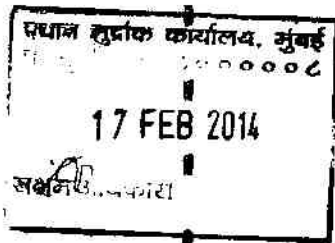




महाराष्ट्र MAHARASHTRA



श्री का न, महाराष्ट्र

श्री का न, महाराष्ट्र
20 FEB 2014
20 FEB 2014
Chakala, Mumbai (S.E.),
Mumbai - 400 093.

MCX-SX Clearing Corporation Limited (MCX-SXCCL), Mumbai.

Before the Appellate Arbitration Tribunal comprising
Mr. Babulal Mundada (Presiding Arbitrator)
Mr. Gopal Krishna Sharma (co-arbitrator)
Mr. Bharat Bhushan Sharma (co-arbitrator)

In the matter of Appeal as per the Byelaws, Rules and Regulations of MCX-SX
Clearing Corporation Limited (MCX-SXCCL) & MCX Stock Exchange Limited
(MCX-SX)

Appellate Arbitration Matter No: MCX-SXCCL/APP/MUM-01/2013

Between

M/s. Globe Capital Market Ltd.

609, Ansal Bhawan,
16, K. G. Marg,
Connaught Place,
New Delhi - 110 001.

Appellant
(Original Respondent)

AND

M/s. HRIM Finance & Securities Pvt. Ltd.

3 B, Jaihand Estate Building,
1st Floor, Room No. 7,
Dr. Atmaram Merchant Road,
Bhuleshwar,
Mumbai - 400 002.

Respondent
(Original Applicant)

1. This is an Appeal arising out of an Award passed by the Sole Arbitrator vide its Award dated 10-08-2013 and 06-09-2013 (on application made under Section 33 of Arbitration and Conciliation Act 1996) allowing the claim of the Respondent (Original Applicant) against the Appellant (Original Respondent) in Reference No. MCX-SXCCL/MUM-01/2013 filed with MCX-SX Clearing Corporation Ltd.
2. The Appellant is a Clearing member of MCX-SX Clearing Corporation Ltd. and the Respondent is a Trading member with the MCX Stock Exchange Ltd. The present Appeal is filed under the Rules and Regulations and Bye-laws of the MCX-SX Clearing Corporation Ltd. and MCX Stock Exchange Ltd.

SOLE ARBITRATOR AWARD DATED 10-08-2013 AND 06-09-2013:

3. The Sole Arbitrator allowed the claim of the Applicant therein for the excess transaction charges and late payment charges levied by the Appellant herein (Respondent therein). According to the Sole Arbitrator, the transaction charges were to be levied at concessional rate from July 2010 and not from October 2010 as considered by the Appellant and no late payment charges are to be applicable as there was no such terms specified in the agreement and there was no consent from the Applicant therein and late payment charges are not allowed when not agreed as per SEBI circular dated 03-12-2009.

THE CASE OF THE APPELLANT:

4. According to the Appellant the Respondent filed the claim for a sum of Rs. 11,72,006.64/- against the Appellant. The Appellant submits that the Appellant entered into Clearing Member-Trading Member Agreement with the Respondent dated 28-04-2010. For earlier period, the Respondent was doing clearing activity through IL&FS Securities Services Ltd. (I.S.S.L.). In the claim the Respondent herein alleged that it was agreed to levy transaction charges at the rate of Rs. 10/- per crore on the traded value in Future and Options in Currency Derivatives segment subject to maximum of Rs. 50,000/- per month irrespective of the quantum of volume. It was alleged by the Respondent that the Appellant assured that no other charges viz. penalty charges, late pay-in charges, collateral charges for security etc. would be levied upon the Respondent. It was further alleged by Respondent in their claim that the Appellant never used to send any ledger of the Respondent's account and never raised any bills regarding its clearing fees till December 2010. It was alleged that the Appellant wrongly levied late pay-in charges which were contrary to the agreed terms.

