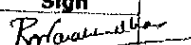
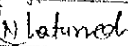
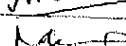
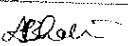
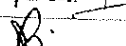
Minutes of the meeting:

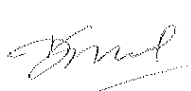

Both the parties were present with their respective Advocates and others to assist them. At the very outset the Advocate representing the Respondent pointed out that one of the Member of this panel was a Member of the IGRP at National Stock Exchange in another matter between both the parties. He further indicated that they have also filed a letter to this Exchange just before this hearing started.

Signature of Arbitrators:

 Mr. Sanwar Mal Gupta (Presiding Arbitrator)	 Mr. Chandan Kumar Basu (Co-Arbitrator)	 Mr. Vasudeo Agarwal (Co-Arbitrator)
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Signature of Parties

Applicant		Respondent	
Name	Sign	Name	Sign
SANJAN ASARWAL		RAMESH VARAKHEDKAR	
Neeraj Chaturvedi		MUTHUSWAMY IYER	
Apratim Bhattacharya		DEBAJYOTI BISWAS	



This panel found that the notice for hearing of this date was sent by this Exchange on 1st February and if they had any objection to the Constitution of this Panel or against any one Member, they should have done it immediately after receiving the notice and not now when the hearing has started after completion of all preliminary formalities like attendance, signatures etc. Hence there is no reason for any party to raise this question now. In any case both Exchanges are different legal entities and if at all this objection could be considered if it was sent timely to the Exchange.

Heard both the parties in detail and following directions are given : -

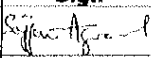
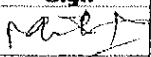
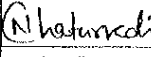
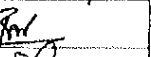


1. The Applicant Company will submit the list of those transactions which according to them were authorized by them, with supporting evidence if any.
2. Copies of Audited Balance Sheets (complete Annual Reports) of Puri Vanaspathi Pvt. Ltd. for the financial Year ending 31.03.2014 and 31.03.2015.
3. Internal Audit Reports for the above years.
4. Copies of Income Tax Returns for the above years.
5. The Respondent Company is directed to submit the copy of ledger concerning this Exchange only from beginning to end relating to the transactions of the Applicant Company.
6. Both the parties are directed to submit the above documents within 10 days hereof.

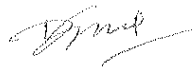
The matter is Adjourned. The next hearing is fixed to 8th March, 2016 at 3.30 p.m.

Signature of Arbitrators:

 Mr. Sanwar Mal Gupta (Presiding Arbitrator)	 Mr. Chandan Kumar Basu (Co-Arbitrator)	 Mr. Vasudeo Agarwal (Co-Arbitrator)
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Signature of Parties

Applicant		Respondent	
Name	Sign	Name	Sign
SANWAN ASA-2011		MUTHUSWAMY IYER	
Neeraj Chaturvedi		RAMESH VARMA	
Abhinav		DEBASWATI BISWAS	







22.02.2016

METROPOLITAN STOCK EXCHANGE OF INDIA LIMITED
(formerly known as MCX Stock Exchange Limited)

REGIONAL ARBITRATION CENTRE, KOLKATA

Minutes of First Hearing – Arbitration Matter No.: KOL-01/2016

Between

Purti Vanaspati Pvt. Ltd. (Applicant) Vs. Karvy Stock Broking Limited (Respondent)

Before the Arbitral Tribunal Panel Comprising of

Mr. Sanwar Mal Gupta (Presiding Arbitrator)
Mr. Chandan Kumar Basu (Co-Arbitrator)
and Mr. Vasudeo Agarwal (Co-Arbitrator)

Date of Hearing: - March 08, 2016

Time: 03.30 PM to 06.45 P.M.

Attendance:

Investor: - Mr. Apratim Bhattacharya (Advocate), Mr. Sajjan Agarwal and Mr. Neeraj Chaturvedi authorized representative from Purti Vanaspati Pvt. Ltd.

Mr. Bodhisatta Biswas (Advocate), Mr. Ramesh Varakhedkar, Mr. Muthuswamy Iyer and Mr. Debajyoti Biswas authorized representative from Karvy Stock Broking Limited.

Minutes of the meeting:

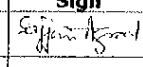

Both the parties were present with their respective Advocates and others to assist them. In the first hearing of this Bench held on 15th Feb 2016, certain directions were given to both the parties to submit documents. The Applicant Company did not submit any documents pursuant to the said directions. They are once again directed to submit the following documents within 10 days hereof.

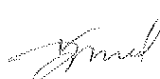
1. The Applicant Company will submit the list of those transactions which according to them were authorized by them, with supporting evidence if any.

Signature of Arbitrators:

 Mr. Sanwar Mal Gupta (Presiding Arbitrator)	 Mr. Chandan Kumar Basu (Co-Arbitrator)	 Mr. Vasudeo Agarwal (Co-Arbitrator)
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Signature of Parties

Applicant		Respondent	
Name	Sign	Name	Sign
Sajjan Agarwal		MUTHUSWAMY IYER	







2. Copies of Audited Balance Sheets (complete Annual Reports) of Purti Vanaspati Pvt. Ltd. for the financial Year ending 31.03.2014 and 31.03.2015.
3. Internal Audit Reports for the above years.
4. Copies of Income Tax Returns for the above years.

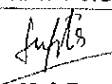

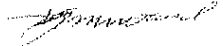
The Applicant company submitted a copy of a ledger/statement in support of their basis for the claim of Rs. 10569313/-. This is the amount of claim made by them in their application being Form No. I.

A copy of the FIR submitted by the Applicant Company to Hare Street Police Station has also been received today.


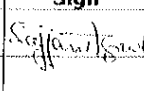
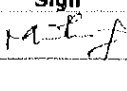
Pleadings in the matter are complete.

The hearing is concluded and the Award will follow.

Signature of Arbitrators:

 Mr. Sanwar Mal Gupta (Presiding Arbitrator)	 Mr. Chandan Kumar Basu (Co-Arbitrator)	 Mr. Vasudeo Agarwal (Co-Arbitrator)
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Signature of Parties

Applicant		Respondent	
Name	Sign	Name	Sign
		MUTHUSWAMY IYER	

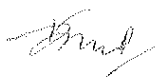
  

(E) Objection by Karvy

It may be recalled that Karvy had written a letter dated 15.02.16 and submitted the same in the first hearing which took place on the same day (15.02.16) inter-alia objecting to the appointment of Mr. Chandan Kumar Basu as one of the Arbitrators on this matter. One of the grounds taken by them was that of his independence due to the fact that he was a member of the JGRP which looked into the matter of grievance of Purti Vanaspati Pvt. Ltd. against Karvy Stock Broking Ltd. before National Stock Exchange of India Ltd. In that matter the award was passed on 14.12.2015 and the matter was closed. Karvy also submitted that Mr. Basu could not constitute a member and was ineligible to be a member of the Arbitral Tribunal in respect of the subject matter in dispute before the Metropolitan Stock Exchange of India Ltd. Karvy wanted reconstitution of the Tribunal. They also submitted that a retired Judge of the High Court be appointed as the Presiding Arbitrator in the matter along with other Arbitrators who have expert knowledge in the area as well as legal practice.

This Panel disposed off the matter after hearing both the parties in the hearing itself and held that the objection was not acceptable for the reasons recorded in the minutes.

Appointment of Arbitrators is done by the Exchange from its panel of Arbitrators which has been constituted under its related Rules and bye-laws and after having submitted the names of their choice while making application to the Exchange, normally the parties cannot further choose the Arbitrators on the panel as the final decision of choosing Arbitrators is taken by the Exchange. The Exchange takes declaration from the Arbitrators about their independence in the matter before the matter in the prescribed form. We understand that most of the Arbitrators in Eastern India are common across panels of all the Exchanges namely, Mumbai Stock Exchange (BSE Ltd.), National Stock Exchange (NSE) and Metropolitan Stock Exchange of India (MSEI) etc.




