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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 24.11.2025***
Judgment pronounced on: 18.12.2025

\+ FAO (COMM) 204/2024

M/S TRUSTLINE SECURITIES LIMITED .....Appellant

Through: Mr. Ashish Mohan, Senior Advocate with Mr. Hemant Manjani, Advocate.

versus

HANISH SINGLA .....Respondent

Through: Mr. Alok Sinha, Mr. Aakash Saini and Ms. Deepansha Saini, Advocates with Mr. Pinkush Singla, son of Respondent in Person.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR J.

1. The present appeal is preferred under Section 13(1A) of the Commercial Courts Act, 2015 read with Section 37 of the **Arbitration and Conciliation Act, 1996**[1] impugning the **Judgment dated 06.06.2024**[2] in the O.M.P. (Comm) No. 106/2019 passed by the learned **District Judge (Commercial Court)-02, New Delhi District, Patiala House Courts, New Delhi**[3].

[1] The Act
[2] Impugned Judgement
[3] Learned District Judge

2. By the Impugned Judgment, the learned District Judge allowed the Respondent's petition filed under Section 34 of the Act. As a result, the Appellate Arbitral Award dated 08.02.2019, passed by the Appellate Arbitral Panel of the **National Stock Exchange**[4], was set aside, and the original Arbitration Award dated 25.09.2018 stood restored.

BRIEF FACTS:

3. The Appellant herein is in business of trading in stock market and is a Trading Member of NSE and was registered with **Securities and Exchange Board of India**[5].

4. The Respondent herein opened a trading account with the Appellant on 14.12.2007, bearing client code UCC–43H8, after completion of the requisite KYC formalities. It is stated that various trades were thereafter executed by the Appellant in the Respondent's account between December 2007 and June 2008.

5. It is the case of the Appellant that for the trades carried out on behalf of the Respondent, trade confirmations, **Electronic Contract Notes**[6], SMS alerts, and financial statements were regularly transmitted to the Respondent. With regard to this, the Appellant would further contend that, to honour the trades, the Respondent issued certain cheques, some of which were dishonoured. The Respondent, however, disputes authorisation of any such trades and asserts that the Appellant carried out trading unilaterally, without any instructions from the Respondent.

[4] NSE
[5] SEBI
[6] ECNs

6. Alleging that the Respondent owed monies to the Appellant against authorised execution of trades, the Appellant herein originally filed a suit for recovery of an amount of Rs. 19,96,998/- as against the Respondent, being Suit No.19/2010 before the Saket Courts, New Delhi.

7. The said suit came to be decreed *ex-parte* in favour of the Appellant herein by virtue of a Decree dated 16.05.2011.

8. The Respondent filed an application under Order IX Rule 13 of the Civil Procedure Code, 1908, in which, by Order dated 06.09.2013, the said *ex-parte* decree came to be set aside, and the suit was revived to its original position.

9. In the said suit, the Respondent herein filed an application under Section 8 of the Act, contending that the Agreement dated 14.12.2007, as executed between the parties, contained an arbitration clause as a result of which the dispute was required to be referred to arbitration.

10. By way of Order dated 20.01.2017, the dispute, based on the application under Section 8 of the Act, was referred to arbitration by the **Delhi International Arbitration Centre**[7]. The said arbitration, thereafter, came to be referred to the Arbitration Centre of NSE by way of an Order dated 23.09.2017.

11. Pursuant to the said order, the learned Single Arbitrator by way of an award dated 25.09.2018, dismissed the claim of the Appellant herein and held that the trading that was carried out by the Appellant was not based on instructions of the Respondent, and negated the claims of the Appellant, on the basis that the trades alleged to have been executed by way of placing of orders *via* telephone calls on the

[7] DIAC

landline phone were not supported by any evidence whether by way of any contemporaneous document or records in the form of recordings, written requests or in any other manner supporting the alleged requests/instructions for carrying out such trades.

12. The learned Single Arbitrator also negated the various ECNs and SMSs that were allegedly sent by the Appellant herein on the ground that the e-mail id to which these e-mails have been allegedly sent was in fact an e-mail id which was the creation of the Appellant themselves and in their control.

13. The learned Single Arbitrator also held that the said documents appear to have been authenticated only by the Appellant's executives themselves.

14. The learned Arbitrator also referred to certain discrepancies that were found with respect to the various cheques that were apparently issued by the Respondent for the purpose of carrying out the trades.