5. The Appellant filed a statement of defense to the statement of claim of the Respondent that the levying of transaction charges by the Appellant is governed by Clause 2.3 of the Clearing Member-Trading Member agreement dated 28-04-2010. As per Appellant, the transaction charges were agreed at Rs. 20/- per crore without any maximum limit up to September 2010. From October 2010, mutually decided that the transaction charges would be Rs. 20/- per crore subject to maximum of Rs. 50,000/- per month. On this basis, the excess charges levied for the month of October 2010 are reversed by giving credit to the Respondent herein. According to the Appellant the Respondent filed the claim only because the Appellant filed the claim in NSE of Rs. 1,07,23,934.91/-. According to the Appellant, the Respondent had regularly logged to the Website of the Appellant and as such was fully aware of all the trading deals on day to day basis. The Appellant submitted the details of access by the Respondent to the aforesaid Website. Further the Appellant submits that the Respondent is a trading member of the Exchange and has access to reports pertaining to its open position, margin statement, and daily trade details etc. from the exchange. The Appellant submits that the late pay-in charges were levied in terms of provisions contained in the Bye-laws of the MCX-SX as well as circulars issued by MCX-SX from time to time and more specifically to the circular of MCX-SX dated 04-10-2008.

6. The Appellant submits that right since beginning the attitude and inclination of the Learned Arbitrator was in favour of the Respondent and instead of hearing the matter on merits the Learned Arbitrator tried to force the settlement between the parties. The Learned Arbitrator forced the Appellant to withdraw its submission dated 12-07-2013 which is against natural justice. The Appellant immediately protested about the misconduct on the part of the Learned Arbitrator and send an email dated 17-07-2013 to the Arbitration Department, MCX-SX Mumbai about the behavior of the Learned Arbitrator. The Appellant made an application to the Arbitration Department on 23-07-2013 under Section 12-13 of the Arbitration and Conciliation Act 1996 and requested to change the Arbitrator.



7. The Learned Arbitrator did not consider all the facts and submissions made before him and even did not allow the Appellant to place on record crucial and important facts vide its additional submissions dated 12-07-2013 which were necessary for the just decision of the case and as such the Learned Arbitrator has passed the Award in favour of Respondent which is erroneous and the Learned Arbitrator acted arbitrarily, biased and non-judicial manner. The Learned Arbitrator ignored to consider that the delay in filing the complaint by the Respondent against the Appellant was an afterthought. Similarly, the Arbitrator failed to consider that the Respondent has filed a claim as counter blast to the statement of claim of Rs. 1,07,23,934.91/- filed by the Appellant in NSE. The Learned Arbitrator should have considered that the Respondent regularly logged on to the official website of the Appellant and was fully aware of all the charges and penalty as levied by the Appellant from time to time and on day to day basis. The Learned Arbitrator erred in holding that the Appellant had agreed to levy maximum transaction charges at Rs. 50,000/- per month with effect from July, 2010. From the perusal of the email dated 17-01-2011 sent by the Respondent reveals that the Respondent had sent confirmation regarding levying of transaction charges as well as late pay-in charges of Rs. 8,39,506/-. In fact the Appellant has levied late pay-in charges of Rs. 7,92,272.11/- as against the confirmation by the Respondent vide his email dated 17-01-2011 of Rs. 8,39,506/-.
8. The Learned Arbitrator has allowed the claim of the Respondent (Applicant therein) for late pay-in charges following the SEBI circular dated 03-12-2009 which provide that the delayed payment charges by either party should be at the specified rate and period this must not result in funding by the broker in contravention of the applicable laws. As per the Appellant the said circular simply provides that levy of delayed payment charges should not result in funding activities. In this regard the Appellant submits that SEBI has clarified the fund basis activities vide circular dated 07-05-1997, according to which the delayed payment charges or interest charges for the fund deployed by the member may be charged at the rate consented by the client. This would not amount to funding as stipulated in circular dated 03-12-2009
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of SEBI. The Arbitrator failed to take into consideration the aforesaid circular and wrongly disallowed the charging of interest or late pay-in charges levied by the Appellant. According to Appellant the impugned Award is patently illegal and the same is liable to be set aside by the Appellate Tribunal. The Appellant prayed to set aside the impugned Award dated 10-08-2013 and 06-09-2013. The Appellant also requested to Award cost of proceedings in favour of the Appellant.