Judicial pronouncements in this regard known to this Tribunal also support the view taken by us.

The law laid down in *State of Arunachal Pradesh vs. Subhas Projects and Marketing Ltd.* 2007(1) Arb. LR (Gau, DB) and *Alcove Industries Ltd. vs. Oriental Structural Engineers Ltd.* 2008 (1) Arb. LR 393, was over ruled by a judgment reported as *Progressive career academy Pvt. Ltd. vs. FIIT –JEE Ltd.* (OMP No. 297/2006). A Division Bench of the Delhi Court has held that *“there was compelling wisdom in Parliament’s decision to allow adjudication on grounds of bias, lack of independence or impartiality of the Tribunal only on the culmination of the arbitral proceedings and that curial interference was not possible at the pre award stage on the allegations of bias or impartiality of the arbitral Tribunal. Thus, it is now no longer permissible for a party to approach the Court u/s 14 of the Act for removal of the Arbitrator on the ground of bias or lack of independence or impartiality. This is a positive development which is in tune with the avowed objective of the Act which is minimal role of the Courts in Arbitral proceedings”* (Quoted from: *Law relating to Arbitration and Conciliation* 8th edition by Dr. P C Markanda and others. Published by LexisNexis).

The Arbitration and Conciliation (Amendment) Act, 2015 has amended Section 12 and 14 but this Tribunal does not find any disqualification in the appointment of Mr. Basu as his case does not disclose any circumstances mentioned in the amended Section 12(1)(a) or (b) or Section 12(5). On page 471 of the aforesaid Book it has been noted that “In view of the conjoint reading of Sections 12 and 13, an Arbitrator who is connected with either of the parties can still be appointed as an Arbitrator provided both the parties are aware of the said professional/business relationship (*Mindmill Software Ltd. vs. Paragon Construction (India) Pvt. Ltd.* 2010 (1) RAJ 353 (Del)).

Both the parties accepted the appointment of all the three Arbitrators of this panel and entered appearance only after all the formalities of the Exchange were complete and before that they knew about the National Stock Exchange

IGRP members which rendered their Award in that matter on 14.12.2015 before the application in this matter was filed by the applicant.

In view of the above this Tribunal gave its findings in the hearing itself on the above subject and disposed off the objection made by Karvy and recorded brief reasons in the minutes holding the validity of the appointment of Mr. Basu. This ruling was accepted by both the parties present in the hearing and thereafter only the proceedings continued.

(F) After the first hearing, both the applicant and the Respondent were directed by this Tribunal to submit certain papers within 10 days thereof as mentioned in the first order. Pursuant to the said order, the Respondent submitted a letter dated 25.02.2016 inter alia enclosing therewith the following:

1. Statement of Account for the trading account 1392698 for the transactions executed since inception of the account.
2. Sauda Summary of transactions executed in the trading account since inception.

From the above it is seen that Purti had started working with Karvy from 06.08.2013 as per the statement of account submitted by Karvy and account was closed on 19.10.2015. Although the top of the statement of account shows the period from 01.04.2013 to 19.02.2016, the closing date of 19.02.2016 may be the date of preparation of statement of account but the transactions took place up to 21 August 2015 and the last entry in the statement is for 19.10.2015.

It is also seen from the statement that at the end of the statement a sum of Rs. 948831.97/- was transferred from NSE account to make the balance in this statement to 0.

During the hearing Purti had submitted that they did not regularly made pay-ins to Karvy and without taking payment from Purti, Karvy continued doing unauthorised transactions only on the basis of the bank guarantee.

Purti placed the following figures from the statement of account submitted by Karvy to show that the following were the only cheques given by them to Karvy from 06.08.2013 to 19.10.2015 and all other entries in the statement were either of purchase/sale of currencies or transfer from/to NSE from time to time:-

<u>Date</u>	<u>Cheque No.</u>	<u>Amount given by Purti to Karvy (Rs.)</u>
1. 06.08.2013	113277	1,10,00,000/-
2. 08.10.2013	904345	20,00,000/-

It is further revealed from the Sauda summary submitted by Karvy that the trades for following amount were carried out by Karvy in the account of Purti (under client code 1392698):-

<u>Financial Year</u> <u>(Rs.)</u>	<u>Buy Amount (Rs.)</u>	<u>Sale Amount</u> <u>(Rs.)</u>
2013-14	7,68,16,09,269	7,70,50,47,606
2014-15	12,61,80,85,065	12,57,13,92,361
2015-16	2,01,91,14,740	2,03,43,35,822
Total	22,31,88,09,074	22,31,07,75,789

(G) After the Second hearing of 08.03.2016 Purti under its letter dated 09.03.2016 furnished the following:-

- (1) Extract of Mobile Call Reports of Mr. Sajjan Agarwal of Purti showing the calls made to Karvy since 01.08.2013 to 31.08.2015 to prove that if the call times are matched with the list of transactions then it will give a clear picture of the orders placed by Purti to Karvy.
- (2) Copies of Audited Balance Sheet of Purti Vanaspati Pvt. Ltd. for Financial Year 2013-14 and 2014-15

[Signature]

[Signature]

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[Signature]

From the copies of audited accounts this Tribunal has noted as follows:-

- In both the Balance sheets, Purti has shown in Notes on Accounts at serial no. 31(b) that BG was given to Karvy International for Rs. 2 crores.

In the hearing, Purti submitted that a sum of Rs. 130 lakhs was given to Karvy in two trenches which was Rs. 110 lakhs at the time of opening of the account and Rs. 20 lakhs thereafter. Out of which a sum of Rs. 44 lakhs was received by Purti from Karvy on NSE account leaving a balance of Rs. 86 lakhs with Karvy as margin. This was in addition to the BG of Rs. 2 crores given by Purti to Karvy.

This Bench found that no amount of Rs. 130 lakhs or 86 lakhs appears anywhere in the above Balance sheets of Purti anywhere separately but Purti submitted in the hearing that this amount has been shown in the total figure of advances as according to them this was an advance given by Purti to Karvy as Margin money.

This Bench also noted that Purti has not complied with the requirements of AS-30 which is an Accounting Standard for Financial Instruments – Recognition and Measurement. This AS contains accounting for derivatives and has been issued by the Institute of Chartered Accountants of India. All the accounting standards are required to be mandatorily complied with by every company. Moreover, Purti has not accounted for even a single transaction in the above two years in its accounts although transaction worth crore of rupees were undertaken by it in derivatives, futures and options at both the Stock Exchanges – NSE and MSEI. This cannot be denied by Purti.

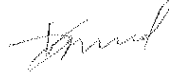
(3) Copies of Income tax return acknowledgement and computation of Tax for F.Y.E. 2013-14 & 2014-15

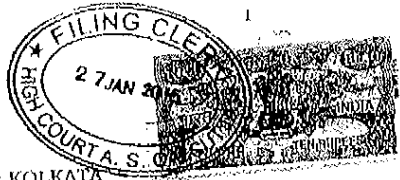
(4) Purti further submitted that Karvy has suppressed the fact that they have moved a petition under section 401 and 482 of the Code of Criminal Procedure, 1973 in the matter of CRR No. 328 of 2016 before the

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Hon'ble High Court at Calcutta praying inter alia to quash the police FIR Case No. 650/2015 dated 29.10.2015. Purti has enclosed copy of the order passed by the Hon'ble High Court on 10.02.2016 which is reproduced here below:





DISTRICT KOLKATA

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

CRR No. 328 2016

In the Matter of:

An application under Sections 401
and 482 of the Code of Criminal
Procedure, 1973;

And

In the Matter of:

7

Quashing of the proceedings being
Hare Street Police Station Case No.
650/2015 dated October 29, 2015
under Sections 406/ 420/ 467/
468/ 471 read with Section 120B of
the Indian Penal Code, 1860
(Corresponding to G. R. Case No.
2469/15 now pending before the
Court of the Learned Chief
Metropolitan Magistrate at Kolkata);



17/10/16

Filed Through
Submi Pindi
Advocate

And

In the matter of:

- 1) M/S. KARVY STOCK BROKING
LIMITED, a - Limited Company,
having its registered office at 46,
Avenue 4, Street No.1, Road no. 10,
Banjara Hills, Hyderabad - 500034
and also having regional office at 19,
R. N. Mukherjee Road, 1st Mezzanine
Floor, Dalhouse, Kolkata-700 001.

being represented by Ch. Viswanath,
working for gain at 46, Avenue 4,
Street No.1, Road no. 10, Banjara
Hills, Hyderabad - 500034 and
residing at D. No.8-9-40/84, Plot
No.84, Sri Jagannadha Nilayam, Sri
Datta Nagar, Opp. CISF quarters,
Midhani Enclave, Kanchanbagh post,
Hyderabad - 500 058.