15. He finally concluded as follows and thereupon rejected the claim of the Appellant and also directed that the cost of the arbitration has to be borne by the Appellant herein:

> "Applicant could not prove that they were executing trade on the advices of the Respondent, issuing contract notes informing the Respondent about the trade executed on his behalf. Applicant was accepting third party cheques drawn on the different banks and also trading in the account of the Respondent without margin money in the account.
> In the light of the above I pronounce the following award:
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> AWARD
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> 1) The claim of the Applicant for Rs. 19,97,439.70 is rejected.
> 2) The cost of the arbitration to be borne by the Applicant-trading Member.
> 3) The award is signed and issued in three originals. NSE will retain one of the originals and forward one original to each of the Applicant-Trade Member and Respondent-Constituent."

16. The Appellant thereafter chose to avail of the Appellate Arbitral mechanism provided by the NSE and, consequently, succeeded in getting the arbitral award passed by the learned Single Arbitrator, set aside. The said Appellate Award, while setting aside the learned Single Arbitrator's award, gave the following reasoning for doing so:

> "7.2 As stated earlier the matter pertains to 2007/2008. That the regulatory mechanism as it existed in 2007/2008 was not as strong or detailed as now is a matter of fact. In that background, the fact that there are no records of the respondent having placed the orders for trades can hardly be a conclusive or satisfactory evidence to rely on, to come to any conclusion against the applicant. It is only recently that SEBI is mandating the compulsory maintenance of such records
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> 7.3 In such a situation the conduct of the parties in their trading relations would be the best indicator of the situation. Whereas the respondent claims that he has not received any contract notes or SMSs for the trades, claimed to have been done on his behalf, on the other hand, the appellant, has put forth details of ECNs issued and SMS sent for each trade. In that background it is interesting to note that both the parties seemed to have normal working relations till 21/01/2008 when the regular trading is being done on behalf of the respondent and the payments are being made to the broker. So it seems the respondent was in complete know of the things till 21/01/2008. This clearly gives rise to the presumption that the respondent was receiving the information via contract notes or SMSs or whatever means, for him to discharge his obligation. Unless some material fact is brought on record, the supmtion has to be maintained for post 21/01/2008 period as well. There is nothing on record to suggest that anything materially changed between the two periods in such a situation. The stand of the respondent that for the period subsequent 21/01/2008, he did not get any intimations for the trade done, is clearly an inconsistent position because if he was receiving information prior to 21/01/2007, he would have received thereafter as well under similar set of circumstances. The onus was on the respondent to explain the position, if there was any material change, between the two periods. Neither in the original proceedings nor before us any such attempt was made.
>
> 7.4 The fact of issuance of cheques which bounced, for whatever reasons, has not been denied by the respondent. Notwithstanding the merits of the various mistakes about detailing of cheques, which have been pointed out in the arbitral order, the factum of the respondent issuing cheques after 21/01/2008 would go to discredit his argument that he was not in knowledge of the trades. It clearly shows that the respondent was participating in the settlement process of the amounts due, thereby being aware of trading being

done in his account and that too without raising any red flag, in form of approaching NSE or SEBI or courts. Or even mere objecting.

7.5 In our view the ld. Arbitrator, should have considered this inconsistent situation to arrive at his conclusions.

7.6 On the issue of lack of margin, we are of the opinion that in itself, it cannot lead to the inference that the broker has done unauthorized trading. The requirement of margins for brokers from constituents is a risk mitigation mechanism provided by SEBI / NSE for brokers. While we do not have the exact reason as to why the broker continued with the trading on behalf of the respondent without margin, yet it will not be proper to characterize the non-availability of margins as equivalent to unauthorized trade, particularly when no objection was raised at the relevant time.

7.7 Similarly bouncing of cheques could have been be trigger point for the dispute between the two parties. But the arbitration before NSE is not concerned about that; the issue here is the outstanding Debit balance of Rs. 19,97,439.70 as on 24.01.2011 in the books of appellant in context of trading done on the NSE platform. The proceedings under the NI Act may not be of much consequence in this arbitration proceedings. Once it is held that the Debit balance standing against the respondent does not arise out of unauthorized trading, all other events associated with this dispute take a backstage.

8. Hence we are of the considered view that the ld. Sole Arbitrator, in coming to conclusions, has missed out certain vital facts and instead has relied on facts/events which appear to be neither relevant nor adversarial to the appellant. From all accounts the respondent seemed well aware of the trading done in his account and raised no objections, notwithstanding non availability of proof of orders placed. Therefore on a balance of consideration, this Tribunal feels that the original order of the sole arbitrator is not justified and needs to be set aside. Accordingly the claim of the appellant to the extent of Rs. 19,97,439.70 is allowed."