9. The Appellant filed voluminous documents which were placed before the said Arbitrator from time to time. The Appellant also filed the specimen on the basis of which late payment charges are worked out by the Appellant. The Appellant also filed the justification of levying the late-paying-in charges for the period from October 2010 to June 2011.

DEFENSE OF THE RESPONDENT:

10. The Respondent submits that it is a settled principle of law that no additional and new irrelevant documents can be allowed under any provisions of law. The Appellant was provided with an ample opportunity nearly 86 days (from 22-04-2013 to 15-07-2013) to file its pleading and documentary evidence by the Learned Arbitrator and the Respondent failed to submit the pleadings and documents during the period of these 86 days and within 67 days from the Sur-rejoinder filed by the Appellant before Learned Arbitrator. The Appellant proposed to file the additional documents dated 12-07-2013 on 16-07-2013 before the Learned Arbitrator which were not considered and not taken on record by the Learned Arbitrator and were withdrawn by the Appellant. The Respondent prayed that the said additional documents should not be considered by this Tribunal.

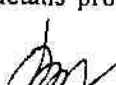

11. The Appellant filed the application under Section 12 & 13 of the Arbitration and Conciliation Act 1996 without marking copy of this application to the Respondent and submitted the application to the MD of the Exchange and not filed the same before the Learned Arbitrator till the last hearing is done. The Appellant failed to file any submissions as per the direction dated 22-04-2013 of the Learned Arbitrator by

10-05-2013 and ignored the opportunity provided by Learned Arbitrator for filing the submissions before the Learned Arbitrator. The Appellant did not adhere to the direction of the Learned Arbitrator and decided to submit the documents on 16-07-2013 (the date of last hearing) which is much beyond the date directed by the Learned Arbitrator. The Appellant filed the Sur-rejoinder 67 days before 16-07-2013 and the Appellant had enough time to file any additional documents by the Appellant but the Appellant wanted to file the additional documents on 16-07-2013 though dated 12-07-2013 to which Learned Arbitrator requested to withdraw the Appellant and did not take on record.

12. The Appellant submitted new documents before the Appellate Tribunal which were not submitted or not pleaded before the Learned Arbitrator should not be considered by this Tribunal. Particularly the circular dated 07-05-1997 of SEBI regarding clarification on funding activity. In the said circular it is clarified that borrowing and lending of funds by trading member in connection with or incidental to or consequential upon the securities business would not be disqualified under Rule 8(1) (f) and 8(3) (f). Similarly the NSE circular dated 26-04-2012 where it is clarified the nature of transactions amount to funding and violate the provision and the nature of transaction which do not violate the provision of funding.

13. Respondent submits that with regard to transaction charges/clearing charges, it was agreed that the same should be at the rate of Rs. 10/- per crore subjects to maximum of Rs. 50,000/- from July 2010 and not only from October 2010. The Respondent submits that there was no forced settlement between the Appellant and Respondent during the Arbitral hearing as alleged by the Appellant. According to Respondent the Learned Arbitrator conducted the Arbitral proceedings for four hours and provided equal and full opportunity to both the parties to argue their case on merit. The Exchange has denied the melafide request of the Appellant to appoint a new Arbitrator as the Exchange did not have authority to change the Arbitrator once the hearings are completed and the matter is pending for order.