17/10/16



2) COMANDUR PARTHASARTHY,

Director of KARVY STOCK BROKING

LIMITED, working for gain at 46,

Avenue 4, Street No.1, Road no. 10,

Banjara Hills, Hyderabad - 500034.

being represented by Ch. Viswanath,

working for gain at 46, Avenue 4,

Street No.1, Road no. 10, Banjara

Hills, Hyderabad - 500034 and

residing at D. No.8-9-40/84, Plot

No.84, Sri Jagannadha Nilayam, Sri

Datta Nagar, Opp. CISF quarters,

Midhani Enclave, Kanchanbagh post,

Hyderabad - 500 058.

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3) YUGANDHAR MEKA, Director of

KARVY STOCK BROKING LIMITED,

working for gain at 46, Avenue 4,

Street No.1, Road no. 10, Banjara

Hills, Hyderabad - 500034.

being represented by Ch. Viswanath,

working for gain at 46, Avenue 4,

my



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Yugandhar Meka

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Street No.1, Road no. 10, Banjara
Hills, Hyderabad - 500034 and
residing at D. No 8-9-40/84, Plot
No.84, Sri Jagannadha Nilayam, Sri
Datta Nagar, Opp. CISF quarters,
Midhani Enclave, Kanchanbagh post,
Hyderabad - 500 058.

....Petitioners

-Versus-

- 1) State of West Bengal

.....Opposite Party

- 2) Sajjan Agarwal, on behalf of M/s.
Purti Vanaspati Pvt. Ltd., having its
office at 14, N. S. Road, 4th Floor,
Kolkata - 700 001.

.... Opposite Party/Complainant

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17/10/16



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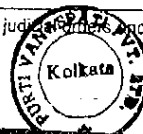
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No. of 20

Date	Notes and Orders
10.02.2016 15 RP Cl. 14	<p>CRR 328 of 2016 M/S. Karvy Stock Broking Ltd. & Ors. Vs. State of W.B. & Anr.</p> <p>Mr. Sekhar Basu, Sr. Adv. Mr. Soubhik Mitter Mr. Siddhartha Datta Mr. Bodhisatta Biswas Ms. Suhani Dwivedi</p> <p>.... For the Petitioners</p> <p>On hearing the learned Senior Advocate appearing for the petitioners and on perusal of the revisional application and its annexures, let this matter appear as 'Contested Application' after twelve weeks.</p> <p>Notice be served upon the opposite parties and affidavit-of-service be filed in the meantime.</p> <p>The investigation of the case being Hare Street PS Case No.650 of 2015 dated 29th October, 2015 under Sections 406/420/467/468/471 read with Section 120B of the Indian Penal Code be continued on condition that the investigation officer shall not take any coercive measures against the petitioners till completion of the investigation. The petitioners are directed to cooperate with the investigating agency. They are also given liberty to represent themselves through their authorised representative before the investigating agency.</p> <p>Urgent certified photocopy of this order, if applied for, be delivered to the learned Advocate for the petitioner, upon compliance of all formalities.</p>

Self Shib Sadhan Sadhu, J.
(Shib Sadhan Sadhu, J.)

The notes should be one serial in black ink and judicial notes in red ink.



10/02/16

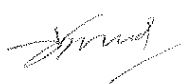
(5)Purti has also enclosed a copy of the complete petition. This Tribunal after reading the petition has noted that Karvy has submitted in para XXVI and XXVII of the said petition inter alia as follows:

(XXVI) FOR THAT it is unfair to the Petitioners to be tried in criminal proceedings arising out of an alleged unauthorised trading and invocation of BG, the disputes with regard to which are pending final adjudication before statutory Arbitrary Tribunals for NSE and MSEI as a result of commencement of the arbitration proceedings invoked by the complainant itself in January, 2016. The Complainant and the Petitioner No. 1 Company have submitted to the competent jurisdiction of the Arbitral Tribunal for NSE and MSEI. Therefore, allowing the criminal proceeding to continue would be an abuse of the process of the Court. Therefore, for the ends of justice, such proceedings ought to be quashed.

(XXVII)FOR THAT the Complainant ought not to be allowed to do Forum shopping by initiating arbitration proceedings before the NSE and MSEI and also initiate criminal prosecution on the self-same cause of action, for alleged unauthorised transactions committed by the Petitioners.

At the end, Karvy made a prayer to the Hon'ble Court for inter alia quashing the case pending before the Court of the Ld Chief Metropolitan Magistrate at Kolkata being Hare Street Police Case No. 650/2015 dated 29.10.2015 (corresponding to G.R. case no. 2469/15)

Purti submitted that Karvy had already participated in the arbitration proceedings going on before this Arbitral Tribunal and this fact was also intimated by them to the Hon'ble High Court at Calcutta by mentioning the same in their petition in CRR no. 328/2016.



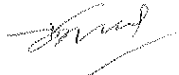
(H) Sur-Rejoinder given by Karvy vide letter dated 03.03.2016 to the rejoinder dated 15.02.2016 of Purti.

Karvy submitted letter dated 03.03.16 which was given to the Tribunal Members by the Exchange at the hearing on 08.03.16 inter alia stating as follows:

1. Karvy while referring to point nos. 1,2,3 of the rejoinder filed by Purti, stated that the dispute of authorisation is a dispute between Company Purti and its authorised signatory and there is no dispute whatsoever that can be paraded before the present Arbitral Tribunal.
2. Referring to point no. 4, Karvy submitted that Purti is a company registered under the Companies Act and such a statement from them that the signatures on the KYC was done by the authorised signatory on the application forms by them is totally baseless. Karvy re-iterated that the account was opened after completion of the KYC and collection of the necessary supporting documents as laid down by the Regulator. It is the applicant company or its employee who have completed the material portion of the KYC and such documents were authenticated by Mr. Sajjan Agarwal who is the authorised signatory of the client. The authorised signatory stamp was also affixed with the sign of Mr. Sajjan Agarwal. Karvy provided a copy of the executed KYC document to the client vide the speed post on 21.08.2013. It is purely an afterthought that Purti is now raising about signing blank KYC and not having received a copy of the document, etc. Purti was at liberty to refuse signing the KYC forms if the same were unfilled. Whenever a person of full age and understanding puts his signature to a legal document without taking the trouble of reading it, then such person cannot claim that it is not his document or has not been signed by him.

Madhavakrishan vs Sami (1980 II MLJ 398) is a case which supports this contention, as per Karvy.

Further the House of Lords in Sauders vs Anglia Building Society ((1971) AC 1004) has held that no matter what class of document was in



question, negligence or carelessness on the part of the person signing the document would exclude the defence non est factum, Karvy further submitted.

Purti never raised any query on the KYC filling for more than 3 years but now raising these false allegations only with the intention of sensationalising its complaint. Further, the applicant company Purti has executed all the transactions in its account by contacting the officials of the concerned branch of Karvy. Karvy's absence of voice recording does not invalidate transactions which have been confirmed through receipt of ECN, SMS, exchange of receipt/payments and renewal of BG on multiple occasions. It is pertinent to note that Purti has requested for change in brokerage slabs twice during the period of dealings with the Respondent company Karvy and such request came up only because the client Purti perused the completed KYC forms and contract notes. It is therefore evident that the applicant Purti is now making false and baseless claims.

