



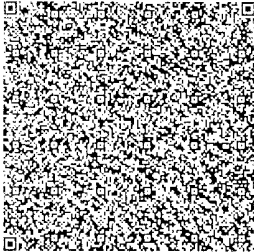
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**IN THE MATTER OF ARBITRATION AS PER THE BYE LAWS, RULES AND
REGULATIONS OF THE EXCHANGE AND THE CLEARING CORPORATION,**

REGIONAL ARBITRATION CENTRE, DELHI

BEFORE THE SOLE ARBITRATOR, MRS. RITA KUMAR, IAS (RETD)

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BETWEEN

SMC GLOBAL SECURITIES LTD.

11/6B, Shanti Chambers,

Pusa Road

New Delhi-110005

....Applicant

Versus

M/S GROW - ON PORTFOLIO PVT. LTD.

B-254-I, Florence Marvel,

Sushant Lok-III,

Sector-57, Gurgaon- 122002

Also at:

C-204, Room No. 4 (Ground Floor),

Pandav Nagar,

Delhi, East Delhi- 110092

....Respondent

ARBITRAL AWARD

1. The undersigned was appointed as Sole Arbitrator in the Arbitration matter SMC Global Securities Ltd. vs. M/s Grow- on Portfolio Pvt. Ltd. vide letter no. MCCIL/ARB/(DEL-01/2017)-8/2017/059 dated 18.09.2017. The Claim statement was submitted to the Arbitral Tribunal by Metropolitan Stock Exchange of India [MSE, earlier known as MCX-SX] and accordingly hearings in the matter were held on 02.11.2017 and on 20.11.2017.
2. On 02.11.2017, upon perusal of the records it was revealed that the first notice including the Statement of Claim along with annexure, sent to the respondents on 18.07.2017 was duly received by Shri. R.K Goyal Director of



the Respondent Company on 19.07.2017. After the first service, later 4 communications were received back by MSE with different observations.

3. No representative or authorized person appeared on behalf of the Respondents M/s Grow- On Portfolio Pvt. Ltd. on 02.11.2017 despite earlier notices sent by the Metropolitan Stock Exchange of India, Delhi. To accord a fair and just opportunity to the Respondent a last and final notice was given by this Tribunal on 02.11.2017 to the Respondent to submit their Defense Statement and Counter Claim if any, within a week, failing which the matter will be proceeded with ex-parte as per provisions under the Arbitration and Conciliation Act 1996.

Again on 20.11.2017, no one appeared on behalf of the Respondent M/s Grow-on Portfolio Pvt. Ltd. However a response was received by the Metropolitan Stock Exchange of India, Delhi through an email/letter dated 11.11.2017 submitted to this Tribunal. This was sent by Shri. Rajender Goel, one of the Directors of the Respondents M/s Grow-on Portfolio Pvt. Ltd. In the said communication the Respondent informed that the M/s Grow- On Portfolio Pvt. Ltd. has been liquidated. The letter was signed by Shri. Rajender Goel as Ex-Director.

4. In the Respondent's communication/ response dated 11.11.2017 addressed to Metropolitan Stock Exchange of India Ltd, the Respondent did not attach or submit any documentary evidence in support of their defense. Both the parties were directed to submit their written submissions by 04.12.2017.
5. The Claimant's written submissions were received on 04.12.2017. However the Metropolitan Stock Exchange of India in their letter dated 14.12.2017 informed that "the Respondent vide email dated 23.11.2017 & 26.11.2017 has only reiterated the fact of liquidation of M/s Grow on Portfolio Pvt. Ltd. in both the communications. The Respondent did not submit any documentary evidence in support of their case even though their reply was awaited up to 14.12.2017.
6. The Applicant in its Statement of Claim contended that Mr. Yatish Kumar Goel and Mr. Rajender Kumar Goel, Directors of the Respondent Company approached the Applicant and showed their interest to avail clearing services in Metropolitan Stock Exchange of India for Currency trading and accordingly the Applicant and the Respondent entered into an agreement dated. 20.12.2008.

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7. The Applicant has further stated that the Directors of the Respondent Company are also the Directors with M/s Bulls & Bear (Stock Broker) Ltd, having its office at C-204, Room No. 4, Ground Floor, Pandav Nagar, Delhi-110092 and the Directors requested the subsidiary company of the Applicant. i.e. SMC Comtrade Ltd. on 05.01.2010 to avail its services. Another Agreement was executed by the two subsidiary companies.
8. Further, the Applicant has placed on record that on 01.04.2012, the Account of the Respondent had a Debit balance amounting to Rs.1,75,170.25/- and the Applicant was given an assurance by the Respondent that the amount is lying with the subsidiary company and the Respondent will make the payment in due course. The Debit balance arose due to the non- submission in filing half yearly Net worth Certificate & Computation, Annual Returns, Insurance Premium coverage etc by the Respondent which is mandatory as per the circulars issued by Metropolitan Stock Exchange of India, and that the Exchange has imposed penalties on the Respondent which was directly communicated to the Respondent by the Exchange under intimation to the Applicant (Clearing member). In the obligation report all such penalty amount was being deducted from the Applicant's account on account of having a relationship as Clearing Member. Further, the said amount of Rs.1,75,170.25/- as imposed by the Exchange was debited by the Applicant in the Respondent's account and neither the Respondent ever raised any objection neither with the Applicant nor with the Exchange.