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14. The Respondent submitted that the shipment of documents details submitted by the Appellant is suspicious, for the reasons explaining the discrepancy in the sr. nos. of the documents would display the anomaly in these documents.
15. The Appellant never sent any ledger to the Respondent either on daily, monthly or quarterly basis so as to enable the Respondent to reconcile the accounts and the charges which were unilaterally debited by the Appellant at its own discretion and contrary to the agreed terms and conditions. The Respondent submits that the Appellant has not been able to produce any basis or the calculation or substantiation for the alleged late pay-in charges or transaction charges levied unilaterally by the Appellant upon the Respondent. The Appellant has not provided any basis or calculation to establish the accuracy of the charges.
16. The Respondent submits that the purported log access of the Appellant back office was hardly working. The Respondent brought many lacunars in the purported log submitted by the Appellant and submitted that the log details by the Appellant are not correct and should be rejected.
17. With regard to Respondent's email dated 17-01-2011, Respondent submits that the same was not accepted by the Appellant as is clear from the different emails sent by the Appellant thereafter will display that the Appellant did not agree to the contents of email dated 17-01-2011 sent by the Respondent. For this the cognizance is to be taken of the email dated 28-03-2011 of the Appellant. According to the Respondent the details of transaction charges and late pay-in charges provided in the email of Respondent dated 17-01-2011 were based on the details provided by the Appellant and no independent working done by the Respondent. The contents of the email dated 17-01-2011 were not accepted by the Appellant as is clear from their email dated 28-03-2011 another email dated 30-04-2011 of the Appellant. The Respondent further submitted that there are various discrepancies in late pay-in charges as some figures are related to MCX-SX and some figures are related to combined and multi-exchange and as such the details provided by the Appellant
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from time to time cannot be co-related. As per the email of the Appellant dated 28-03-2011, they have shown late pay-in charges at Rs. 9,61,167.68/- of all the Exchange together and does not provide breakup of late pay-in charges Exchange wise. The Respondent submits that late pay-in charges were contradicting the terms and conditions agreed by the Respondent and Appellant. It was never agreed to levy any late pay-in charges by the Appellant and as per the regulations in this regard, the late pay-in charges cannot be levied. The SEBI circular No. MIRSD/SE/Cir-19/2009 dated 03-12-2009 issued by SEBI provides :

- i) The rate and period should be agreed upon by either party;
- ii) It should not result in funding by the broker in contravention to the applicable laws; and
- iii) It is a mandatory document for imposition of late pay-in charges

As there are no agreed terms, the late pay-in charges cannot be levied by the Appellant.

18. The Appellant did not charge any late pay-in charges for the month of July 2010 till September 2010, April 2011, July 2011, August 2011 and September 2011, though the Appellant has alleged to have debit balance in the account of Respondent. Since the Appellant has not provided any basis and proper calculation for the levy of late pay-in charges, the same should be rejected. The Respondent made regular request for providing the basis and calculations regarding late pay-in charges but the Appellant did not provided the same. On comparison, the Respondent found that for different dates and for different month's different working method is adopted by the Appellant and there is no consistent basis adopted for working-of late pay-in charges by the Appellant. On different dates the Appellant have levied late pay-in charges and on the same date the Appellant released Bank Guarantee, funds to the Respondent, this seems to be contradictory when funds are released or Bank Guarantee are released, how there can be delay in payment and levy of late pay-in charges?



19. The Respondent submits that mere deduction of tax on source (TDS) does not mean deemed acceptance of unauthorized and illegal charges. The tax is deducted by the Respondent only to avoid any penalty under the Income Tax Act and cannot be considered as acceptance of the liability. The onus of levy of late pay-in charges is on the Appellant.

20. The Respondent submitted that for different dates the different basis is adopted by the Appellant of late pay-in calculation of late pay-in charges. The Respondent submits that the Appellant failed to file the calculation and justification of late pay-in charges levied in the account of Respondent as directed by the Learned Appellate Tribunal on 24-01-2014. The Appellant has not provided any justification and calculation for providing the details of late pay-in charges levied for the disputed amount and for the relevant period considered by the Appellant. The Respondent submits that during the month of June 2011, the Appellant has debited and alleged amount of Rs. 8,881.47/- towards purported late pay-in charges when in fact there were no turnover or ledger debits in the month of June 2011. This clearly establishes that there is no consistency followed by the Appellant in the unilateral and illegal levy of the late pay-in charges and this clearly establishes the fact that there was no Agreement between the parties to levy late pay-in charges.