3. Referring to point no. 5 of the rejoinder filed by Purti, Karvy submitted that the transactions executed by Purti were duly confirmed by ECN which were sent to the email id sajjan@purti.net of the Applicant which was registered in the records of the Respondent company Karvy. Karvy enclosed ECN consent letter signed by Purti and denied the allegation that the same is devoid of credibility.

Karvy submitted that a total of 378 ECN were issued during the period 06.08.2013 to 29.09.2015. Karvy denied that only few ECN were received by Purti and submitted that this does not invalidate the trades by Purti and they continue to remain responsible for the obligations arising out of such trades.

The responsibility of reading and reconciling the emails and attachments of ECN rested solely on Purti and they cannot now use this point as a ploy to wriggle out of its trading losses. The applicant company Purti has raised a complaint on 09.10.2015 only with an intention to disown

the losses incurred in its trading account and saddle the burden of such losses on Karvy.

Karvy provided sufficient time to Purti to clear the debit balances and only on the failure of Purti to clear the debit balance, Karvy has invoked the BG provided by Purti. Karvy denied that they never demanded any payment and the BG was invoked with malafide intention. Karvy is within its right to invoke the BG to recover the debit balances of the client on its failure to clear the debit balances.

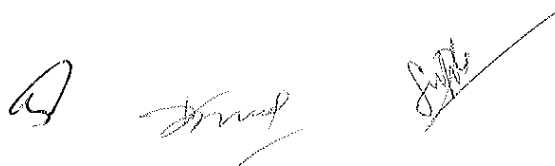
4. Referring to point no. 6 of the rejoinder, Karvy denied the allegation that the IGRC panel was misdirected to dismiss the matter. Karvy submitted further that Purti is having only one complaint against Karvy that of execution of transactions without its consent and now they are raising the issue with multiple Forums with an intention to gain monetary relief. Further, allegation made by the applicant company Purti before this Tribunal as well as police authorities are the same in as much as the applicant has alleged that the trading losses were a result of the criminal conspiracy purportedly committed by Karvy and its officers. Karvy referred to judgment - 2009 (3) Apex Court J 0643 (S.C.) in the matter of N Radhakrishnan vs Maestro Engineers wherein it has been held that inspite of an arbitration agreement existing between the parties, cases relating to fraud, malpractice, etc can only be settled in Court through furtherance of detailed evidence by either parties and such a situation cannot be properly gone into by the Arbitrator.
5. Referring to point no. 7 of the rejoinder, Karvy denied that Purti became aware of the transactions only after receiving the ledger statement on 29.09.2015. If it is so, then why Purti renewed the BG on multiple occasions and why they gave pay-in cheques to clear their obligation if there was no transaction executed by them. Karvy submitted that Purti was well aware of all the transactions.

Further, Karvy submitted that BG is considered as a Cash equivalent and based on the balance in the ledger alone, it cannot be construed that

trading was carried out during negative ledger balance. Value of the BG needs to be added to the ledger balance in order to determine whether the client's account is in credit or debit. BG is a single instrument which can be used by Karvy as a broker towards margin across Exchanges. Purti's allegation that Karvy has done uninterrupted trades in complete violation of law is without merit.

Karvy submitted that Purti had authorised Mr. Sajjan Agarwal to complete the account opening formalities through a Board Resolution. It is a known fact that all acts of such employee will be deemed to be the acts of the company Purti.

6. Karvy denied the claim of Rs.1,24,23,171 raised by the applicant Purti. Karvy submitted that Purti had stated that the issue of unauthorised trade falls fairly and squarely within the purview of arbitration but simultaneously filed case with the police authorities under various sections. Therefore, when such complaint is being investigated by the police, separate decision on trade dispute by this Forum would jeopardise the fairness of police investigation and will be detrimental to the interests of Karvy.
7. Karvy submitted that Purti enclosed telephone bills for the period from 08.10.2013 to 15.10.2013 to show that the authorised signatory was abroad and disputed the transactions during this period. Purti gave a cheque of Rs. 20 lacs on 08.10.2013. At one instance, Purti is disputing all the transactions but in another instance, they are disputing the transactions between 8.10.2013 to 15.10.2013 only.
8. Karvy denied the statement of Purti that the CD containing voice recordings are not genuine.
9. Karvy denied that two sets of books were maintained by them and further submitted that inadvertent technical error in the back office document generation process have in no manner been detrimental to the client's interest nor have the same benefitted Karvy in any manner.
10. Karvy denied that fabricated/inflated statements were issued to Purti.



11. Karvy made a prayer that the present arbitration reference is a ploy adopted by Purti to somehow disown all trading losses for a period of 24 months despite the fact of having agreed to such transactions. Karvy requested this Tribunal to dismiss the present application as the matter is under investigation by the Police Department.

(I) FRAMING OF ISSUES

In view of the aforesaid facts and circumstances, following issues are framed:

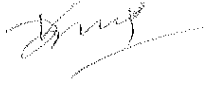
1. The first and foremost issue is whether Arbitration proceedings can continue simultaneously with criminal proceedings having been filed by one of the parties being the Applicant herein, also when the Respondent herein has also preferred a criminal revision before the Hon'ble High Court at Calcutta for quashing the police proceedings and the Hon'ble High Court has inter alia directed police investigation to continue with certain conditions.
2. The second issue and the most important issue is whether unauthorised trades were conducted by Karvy in the account of Purti without its knowledge and if so who is responsible for the loss on account of such trading.

(J) THE FACTS OF THE CASE

- (a) The list of dates in this matter is given below for better understanding of facts:-

<u>Event</u>	<u>Date</u>
Purti made a complaint to IGRC	03.11.2015
IGRC Minutes	18.11.2015
IGRC Judgment	16.12.2015

(b) Both the orders of IGRC and an order passed by Calcutta High Court in AP no. 1580 of 2015 dated 16.10.2015 SMC Global Securities Ltd. vs. Bharti Roy & ANR. are enclosed herewith:



METROPOLITAN STOCK EXCHANGE OF INDIA LIMITED
(Formerly known as MCX Stock Exchange Ltd.)

INVESTOR GRIEVANCE REDRESSAL COMMITTEE (IGRC)

Ref. No. : ISC-14/2015 Date: November 18, 2015

IGRC Panel : Dilip Kumar Shah, Mr. N P Sengupta, Mr. Udayan Kumar Basu

Complainant : Puri Vanaspati Private Limited

Respondent : Karvy Stock Broking Limited

Appearance

From Complainant : Mr. Sajjan Agarwal and others authorized representatives from Puri Vanaspati Private Limited

From Respondent : Mr. Ramesh Varakhedkar and others authorized representatives from Karvy Stock Broking Limited

ORDER

NOTE:

As per SEBI circular no: CIR/MRD/DSA/03/2012 dated January 20, 2012, the IGRC shall comprise a single person for claims up to Rs. 25 lakh, whereas, for claims above Rs. 25 lakh, the IGRC shall comprise three persons.

Since the claim of the complainant in the aforesaid matter is 14/2015 the same has been referred to 3 persons. The parties are also informed that the Exchange currently has only the aforementioned 3 members empaneled as IGRC member to redress investor complaints and hence the matter has been referred to them. The parties do not have any objection to the same.

Background and proceedings of IGRC meeting:

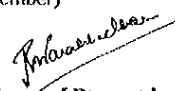
¹Complainant raised various issues in terms of letter dated 3rd November, 2015. Addressed to the Exchange.


Dilip Kumar Shah
(IGRC Member)


Mr. N P Sengupta
(IGRC Member)


Mr. Udayan Kumar Basu
(IGRC Member)


Signature of Applicant


Name of Respondent

Complainant's statement:

Several issues relating to non-receipt of important documents, wrong reporting in documents, difference in data provided in different sets of documents were pointed out.