The amount towards the penalty rose to Rs.1,78,541/- as on 01.04.2013 and the same is pending till date.

9. Furthermore, in support of their arguments the Applicant mentioned that on 01.04.2012, the subsidiary company of the Respondent had a credit balance of Rs.4,98,355.06/- towards M/s Bulls Bear (Stock Broker) Ltd. and the Applicant received an email dated 11.04.2012 (Annexure "K" of the Claim Statement) from the Directors of the Respondent Company stating that, *"There are some entries, which needs to be cleared. My 4,98,000 lying with you in Bulls & Bear and also I have to pay you Rs.1,48,000/- in Grow-On Portfolio..... I believe the best alternative is I will send you a receipt of Rs.1,48,000/- on Bulls & Bear and you make the account of Grow-on Nil".* The Respondent had requested to settle the account with the Account of M/s Bulls & Bears (Stock Broker) Ltd. The Applicant however denied

adjusting the balances of equity segment and commodity segment against each other as they were separate segment and that both the Companies are separate legal entities.

10. In addition to that the Directors of the Respondent company had requested for releasing of Rs.2,50,000/- from the Account of M/s Bulls & Bear (Stock Broker) Ltd. vide email dated 11.04.2012 and the same was released by the Applicant Company on 19.04.2012, as the dues payable to M/s Bulls & Bear (Stock Brokers) Ltd. amounting to rupees Rs.2,48,355.06/- by the Subsidiary of the Applicant was higher in numbers in comparison to the balance in M/s Bulls & Bear (Stock Brokers) Ltd.
11. The Applicant have further stated that the Directors of the Respondent Company demanded an amount of Rs.2,50,000/- at M/s Bulls & Bear (Stock Brokers) Ltd. vide its email dated 28.01.2016 and 01.02.2016. Besides the Respondent tried to create undue pressure, threatened the Applicant by filing complaints with SEBI, Ministry of Finance etc. and continued with making false and frivolous complaints to Prime Minister's Office, Finance Minister of India and other Higher Authorities.
12. Furthermore the Applicant has stated that vide its email dated 15.02.2016 the Respondent was again requested to clear the outstanding amount of Rs.1,78,541.05/- (after debiting exchange dues) against M/s Grow-On Portfolio Pvt. Ltd. and the same was not followed by the Respondent. The Applicant then disassociated itself from the Respondent's subsidiary Company as its trading member (w.e.f. 18.04.2017).
13. The Applicant has contended that to avoid the unnecessary litigation, it decided to pay off the amount payable to M/s Bulls & Bears (Stock Brokers) Ltd. without deducting the dues on account of the Respondent Company and paid an amount of Rs.2,03,411.06/- vide DD no. 101929 dated 21.04.2017 drawn on HDFC Bank to M/s Bulls & Bear (Stock Brokers) Ltd. along with the letter of settlement dated. 21.04.2017.
14. The Applicant further requested the Respondent vide email dated 26.04.2017, to clear its dues, however the Respondent did not reply to the same. In order to extort money and defame the Applicant as well as to shift the onus of debit balance in Respondent account, the Respondent started raising false and frivolous complaints dated. 01.05.2017 & 06.06.2017 to the higher authorities.

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15. Accordingly the Applicant went in for Arbitration proceedings and prayed in his Statement of Claim that besides the due amount of Rs.1,78,541/- on 01.04.2013 the Respondent is liable to pay interest to the tune of Rs.5,09,029/- till 31.12.2016, and Rs.6,87,570/- is the total amount as Claim submitted by the Applicant. The Respondent M/s Grow-On Portfolio Pvt. Ltd. on 19.07.2017 received the Claim statement filed by the Applicant and sent to them by MSEI, which was received on 19.07.2017.
16. In their defense the Respondent vide email/letter dated 11.11.2017 have agreed that the Respondent Company "M/s Grow on Portfolio Pvt. Ltd. has been liquidated by the ROC and further stated that the information regarding the liquidation is in the knowledge of the concerned officer of MSEI as well as the Applicant and that the MSEI's officer in connivance with the Directors of SMC are illegally extending threats to the Ex-Directors of Grow-on Portfolio Pvt. Ltd. They have alleged a Criminal offence on the part of MSEI.
17. Further, the Respondent has stated that the Metropolitan Stock Exchange of India has no right and authority to continue with Arbitration proceedings and that the proceedings are illegal and abuse and misuse of the process of law.

Similar arguments have been reiterated in the communications of the Respondent dated.23.11.217 and 26.11.2017.
18. No documentary evidence has been submitted by the Respondent in any of its communications.
19. Despite many notices sent by MSEI, the Respondent did not present himself before this Tribunal and has responded through email/letters only.
20. The Applicant's Claim does not attract the provision of the Limitation Act, as the cause of action first arose on a continuous basis and further the Respondent was communicated with respect to its liability towards the Applicant.