21. The Respondent submits that the Arbitral Award should be upheld and the Appeal should be dismissed with costs.

22. HEARING DATES:

Sr.no.	Hearing on	Members present from Appellant's side	Members present from Respondent's side
1	19-12-2013	Mr. Pawan Kumar Hira, Mr. Harvinder Singh	Mr. Hitesh Daga
2	24-01-2014	Mr. Pawan Kumar Hira, Mr. Harvinder Singh	Mr. Hitesh Daga
3	12-02-2014	Mr. Pawan Kumar Hira, Mr. Harvinder Singh	Mr. Hitesh Daga



ARGUMENTS BY APPELLANT:

23. The Appellant argued that the Learned Arbitrator was bias towards Appellant and they have made application under Section 12 of the Arbitration and Conciliation Act 1996 to change the Arbitrator by the MCX-SX authorities. This application was made before the Award was passed by the Learned Arbitrator and is not considered by the Exchange and wrongly rejected their application to change the Arbitrator.
24. The Appellant argued that Respondent never disputed transaction charges till filing the claim. The Appellant argued that late pay-in charges were levied only on agreed terms. The consent of the Respondent can be revealed from the email dated 17-01-2011 of the Respondent as well as from the TDS deducted by the Respondent on late pay-in charges. In the email dated 30-04-2012, the Respondent requested Appellant to send late pay-in charges details for the period 01-04-2011 to 31-03-2012. The message of Respondent reveals that there was consent between Appellant and Respondent for levying late pay-in charges and for this reason the Respondent requested Appellant to submit the details for the period from 01-04-2011 to 31-03-2012. The Appellant submits that they have levied late pay-in charges from the month of October 2010. The debit note for the late pay-in charges for October 2010 was sent to Respondent in November 2010 by courier. The Appellant submits that the relevant courier details are annexed to the appeal. The relevant document pertaining to TDS by the Respondent are also annexed to the Appeals.
25. In view of the above the appeal should be allowed and prayed to set aside the Award of Sole Arbitrator dated 10-08-2013 and 06-09-2013.

ARGUMENTS BY RESPONDENT:

26. The Respondent argued that the Appellant has filed the application under Section 12 of the Act, after the last date of hearing (hearing on 16-07-2013 and application filed on 23-07-2013) and as such should not have been considered at that stage by MCX-SX as MCX-SX was not authorized to deal with the application of the Appellant for

change the Arbitrator at that stage. The Appellant failed to establish that the Learned Arbitrator was bias towards Appellant.

27. The Respondent further submitted that TDS basis alleged by the Appellant cannot be considered as held by various judgments as the TDS working operates independently and cannot be considered as an acceptance by the Respondent to the late pay-in charges.

28. The Respondent submits that the transaction charges were agreed between the Appellant and Respondent at the rate of Rs. 10/- per crore subject to maximum of Rs. 50,000/- per month from July 2010. The Appellant has considered Rs. 50,000/- ceiling applicable only from October 2010 and not from July, 2010. The Learned Arbitrator has rightly allowed the maximum transaction charges of Rs. 50,000/- per month from July 2010.

29. The Respondent argues that it was never agreed between Appellant and Respondent to levy late pay-in charges at all. The details of 17-01-2011 email sent by the Respondent in fact were provided by the Appellant themselves and also not agreed by the Appellant in view of their email dated 28-03-2011 and 30-04-2011 and as such cannot be given much emphasis to this email dated 17-01-2011.

30. The late pay-in charges calculated by the Appellant is not consistent on different dates of the month and also different basis is adopted for different months for e.g. basis of late pay-in charges in October 2010 and November 2010 are not the same. It means the basis is adopted by the Appellant is unilateral and arbitrary, which should not be accepted by this Appellate Tribunal. On the dates for which late pay-in charges were levied the payment and /or Bank Guarantee has been released to the Respondent. The details of which are submitted by way of statement to the Respondent's submissions. When the amount/Bank Guarantee is released by the Appellant the question of levying late pay-in charges does not arise and is patently

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arbitrary and illegal. In view of the above the Respondent prays for dismissing the appeal and upheld Arbitral Award dated 10-08-2013 and 06-09-2013.