The Complainant also wanted to submit in duplicate a CD containing voice recordings.

Respondents reply:

Trading Member pointed out that a copy of such a CD should first be made available to Trading Member so that they can come prepared to respond.

The trading Member also stated that although the amount of margin was erroneously shown at Rs. 8.00 crore in a number of margin money statement sent to the Complainant, the correct position was always disclosed in their report to the Exchange and this can be verified by the exchange.

Conclusion:

Reconciliation of this position involves checking a large number of documents. Moreover the CD would require first to be examined by the Trading member and then to be replied. Also various papers had to be discussed by both the sides, which could not be accomplished by them during the tenure of the meeting.

Accordingly the meeting had to be adjourned until 25th November, 2015, Wednesday at 11.00 a.m.

The Complainant submitted a list of items for which he requires specific clarifications along with all supporting documents. A copy of this list and a copy of the aforesaid CD have been handed over to the Trading Member. Both parties are advised to come fully prepared on the next date of hearing.

Claim Admissible:

Matter adjourned.

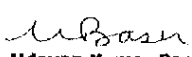
Signature


Dilip Kumar Shah
(IGRC Member)


Signature of Applicant


Mr. N P. Sengupta
(IGRC Member)


Name of Respondent


Mr. Udayan Kumar Basu
(IGRC Member)

Annexure - 'A'
16

METROPOLITAN STOCK EXCHANGE OF INDIA LIMITED
(Formerly known as MCX Stock Exchange Ltd.)

INVESTOR GRIEVANCE REDRESSAL COMMITTEE (IGRC)

Ref. No. : ISC-14/2015 Date: December 16, 2015
IGRC Panel : Prof. Dilip Shah, Mr. N P Sengupta, Mr. Udayan Basu
Complainant : Puri Vanaspati Private Limited
Respondent : Karvy Stock Broking Limited
Appearance
From Complainant : Mr. Sudipta Biswas and Mr. Neeraj Chaturvedi authorized
representatives from Puri Vanaspati Private Limited
From Respondent : Mr. Ramesh Wadekar, Mr. Debajyoti Biswas and Mr. Muthuswamy
Iyer others authorized representatives from Karvy Stock Broking
Limited

ORDER

NOTE:

As per SEBI circular no: CIR/MRD/DSA/03/2012 dated January 20, 2012, the IGRC shall comprise a single person for claims up to Rs. 25 lakh, whereas, for claims above Rs. 25 lakh, the IGRC shall comprise three persons.

Since the claim of the complainant in the aforesaid matter is more than Rs. 25 lakh, the same has been referred to 3 persons. The parties are also informed that the Exchange currently has only the aforementioned 3 members empaneled as IGRC member to redress investor complaints and hence the matter has been referred to them. The parties do not have any objection to the same.

Background and proceedings of IGRC meeting:

The present IGRC meeting is the continuation of the earlier meeting held on 18th November, 2015 which was adjourned to enable both parties to come up with further inputs/ documents.

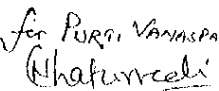
Complainants statement:

Apart from unauthorized trades, Complainant raised various procedural issues such as


Prof. Dilip Shah
(IGRC Member)


Mr. N P Sengupta
(IGRC Member)


Mr. Udayan Basu
(IGRC Member)


Signature of Applicant


Name of Respondent

delayed dispatch of copy of executed KYC, closing balance of a day not matching with the opening balance of the next working day, Calculation of interest which they had claimed etc. However the Complainant was categorical in not wanting to settle the dispute amicably.

Respondents reply:

In defending their position, against the above, Respondent referred to many documents which were submitted later. In the course of the discussion the Respondent submitted a letter dated 16th December 2015 address to the Exchange along with a copy of the notice dated 13.12.2015 U/s 41A of Cr. P.C from the Hare Street police Station, which was received them on 15th December 2015. The notice stated that the Respondent must report within 7 days to the Police station against case number 650 dated 29th October, 2015 which was initiated by Mr. Sajjan Agarwal of Puri Vanaspati Pvt. Ltd. In view of the above the Respondent requested to discontinue the proceedings at IGRC.

Conclusion:

At the time of initial hearing, when the Trading Member referred to the Police complaint lodged by the Complainant, the Complainant stated that the Police had treated this as an ordinary GD and not a FIR and also that there is no development in regard to that matter. However, the notice received by the Trading Member, a copy of which has been submitted to The Exchange, reveals a different position. While the Complainant has submitted, in terms of its letter dated 16th December, 2015, that they have also come to know of this development only today after seeing the copy of the notice received by the trading Member.

In the circumstances the panel feels that the matter can not be considered at this forum as of now since a Police case number 650 dated 29th October 2015 U/S - 406/420/467/468/471/120B IPC is already subsisting.

It has already been pointed out that the Trading member made a request for closure of the case at IGRC. In view of the forgoing the panel decides to dismiss this matters.

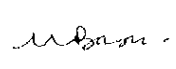
Claim Admissible:

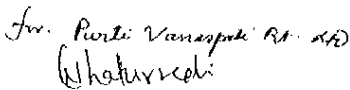
Matter dismissed.

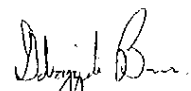
Signature


Prof. Dilip Shah
(IGRC Member)


Mr. N. A. Sengupta
(IGRC Member)


Mr. Udayan Basu
(IGRC Member)


Signature of Applicant


Name of Respondent

D-25

AP No. 1580 of 2015
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction

SMC GLOBAL SECURITIES LTD.

Versus

BHARTI ROY & ANR.

ANNEX X

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE
Date : 16th October, 2015.

Appearances:
Mr. Suman Kumar (In person)
Mr. Indranil Bhattacharyya, Adv.
Mr. Sourav Chatterjee, Adv.

The Court : The petitioner considers court proceedings to be a complete joke and advocates engaged were sought to be discharged in court with a representative of the petitioner seeking to pursue the matter in person without the slightest idea of the scope of Section 34 of the Arbitration and Conciliation Act, 1996.

The representative of the petitioner appearing in person was specifically warned of his inability to conduct the matter, particularly, since

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the award impugned was passed in appeal as the mechanism of the National Stock Exchange provided for an internal appeal.

The appellate award records, at paragraph 7 thereof, as follows:

"7. After carefully considering their cases and submissions the Ld. Arbitrator in paragraph 6 of the Award states that the applicant basically contended that she never gave the respondent (SMC) any trading instruction herself, nor did she authorize anyone else, including her husband, to execute trade on her behalf. On the other hand, the respondents basic contention is that although it duly sent to the applicant physical contract notes, and quarterly ledger statement to the address given by her in the KYC through bulk post and also sent trade confirmations through SMS to the mobile number provided by her in the KYC, she never once voiced her objection to any trade within the stipulated time, thus proving that the trades executed in her account were not unauthorised. So, according to the Ld. Arbitrator, the most crucial issue was whether there was evidence of issuing of trading instructions by the applicant, prior to the execution of trades, and whether, for a trade to be proved as authorized by the client, existence of such evidence is necessary, and has referred to Regulation 3.2.1 of the N.S.E Trading Regulations Part A (Capital Market Segment) which states "that trading members shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement of an Order on the system and shall keep relevant records or documents of the same and of completion or otherwise of these orders thereof". That Regulation 3.4.1 relating to F & O segment is of similar vein.

"The Ld. Arbitrator came to the conclusion that in this case, the respondent has not been able to furnish any record or document to show that it had obtained trading instruction from the applicant before placement of Order on the system for execution of any trade,

37 *[Signature]* *[Signature]*

let alone furnishing of record or document showing, obtaining of confirmation of such trading instruction from the client."

Thus, it is evident that the appellate tribunal agreed with the arbitrator that the petitioner herein could not establish that the transactions had either been requested by the respondent constituent or that the impugned transactions were approved ex post facto. The petitioner suggests that since a broker now works on minimal margins and there may be several transactions that may be entered into on behalf of a solitary constituent in course of a day, it may be impossible to produce proof of delivery of several physical contract notes. The petitioner submits that since the evidence as to the despatch of the contract notes was before the arbitrator, the failure on the part of the petitioner to establish actual delivery of the physical contract notes on the constituent should not have weighed with the tribunal in discrediting the petitioner's defence.