Thus, the provisions of the limitation Act will not be attracted and Claimant's claim is within time limit.

21. I, now proceed on merits of the case after hearing the Applicant, documents submitted and written submissions made by both the Parties. The main issue is whether the penalties imposed by the Exchange were as per provisions in the agreement dated. 20.12.2008 signed by the two parties and whether the Applicant is liable to recover the amount from the Respondent. The second issue is whether, Arbitration proceedings can be initiated in the event of liquidation of the Respondent Company.
22. I deal with issue no. 1. The Agreement signed by both the parties incorporates as per clause 12(2) that "if the Parties fail to resolve the same mutually, then the same shall be referred to the Arbitration in accordance with the Rules, By-laws and Regulations of Exchange/ECH/CC, as the case may be and as per the Chapter XII of the MSEI Bye-Laws, which reads as follows:

17. Failure to Meet Obligations

In the event a trading member fails to meet obligations to the Stock Exchange arising out of clearing and settlement operations of admitted deals, the relevant authority may charge such interest, impose such penalties and fines and take such disciplinary action against the trading member as it may determine from time to time. Any disciplinary action which the relevant authority takes pursuant to the above shall not affect the obligations of the clearing member to the Stock Exchange or any remedy to which the Stock Exchange may be entitled under applicable law. "

It is clear that as per the bye laws of MSEI as reproduced above; the Applicant is not liable for the failure of the Respondent to meet its obligation.

23. Further on having examined the clauses: clause 4 (2)(2), clause 4(2)(6) read with clauses 4(2)(8), 4(2)(9) and 4(5)(9) of Clearing Member- Trading Member agreement dated 20.12.2008 between SMC Global Securities Ltd Vs. M/s Grow- on Portfolio Pvt. Ltd. it is clear that Respondent did not comply with the term as agreed upon between the Claimant and Respondent as per the said Agreement. The Applicant being the Clearing member is entitled to be paid by the Trading member any dues relating to final settlement or such other settlement as per requirement ECH/CC.



24. Besides, it was Respondent's duty to settle any account and payment, which was paid on behalf of the Respondent by the Applicant and even after a demand notice, the Respondent did not bother to clear Applicant's (Clearing member) accounts.

Moreover the basic requirement, to maintain a deposit of Rs.3 Lac, by Respondent (Trading member) was not fulfilled and the Respondent has been deliberately failed to fulfill its obligations.

Also as per the admission of the Respondent himself the Respondent was willing to pay the debit balance in the Grow-on Portfolio Pvt. Ltd. as per their communication dated 11.04.2012 (**Annexure "K" of Claim Statement**). Both acceptance of due amount and intend to pay of the Respondent is amply clear even though he later changed his stand.

25. In view of the above the Tribunal has reached to the finding that the Applicant is liable to recover from the Respondent an amount of Rs. 1,78,541/- against the penalties due to non- submission in filing half yearly Net worth Certificate & Computation, Annual Returns, Insurance Premium coverage etc. by the Respondent.
26. With regard to the 2nd issue, whether recoveries can be made and Arbitration proceeding initiated in the event of liquidation of the Respondent Company as contended by them, it is observed that merely stating that their company M/s Grow-On Portfolio has been liquidated by Registrar of Companies does not authenticate the status. The respondent has neither submitted any document from a competent authority nor there is any Court Order to that effect submitted by the Respondent.
27. Regarding alleged connivance of the Directors of SMC Global and Metropolitan Stock Exchange of India no evidence has been submitted by the Respondent.
28. Respondent's allegation of illegal threats being given by the Directors of SMC Global is also not supported by any documentary evidence.
29. In view of the above and on account of lack of evidence regarding the status of the Respondent's Company being liquidated, the MSEI was well within its right to initiate Arbitration proceeding on behest of clearing member(SMC

GLOBAL) as per the clause on the Arbitration in the agreement dated. 20.12.2008.


30. I, therefore come to the conclusion that the Respondent is liable to pay the dues amounting to Rs.1,78,541/-.
31. In the interest of justice and fair play, I also grant simple interest of 6% P.A for the period 01.04.2013 to 31.12.2016.

In view of the above, I pronounce award as under:

Award:

32. The Tribunal hereby Awards an amount of Rs.1,78,541/- to be paid by the Respondent to the Applicant. In addition a 6% P.A simple interest is also to be paid by the Respondent to the Applicant w.e.f. from 01.04.2013 to 31.12.2016, within a period of 30 days from the date of issuance of this Award.
33. In the event the Respondent fails to make the payment within 30 days, a pendent lite simple interest of 6% P.A will be paid by the Respondent to the Applicant after specified 30 days from the issuance of the Award till realization.
34. The cost of litigation to be borne by both the parties equally.
35. This Award is Published today 03.01.2018

PLACE: New Delhi


RITA KUMAR
(SOLE ARBITRATOR)