FINDINGS AND REASONINGS:

31. THE AWARD OF THE LEARNED ARBITRATOR DATED 10-8-2013 & AND 06-09-2013:

The Learned Arbitrator passed the Award on 10-8-2013 and 6-9-2013 allowing the application of Respondent as under:

- i. Since the transaction charges/clearing charges for Rs. 1,59,296.31/- allowing the concessional rate of Rs. 50,000/- per month irrespective of the volume of transaction from July 2010 instead of October 2010 considered by the Appellant. The Learned Arbitrator has considered that the Respondent herein have shifted business from earlier clearing agent to the Appellant only to get the concessional rate and more facility from the Appellant. In view of this it is justified to consider the concessional transaction charges/clearing of Rs. 50,000/- maximum per month from July 2010.
- ii. With regard to late pay-in charges, imposed by the Appellant amounting to Rs. 4,82,477.56/- for the period from October 2010 to September 2011 allowed to the Respondent for the reason that imposition of penalty/delayed charges by either party should have specified the rate and period. There has to be agreement or consent amongst the parties. As per Learned Arbitrator the levy of late pay-in charges by the Appellant amounts to funding by the broker and the levy of late pay-in charges in contravention of the applicable law as per circular of SEBI dated 3-12-2009. As per the Award dated 10-8-2013 and 6-9-2013 the Learned Arbitrator has held that since the Appellant did not charge delayed payment charges earlier to 22-11-2010 and also not given credit of interest to the Respondent when there was a credit in the account of Respondent, the delayed charges levied by the Appellant is not justified.
- iii. Interest allowed at the rate of 12% from the date of application of claim till realization.



32. Issues to be considered by Appellate Arbitral Tribunal:

- i) To deal with Argument of Appellant for the biasness of Learned Arbitrator under Section 12 of the Arbitration and Conciliation Act 1996.
- ii) The transaction charges should be applicable from July 2010 or from October 2010.
- iii) Late pay-in charges whether applicable and payable by the Respondent in the form levied by Appellant

33. i) To deal with Argument of Appellant for the biasness of Learned Arbitrator under Section 12 of the Arbitration & Conciliation Act 1996

The Appellant did not bring any material or instances to establish the Learned Arbitrator was bias at any stage of dealing with the proceedings. In view of this the Appellate Tribunal is of the view that the plea of Appellant to set aside the award on account of bias of the Arbitrator is rejected and the Tribunal directed the parties to proceed the matter on merit.

ii) The transaction charges should be applicable from July 2010 or from October 2010

With regard to transaction charges at maximum rate of Rs. 50,000/- per month irrespective of volume of transaction from July 2010 or from October 2010 the Appellant has not produced any material that the maximum transaction charges of Rs. 50,000/- per month irrespective of volume of business are applicable only from October 2010. In this matter, the Tribunal is of the view that no interference is required with regard to transaction charges at maximum rate of Rs. 50,000/- per month from July 2010 and the appeal with regard to levying transaction charges at maximum rate of Rs. 50,000/- from October 2010 is rejected.

iii) Late pay-in charges were applicable and payable by the Respondent

The Appellant has levied late pay-in charges for the substantial period on the basis of short fall in exposure provided by the Appellant to the Respondent. Also during different months the basis for late pay-in charges are not consistent. Even

during the month, different basis is adopted by the Appellant on different dates. The Appellant was directed on 24-1-2014 to justify the levy of late pay-in charges and also the basis thereof. The Appellant submitted the justification on the basis of TDS deducted by the Respondent and also the email dated 17-1-2011 of the Respondent where Respondent stated that late pay-in charges should be levied for Rs. 8,39,506/- and as such it was consented by the Respondent to the late pay-in charges. No other justification is provided by the Appellant for the levy of late pay-in charges.