The relevant paragraph in the appellate award quotes regulation 3.2.1 of the Stock Exchange that clearly stipulates that confirmed instructions ought to be obtained by the trading members from the constituents before placing an order on the system. The relevant rule mandates the preservation of the records and documents of such confirmation.

In the light of such rules, both the arbitrator and the appellate tribunal found that the petitioner could not establish that the respondent constituent had either issued the instructions on the basis of which the

transactions were undertaken or that the constituent had approved transactions once they had been completed.

It is elementary that in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, the Court does not reappraise the evidence that may have been adduced before the arbitral tribunal. The Court, in this case, is not required to go into the evidence at all since there was an internal appellate mechanism and the petitioner has failed at both levels. It is for the arbitrator to decide as to the sufficiency of the evidence and, based on regulation 3.2.1 of the rules of the Stock Exchange quoted at paragraph 7 of the appellate award, it does not appear that no reasonable person in the position of either the arbitrator or the arbitral tribunal could not have arrived at the opinion that has been rendered.

The transactions allegedly undertaken by the petitioner on behalf of the constituent may or may not have had the approval of the constituent. Upon a transaction being undertaken by a broker or trading member of a Stock Exchange on behalf of a client or constituent and such transaction being challenged, it is incumbent on the broker or trading member to establish the bona fides of the transaction and that the same had been conducted on the authority of the client or the constituent. This fundamental fact could not be established by the petitioner before either the arbitrator or the appellate tribunal.

In the circumstances, the primary ground urged that the impugned award is opposed to the public policy of India is completely devoid of merit.

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AP No. 1580 of 2015 is dismissed with costs assessed at 300 GM.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.)

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(K) ARGUMENTS AND COUNTER ARGUMENTS OF APPLICANTS
AND RESPONDENTS


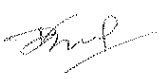

a) The contentions of the Applicant Petitioner Company Purti are summarised here below:

- i. Unauthorised and uninstructed trade done by Karvy in the account of Purti.
- ii. Trade during negative ledger balance
- iii. Trade without required Margin
- iv. Non issuance of & even issuance of incomplete/erroneous ECNs and Non production of even the post trade confirmation
- v. Non issuance of SMS alerts as alleged.
- vi. Non issuance of mandatory daily margin statements.
- vii. Issuance of fabricated/erroneous/inflated and non disclosing utilised and required margin in issued Daily Margin Statements.
- viii. Non settlement of client's account with trading member on an agreed quarterly period by pay in and pay out or written confirmation of the account along with the confirmation of any position on hold.
- ix. Encashment of collateral bank guarantee.
- x. Prayer-

Claim of Rs. 1,24,23,171/- with the following break up:

Sl No.	Nature of Claim	Currency Derivative (Rs.)
1	Execution of Trade without authorisation	1,05,69,314
2	Penalty and others as levied	56,215
3	Interest	17,97,642
	Total	<hr/> 1,24,23,171 <hr/>

b) Defence submitted by the Respondent Company Karvy in brief

- i. There have been no unauthorised/uninstructed trades carried out by the Respondent in the account of the applicant. The applicant has omitted to mention various trade related discussions it had with the employees of Karvy and also omitted multiple trade confirmation calls made by employees of Karvy. Karvy had submitted 21 voice recordings with transcripts and sent 434 ECNs to the registered email ID of Purti. Dispute must be raised within 24 hours of receipt of SMS/ECN. In the event the applicant fails to contact the Respondent for dispute, it is deemed that the applicant has accepted the transaction.
- ii. Bank guarantee is considered as a cash equivalent and based on the balance in the ledger alone it cannot be construed that trading has been carried out during negative ledger balance. The value of the bank guarantee needs to be added to the ledger balance in order to determine whether the client's account is in credit or debit. Bank guarantee is a single instrument which can be used by Karvy as a broker towards margin across Exchanges.
- iii. In most of the instances when the applicant has traded, the margin in his account has been sufficient and the same have been reported to the Exchange. Margin shortages have been few and far between and negligible in comparison to the total Margin requirement. Relevant penalty has been levied by the Exchange for such margin shortages. Margin shortages do not invalidate the trades executed by the applicant and the applicant continues to remain responsible for the obligations arising out of such trades.
- iv. ECN were issued to the applicant on all the dates. A total of 378 ECNs have been issued to the client from 06.08.13 to 29.09.15. No erroneous ECN was issued. This does not invalidate the trades executed by the clients and the clients continue to remain responsible for the obligations arising out of such trades.

Absence of order or trade confirmation calls does not in any manner invalidate the transactions which have been accepted by the applicant through SMS and ECN. The Respondent had on its own free will renewed the bank guarantee on multiple occasions and had also Exchanged receipt/payment of funds in its account.

- v. Issuance of SMS alerts is not laid down regulatory requirement. Karvy has issued ECN and sent daily confirmation emails to Purti which suffices the requirement.
- vi. Karvy submitted that due to some technical reason the loss pertaining to the margin statements issued during the period 29.08.14 to 14.04.15 did not feature in the logs submitted by Karvy to the Exchange. This point does not invalidate the trades executed by the client and the client continues to remain responsible for obligations arising out of such trades.
- vii. Karvy denied that any fabricated/inflated statements were issued by them. As regards the BG value appearing as Rs. 8 crore instead of Rs. 2 crore, Karvy stated that they had clarified during the hearing that it was on account of inadvertent technical error in the back office/electronic document generation process. Trading limits and exposure limits was given to the clients based on the BG of Rs. 2 crores only. While reporting margin collected to the Exchange, Karvy has mentioned the BG value as Rs. 2 crore. This inadvertent error in the back office has in no manner been detrimental to the interest of the applicant nor has the same benefitted Karvy in any manner. This error also do not invalidate the trades executed by the applicant and the applicant continues to remain responsible for the obligation arising out of such trade.
- viii. The applicant had given BG of Rs. 2 crores towards margin and since BG is a cash equivalent the same could be adjusted

towards such obligations. Point 12(g) of the SEBI circular dated 3.12.09 clearly stated that quarterly settlement is not required in case of funds received from the clients towards collaterals/margin in the form of BG/Fixed Deposit receipts.

- ix. Karvy submitted that the applicant has alleged execution of unauthorised trades solely with the intention of disowning their trading losses, securing the BG and saddling such trading losses on the Respondent. They were well aware of all transactions executed by them. However while Purti showed an appetite for absorbing losses it was unable to fathom the trading losses and has therefore filed this complaint to indicate their intention to not clear the dues standing to their account. Karvy further submitted that when the applicant did not clear the debit balance despite repeated reminders and instead chose to raise baseless allegation of transaction without consent to disown the losses, the Respondent was left with no option but to invoke the BG in order to recover their dues.

- x. Prayer:

Karvy submitted that Purti has made false statement before the IGRC Panel and kept them in the dark about the police case. Karvy further submitted that the applicant has made false statements with the sole intention of misleading the IGRC and to gain monetary relief through Redressal process and simultaneously engage the police to intervene in the matter. Karvy further submitted that the present complaint of the applicant can only be settled/decided in court through furtherance of detailed evidence by both the parties. The IGRC Panel members have correctly dismissed the matter due to the above reasons. Karvy requested this Arbitral Tribunal to dismiss the present arbitration matter as the matter is under investigation by the police department.