Specimen working provided by the Appellant the basis how they have calculated the late pay-in charges at different dates/months are as under:

	1-10-10	Amount (INR) 01-10-10	7-10-10	Amount (INR) 07-10-10
MCX SX membership number		M41200		M41200
Deposit (US)	(A)	0	(A)	0
Bank Guarantee	(B)	5,000,000.00	(B)	5,000,000.00
Span Margin (as per exchange)	(C)	3,666,724.00	(C)	3,540,927.00
MTM Span Margin (as per exchange)				
Ledger Balance with exchange margin posting	(D)	(4,557,752.33)	(D)	(5,182,925.52)
MTM settlement of exchange	(E)	(449,077.50)	(E)	371,440.00
Total Deposit	(P)=(A)+(B)+(C)+(D))-(E)	4,558,049.17	(P)=(A)+(B)+(C)+(D))-(E)	3,358,001.48
Limit (Exposure given)	(Q)	15,000,000.00	(Q)	15,000,000.00
Extra Exposure given (Limit Short)	(P)-(Q)	(10,441,950.83)	(P)-(Q)	(11,641,998.52)
Ledger Balance without margin posting				
Rate of Interest @ 12%		0.12		0.12
Number of Days		3		1
Interest		(10,298.91)		(3,827.51)

	3-1-11	Amount (INR) 03-01-11	5-1-11	Amount (INR) 05-01-11
MCX SX membership number		M41200		M41200
Deposit (US)	(A)	100,000.00	(A)	100,000.00
Bank Guarantee	(B)	0.00	(B)	0.00
Span Margin (as per exchange)	(C)	0.00	(C)	38,500
MTM Span Margin (as per exchange)				
Ledger Balance with exchange margin posting	(D)	1,486,423.79	(D)	142,573.39
MTM settlement of exchange	(E)	0.00	(E)	(22,005.00)
Total Deposit	(P)=(A)+(B)+(C)+(D))-(E)	1,586,423.79	(P)=(A)+(B)+(C)+(D))-(E)	303,078.39
Limit (Exposure given)	(Q)	11,500,000.00	(Q)	11,500,000.00
Extra Exposure given (Limit Short)	(P)-(Q)	(9,913,576.21)	(P)-(Q)	(11,196,921.61)
Ledger Balance without margin posting				
Rate of Interest @ 12%		0.12		0.12
Number of Days		1		1
Interest		(3,259.26)		(3,681.18)

	3-2-11	Amount (INR) 03-02-11	21-2-11	Amount (INR) 21-02-11
MCX SX membership number		M41200		M41200
Deposit (US)	(A)	100,000.00	(A)	100,000.00
Bank Guarantee	(B)	0.00	(B)	0.00
Span Margin (as per exchange)	(C)	0.00	(C)	0.00
MTM Span Margin (as per exchange)		-		-
Ledger Balance with exchange margin posting	(D)	247,882.28	(D)	(14,327.50)
MTM settlement of exchange	(E)	(108,995.00)	(E)	28,580.00
Total Deposit	(P)=(A)+(B)+(C)+(D) -(E)	456,877.28	(P)=(A)+(B)+(C)+(D) ()	85,672.50
Limit (Exposure given)	(Q)	11,500,000.00	(Q)	5,000,000.00
Extra Exposure given (Limit Short)	(P)-(Q)	(11,043,122.72)	(P)-(Q)	(4,914,327.50)
Ledger Balance without margin posting		-		-
Rate of Interest @ 12%		0.12		0.12
Number of Days		1		1
Interest		(3,630.62)		(1,615.67)

	1-3-11	Amount (INR) 01-03-11	7-3-11	Amount (INR) 07-03-11
MCX SX membership number		M41200		M41200
Deposit (US)	(A)	100,000.00	(A)	100,000.00
Bank Guarantee	(B)	0.00	(B)	0.00
Span Margin (as per exchange)	(C)	0.00	(C)	0.00
MTM Span Margin (as per exchange)		-		-
Ledger Balance with exchange margin posting	(D)	(3,527.61)	(D)	(141,520.37)
MTM settlement of exchange	(E)	(9,622.50)	(E)	47,892.50
Total Deposit	(P)=(A)+(B)+(C)+(D) -(E)	106,094.89	(P)=(A)+(B)+(C)+(D) ()	(41,520.37)
Limit (Exposure given)	(Q)	5,000,000.00	(Q)	5,000,000.00
Extra Exposure given (Limit Short)	(P)-(Q)	(4,893,905.11)	(P)-(Q)	(5,041,520.37)
Ledger Balance without margin posting		-		-
Rate of Interest @ 12%		0.12		0.12
Number of Days		2		1
Interest		(3,217.91)		(1,657.49)