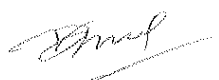
(L) ANSWER OF THIS ARBITRAL TRIBUNAL TO THE ISSUES

1. First issue of maintainability of the instant application before this Bench is answered in the affirmative for the following reasons:

- i. Respondent company Karvy filed a criminal revision petition before the Hon'ble High Court at Calcutta wherein they accepted in their petition that they have participated in the arbitration proceedings before this bench and one of their prayer inter-alia was to quash the police complaint on several grounds including that of this being a Civil matter. In serial no. XXVI of their petition, Karvy submitted as follows:-

XXVI. "FOR THAT it is unfair to the petitioners to be tried in criminal proceedings arising out of an alleged unauthorised trading and invocation of BG, the disputes with regard to which are pending final adjudication before statutory arbitral Tribunals for NSE and MSEI as a result of the arbitration proceedings invoked by the complainant itself in January, 2016. The complainant and the Petitioner no. 1 company have submitted to the competent jurisdiction of the arbitral Tribunal for NSE and MSEI. Therefore allowing the criminal proceeding to continue would be an abuse of the process of court. Therefore for the ends of justice, such proceedings ought to be quashed.

XXVII. FOR THAT the complainant ought not to be allowed to do forum shopping by initiating arbitration proceedings before the NSE and MSEI and also initiate criminal prosecution on the self-same cause of action, for alleged/unauthorised transactions committed by the petitioners."



- NSE means National Stock Exchange of India Limited and MSEI means Metropolitan Stock Exchange of India Limited – formally known as MCX Stock Exchange Limited
- Complainant means Purti Vanaspti Pvt. Ltd.
- Petitioner No. 1 means Karvy Stock Broking Ltd. – the Respondent herein

The Hon'ble High court at Calcutta in this matter did not give any direction for discontinuance or otherwise of the Arbitration proceedings before us. The Hon'ble Court did not also quash the police case and on the contrary inter-alia directed as follows:

The investigation of the case being Hare Street PS Case no. 650 of 2015 dated 29.10.15 under sections 406/420/467/468/471 read with section 120(b) of the Indian Penal Code be continued on condition that the investigation officer shall not take any coercive measures against the petitioners till completion of the investigation (full order has been quoted herein above).

- ii. Both Purti and Karvy continued to appear before this Tribunal and participated in the proceedings thereby accepting the jurisdiction and seeking Redressal of their dispute.
- iii. Certain Judicial pronouncements also support the view and the same are briefly given here below:

- a. **Swiss Timing Limited vs. Organising Committee, Commonwealth Games 2010.**

In the above matter, the Supreme Court of India in Arbitration Petition no. 34 of 2013 decided on 28.05.2014 inter alia held that it could not be accepted that whenever contract was said to be void-ab-initio, Courts exercising jurisdiction under provisions of the

Act were rendered powerless to refer disputes to arbitration- no grounds in Respondents' submission that since criminal case had been registered against officials of petitioner, present Court would have no jurisdiction to make reference to arbitration- whenever plea was taken to avoid arbitration on ground that underlying contract was void, Court was required to ascertain true nature of defence- balance of convenience was tilted more in favour of permitting arbitration proceedings to continue rather than to bring same to grinding halt- No hard and fast rule could be laid down that Civil proceedings in all matters ought to be stayed when criminal proceedings were also pending- Arbitrators nominated- petition allowed. [paras 15,16,17,25,27,30 and 35]

(Taken from head notes of the above judgment in the matter AIR2014SC3723)

b. Lotus Refineries Pvt. Ltd. vs. National Spot Exchange Limited.

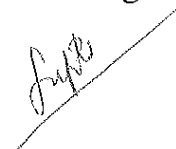
In the above matter, the High Court of Bombay in Notice of Motion (L) No. 2036 of 2013 in Suit (L) No. 870 of 2013 decided on 10.09.2014 inter alia held that document annexed to Plaint was not a membership agreement as sought to be argued by Plaintiff- Exchange had not been kept out of purview of arbitration proceedings under bye-laws and clause 15.4 of bye-laws as valid arbitration agreement by which Exchange may be made party to arbitration- Clause 11.11 of UIBT was valid and binding Arbitration agreement between parties and defendant could invoke that agreement in order to request Court to refer

present dispute to Arbitration- defendant had not waived its right to arbitrate- dispute was arbitrable, even though it involves allegations of fraud- therefore parties were referred to arbitration- notice of motion disposed off. [para11]

(Taken from head notes of the above judgment in the matter MANU/MH/1551/2014)

(Emphasis supplied by us)

- iv. Although the facts of the above two judgments of the Supreme Court of India and Bombay High Court do not directly match with the facts of this case, we feel that we are getting support from both the judgments that both the Civil (arbitration) and criminal proceedings can continue together, particularly when the Hon'ble High Court at Calcutta after hearing both the parties and after considering all the facts of this very case has allowed the police investigation to continue without giving any direction to us to stop the proceedings or otherwise.
 - v. Hence the first issue is answered in the affirmative to say that the proceedings of this arbitral Tribunal are valid in law and can continue.
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2. The second issue and the main issue is the allegation of the Applicant that the Respondent had put them into a huge loss of the amount under claim by conducting and carrying out unauthorised trades in currency derivative segment for the reasons mentioned elaborately in their application and also briefly stated herein above. The defence of the Respondent company has also been submitted by them with full details and reasons and also briefly stated herein above.
- The answer to this issue will result in the decision of this Tribunal in favour of either party which we have to give with reasoning as the



amount of claim is very big and allegations and counter allegations are large in numbers advanced by both the parties.

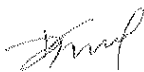
We proceed to answer the second issue in the following manner and first we give the reasons and findings.

(M) Reasons and findings for the second issue:

The Indian Arbitration Act, 1940 has been amended to become the Arbitration and Conciliation Act, 1996, providing for several ADR measures and strengthening the whole system of arbitration.

The Arbitration mechanism and the Rules and Bye Laws framed by Stock Exchanges read with SEBI Guidelines on Arbitration issued from time to time are in consonance with and are a result of the initiative taken globally to promote the Alternative Dispute Resolution system, which is also known as ADR. Several Countries including India have made enormous progress in the field of ADR under which various Tribunals have been set up and several Laws have been amended to provide for compounding of offences, compromises and consent Orders. The ADR mechanism has even taken a historical move as our Parliament in its great wisdom has also amended the Criminal Procedure Code specifically providing for even compounding of Criminal offences and passing of consent Orders under certain circumstances. People of our Country have greatly benefited from the ADR system. Lok Adalats, Telephone Adalats, Pension Adalats and other such Forums have brought great relief to the citizens. Consumer Courts are serving the Country in a befitting manner. More and more Tribunals are being set up which are mainly the final fact finding bodies. The latest to come is the National Company Law Tribunal and The National Company Law Appellate Tribunal.

Keeping this in mind, we do not wish to go into all the legalities of the subject in a very strict manner and while framing the issues, we have decided

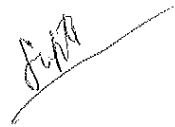


only to go into the facts and circumstances of the case. For this reason we have framed only two issues as mentioned above.

Arbitration is after-all an alternative dispute resolution mechanism (ADR) and the Arbitral Tribunal may not conduct itself strictly as per Court of Law. The purpose of Arbitration is to bring both the parties face to face before the Bench which may conduct its proceedings in an informal atmosphere. This will create more and more confidence in the ADR Mechanism and in the long run, the avowed purpose of reducing the burden on Law Courts in particular and the whole Judiciary in general will be achieved.

This Bench also feels that small investors are the back-bone of a healthy capital market and hence their welfare and protection should be the prime concern of all those who are related to economic development of our country. House-hold savings are required to be brought into the system for the long term economic sustainability and for nation building. This underlines the basic need of a healthy capital market in a country.