34. From the above working provided by the Appellant it is clear that they have followed different pattern on different dates during the month and also from month to month the calculation pattern is not same for example. On 01-10-2010 they have considered the formula $(P) = (A) + (B) + (C) + (D) - (E)$ whereas on 07-10-2010 they have considered $(P) = (A) + (B) + (C) + (D)$ and E is not considered in this calculation. In October 2010 the charges are calculated on extra exposure given (limit short) for 3 days at 12% p.a. Why 3 days are considered for the calculation has not been explained. No justification is provided by the Appellant why they have not

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considered M to M settlement exchange amount (item no. E) for the calculation for 07-10-2010 which was considered for the calculation of 01-10-2010. During the month of November, 2010 the formula adopted $P = (A) + (B) + (C)$ here the limit of exposure given and extra exposure given is not considered which was considered in October 2010. Similar variation are there on other dates as well as shown in the tables for different dates. Again why these charges are levied for one day or more than one day has not been justified and as such there is inconsistency in levying the late pay-in charges by the Appellant.

35. The late pay-in charges are applicable when there is a delay in payment of margin or debit balance in the ledger account. The Appellant has accepted and admitted that late pay-in charges worked out by them is not on the basis of delay in payment by the Respondent, but they are levied on the basis of short fall in exposure not achieved by the Respondent (the limit provided and there is a short fall in that) after reducing the funds and Bank Guarantee provided by the Respondent. We are of the considered view that if the late pay-in charges are not calculated on the basis of delay in payment by the Respondent, they could not be termed as late payment charges at all. The Appellant during the argument has accepted that they are in fact commitment charges for not achieving the exposure limit given to the Respondent after giving credit of funds and securities provided by Respondent. We found from the records and submissions that nowhere there is an arrangement between the Appellant and Respondent to levy this kind of charges.

36. In June 2011, there are no transaction and no debit balance in the account of Respondent. In spite of that Rs. 8,881.47/- are debited as late pay-in charges to Respondent. This support the plea of Respondent that the late pay-in charges are levied by Appellant are without any basis and are arbitrary in nature.

37. Also it is strange that at one place the Appellant is levying late-pay-in charges and on another hand releasing Bank Guarantee/Funds to the Respondent. The details

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submitted by Respondent to this effect on different dates are not controverted by the Appellant.

38. The Appellant has not levied late-pay-in charges during the month of July 2010 to September 2010, April 2011, July 2011, August 2011 and September 2011 when there was debit balance in the account of Respondent. No comments and justification is offered by Appellant to these submissions of Respondent.

39. The Appellant has submitted in their additional submissions that in the month of November 2010 due to error it was debited on the basis of pay in short. The Appellant has failed to justify the calculations made for each month and why the late pay-in charges should not have been levied on the basis of short margin received or debit balance in the ledger has not been explained and not justified.

40. Once we reach to conclusion that the late-pay-in charges in the form levied by the Appellant cannot be termed as delayed charges at all and as such SEBI Circular dated 04-10-2008 referred by Appellant can have no application in the matter.

41. In view of this, the late pay-in charges debited by the Appellant to the account of Respondent is not correct and are not treated as late pay-in charges and or levied arbitrarily. As such the Appellant's claim for setting aside the Award of the Learned Arbitrator dated 10-08-2013 and 06-09-2013 cannot be accepted. Accordingly the appeal of the Appellant on this account also is rejected.



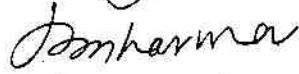
42. For the reasoning given above the Award of the Learned Arbitrator dated 10-08-2013 and 6-09-2013 are upheld and does not require interference at all.



AWARD

- i. The Appeal is rejected.
- ii. No order as to cost.

Appellate Arbitral Tribunal

- | <u>Name</u> | <u>Signature</u> |
|---|---|
| 1. Babulal Mundada (Presiding Arbitrator) |  |
| 2. Gopal Krishna Sharma (Co-arbitrator) |  |
| 3. Bharat Bhushan Sharma (Co-arbitrator) |  |

Place : Mumbai

Date : 21st February, 2014