Having said that, we also know and it is common knowledge that every broker works on targets. They earn brokerage in both buying and selling of securities in all transactions. It is not new that brokers do counter trades of the same scrip/commodity/currency every day in the account of the client and while doing so they earn huge brokerage. They also meet the targets by doing this. In this situation, they have an understanding with the client that they will not put him into any loss in this process and he will not be asked to pay anything at the end of the day/week/month/quarter. Sometimes when the market is not very volatile, this understanding works very nicely and the broker earns very good brokerage on these counter trades in the accounts of various clients without putting them into loss. Sometimes, gains also arise in a particular transaction and at the time of quarterly settlement, when a client receives money from the broker, he accepts it happily and when there is a



loss, and the loss is small, then the broker does not ask payment from the client and tells him that it will be adjusted in the next quarter and he will do such adjustments to make up this small loss. But the dispute arises when the loss is big and the client is asked to pay money. The confusion is compounded when there is a change of dealer/dealing person at the end of the broker or the client. The change mostly happens in the brokerage firm. Most of the mischief is played by the sub-brokers who are desperate to meet their targets to keep their agencies running or by the dealers at the brokerage firm who sit at the computer and are also given a target to meet. In case of actual delivery of securities, the chances of loss are minimal but in the case of futures/options of derivatives segment, the chances of loss are maximum as it is a pure speculation.

Derivative has been defined by the Oxford dictionary as follows:

"An arrangement or product (such as a future, option, or warrant) whose value derives from and is dependent on the value of an underlying asset, such as a commodity, currency, or security"

Elsewhere also, derivatives have been defined in the same manner.

Securities Contract (Regulation) Act, 1956, in section 2(ac) has defined derivatives in the following manner:

"Derivatives includes –

- (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;*
- (B) a contract which derives its value from the prices, or index of prices, of underlying securities.*

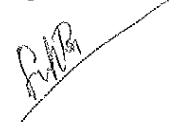
In the case at hand, Purti being the Applicant herein opened a trading account in currency segment obviously for hedging its exports as it did not have any transaction of actual delivery as per the documents available with this Bench. These transactions were done in futures and options. The transactions which were done amounted to Rs. 22,31,88,09,074 (buy) and

Rs. 22,31,07,75,789 (sale) totalling to Rs. 44,62,95,84,863 as per the records submitted to this Bench.

Both the parties equally contributed to the loss for the reasons elaborately mentioned above.

Both the parties have defined duties to be performed by them respectively but both of them failed in their duty in one way or the other.

While Purti kept on alleging for unauthorised trade, trade during negative ledger balance, trade without margin, non issuance of ECN, incomplete issuance of ECN, erroneous issue of ECN, non production of post trade confirmation, non issuance of SMS alerts, non issuance of mandatory daily margin statements, issuance of fabricated/ erroneous / inflated statements, non disclosing utilised and required margin in issued daily margin statements, non settlements of account on an agreed quarterly period by making payin and payout, non confirmation of account with any position held, encashment of collateral bank guarantee and several other blames on different accounts and repeating them, Karvy on the other hand vehemently denied the above allegations and defended the case by making counter allegations on Purti. They defended themselves by inter-alia saying that all allegations were made by Purti to disown the liability which has are reason due to the transactions carried out by Karvy with full knowledge and instructions of Purti. Karvy also defended by saying that the errors pointed out by Purti was on account of some technical reasons/ inadvertent technical error in the back office / electronic document generation process, margin shortages have been few and far between and negligible in comparison in total margin, Karvy have the bank guarantee which was a cash equivalent and could be used as a broker towards margin across exchanges, quarterly settlement was not required in case of funds received from the clients towards collaterals / margin in the form of bank guarantee / fixed deposit receipts, no erroneous ECN was issued, in any case these technical inadvertent errors does not invalidate the trades executed and the clients continue to remain responsible for the obligations arising out of such trades.



Karvy further submitted that SMS was not mandatory and absence of order or trade confirmation calls does not in any manner invalidate the transactions which have been accepted by Purti through SMS and ECN. It further said that Purti had on its own free will renewed the BG on multiple occasions and had also exchanged receipt/ payment of funds in its account.

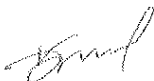
It is evident from the documents available with this Bench that Purti made only two payments- first at the time of opening the account being Rs. 110 lakh and second thereafter being Rs. 20 lakh. Karvy made a payment to Purti for Rs. 44 Lakh in NSE account and nothing in account of MSEI.

The allegations and counter allegation are obvious because out of a turnover Rs. 44,62,95,84,863 crores, a trading loss of Rs. 105,69,314 has taken place in a period of more than two years from August 2013 to October 2015 approximately or nearby. All transactions were done in currency futures and options segment and all were in derivatives.

The arguments and counter arguments of both the parties are equally self defeating. Karvy feels that Purti is trying to disown the loss by making the allegations of unauthorised trade conducted without their knowledge and other allegations. On the other hand Purti feels that Karvy has put them into loss by unauthorised trades without their instructions and encashed the bank guarantee inspite of protests. Karvy is in a better position as they got the money by encashing the bank guarantee, Purti also feels.

This Bench after hearing both the parties and perusal of all the documents available with it finds that both the parties are equally at fault. Purti has clearly accepted and admitted knowledge of transactions and this is proved by the following statement made by them in the police complaint.

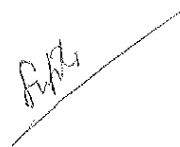
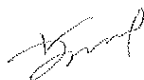
“That Amit Rastogi as Regional Manager of Karvy, kept in regular touch with me. As and when I placed orders from trading, Amit Rastogi would promptly inform me of the result and the balance in the company’s account. Amit Rastogi and other officers of Karvy namely Debajyoti Biswas as Zonal Head would often visit me at our office. In this manner over this period of 2 years, Amit Rastogi and his team of



officers at Karvy obtained our trust and confidence. For this reason I never checked any mails or correspondence which I received from Karvy except the yearly and half yearly account ledger statements”.

Purti is not a small investor as defined in the Companies Act, 1956/2013. Purti is also not an illiterate/ un-informed investor. Purti did not act in the manner expected of a company who should be responsible enough to protect its funds. Purti opened an account with a share broker in derivative segment for currency in future and options by making payment of amount of Rs. 110 lakh to Karvy. It also gave a bank guarantee of Rs, 2 crores. It has accepted that even while they were in knowledge of the thing going on in two years as expressed admitted in the above paragraph, they did not see their email account for a long period of two years and allowed losses to continue or at best could not know or tried to know that they were suffering losses as they did not bother to open the email account for reasons best known to them. They did not also account for any transactions in derivative segment in their audited accounts for 2013-2014 and 2014-2015 in violations of the accounting standards.

Karvy on their part defended by saying and repeating the same defends at several places that technical error/ back office document generation and even numerical errors could not invalidate the transactions even if the same were done without instructions. The order passed by the Hon'ble High Court at Calcutta inter alia says that **“upon a transaction being undertaken by a broker or trading member of a stock exchange on behalf of a client or constituent and such transaction being challenged, it is incumbent on the broker or trading member to establish the bona fides of the transaction and that the same had been conducted on the authority of the client or the constituent. This fundamental fact could not be established by the Petitioner before either the Arbitrator or the Appellate Tribunal”.**



¹²In the instant case, Karvy has failed to establish to our full satisfaction that all transactions were supported by respective orders, in the situation that Purti has challenged the same.

This leads us to the conclusion that both the parties are at equal fault and as it customary in such cases we hold both the parties responsible for the loss in equal proportion. The second issue is answered accordingly.

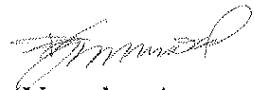
(N) AWARD

This Bench doth order as follows:-

AWARD

1. Karvy Stock Broking Limited, 46, Avenue 4, Street no 1, Banjara hills, Hyderabad 500 034 shall pay a sum of Rs. 52,84,657/- (Rupees Fifty two lakh eighty four thousand six hundred fifty seven only) within two weeks from the date of receipt of this order to Purti Vanaspati Private Limited, 14 Netaji Subhas Road, 4th floor, Kolkata 700 001.
2. If the above amount is not paid within the above period, Karvy shall pay interest to Purti on the above amount at the rate of 9% per annum until payment.
3. There will be no order as to costs.


(S.M. Gupta)


(Vasudeo Agarwal)


(C.K. Basu)

ARBITRATORS

Place: Kolkata

Date: 30.05.2016.