17. The said Appellate Award came to be challenged by the Respondent herein before the Court of the learned District Judge, wherein the present Impugned Judgment came to be passed in the following terms:

"26. In the case in hand, the petitioner/ objector has raised two important issues, which were allegedly ignored / overlooked by Ld. Appellate Arbitral Tribunal while passing the impugned appellate arbitral award dated 08-2-2019. The first one being that trading was done by the respondent even in the absence of any margin money in the trading account of the petitioner during the relevant

period and the second one being failure on the part of respondent / trading member to produce any evidence showing or proving that trading was done on the direction and instructions of the constituent / petitioner.

27. It would be relevant to note that Rule 3.3 of NSEIL (Capital Market) Regulations, 1994 clearly stipulates that subject to provisions contained in Exchange Bye-laws and such other Regulations as may be in force, every trading member/ participants shall in respect of trades in which he is a party, deposit a margin with Exchange Authority, in the manner and to the extent specified by the Exchange. Further, Rule 3.3A thereof further provides about the requirement of additional capital and margins for the trading members. Not only this, Rule 3.5 thereof deals with Contract Notes by providing that every trading member shall issue a contract note to his constituents for trades executed in such format with all relevant details as required to be filled in and issued in such manner and within such time as may be prescribed by the Exchange. Further, Rule 3.9 and 3.11 thereof deal with the requirement to maintain margin by the constituents and the fallout in case of default to maintain margin money on the part of constituents. It would be apposite to reproduce the said rules for appreciation of the rival submissions made on behalf of both the sides in the light of material available on record:

> *3.9 MARGIN FROM THE CONSTITUENTS*
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> *(a) The Trading Members shall have the right to demand from its constituents the Margin Deposit which the member has to provide under these Trading Regulations in respect of the business done by the Members for such constituents. The Trading Members shall buy securities on behalf of the constituent only on the receipt of margin of minimum such percentage as the relevant authority may decide from time to time, on the price of the securities proposed to be purchased, unless the the constituent already has an equivalent credit with the broker. The Trading Member may not, if so desire, collect such a margin from Financial Institutions, Mutual funds, and Foreign Institutional Investors.*
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> *(b) The Trading Members shall buy securities on behalf of the constituent only on the receipt of margin of minimum of such percentage as the relevant authority may decide from time to time, on the price of the securities proposed to be sold, unless the Trading Member has received the securities to be sold with valid transfer documents to his satisfaction prior not if so to such sale. The Trading Member may not, if so desire, collect such a margin from Financial Institutions, Mutual funds, and Foreign Institutional Investors.*
>
> *(c) The Trading Member shall obtain a written undertaking from the constituents that the latter shall*

when called upon to do so forthwith from time to time provide a Margin Deposit and/or furnish additional Margin as required under these Rules and Regulations in respect of the business done for the constituent by and/or as agreed upon by constituent with the Trading Member concerned.

(d) The Trading Member may keep the unutilised margin deposits of his client in bank deposits and pay interest on the same at such rate as may be mutually agreed in writing between the Trading Member and his constituent out of the interest accrued on the said deposits.

3.10 Trading Member in default

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[3.11 CONSTITUENT IN DEFAULT

If a Constituent fails to make payment of consideration to the trading member in respect of any one or more securities purchased by him before the poy-in date notified by the Exchange from time to time, the Trading Member shall be at liberty to sell the securities received in pay-out, in proportion to the amount not received, after taking into account any amount lying to the credit of the Constituent, by selling equivalent securities at any time on the Exchange not later than the fifth trading day reckoned from the date of pay-in. If the trading member has not sold the securities for any reason whatsoever, such securities shall be deemed to have been closed out at the close out price declared by the Exchange for the fifth trading day. The loss, if any, on account of the close out shall be to the account of the Constituent.

If a Constituent fails to deliver any one or more securities to the pool account of the trading member in respect of the securities sold by him before the pay-in date notified by the Exchange from time to time, such undischarged obligation in relation to delivering any one or more securities shall be deemed to have been closed out at the auction price or close- out price, os may be debited to the Trading Member in respect of the security for the respective settlement, to the extent traceable to out failed to deliver, otherwise the close out price on the date of pay-out in respect of the relevant securities, declared by the Exchange The loss, if any, on account of the close out shall be to the account of the Constituent.

Subject to what is stated above, no further claims shall lie between the Constituent and Trading Member.

Explanation: If for any reason, schedule of pay-in and pay-out is modified the above provision shall be made applicable reckoning the actual date of pay-in and/or pay-out, as the case may be.]

28. Further, Rule 6.1 thereof cast certain obligations upon the trading members concerning maintenance of records, annual accounts and their audit. Said rule reads as under:-

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6. RECORDS, ANNUAL ACCOUNTS & AUDIT

6.1 RECORDS

(i) Every Trading Member shall comply with all relevant statutory Acts, including Securities Contracts (Regulation) Act, 1956 and Rules thereunder of 1957, and Securities Exchange Board of India Act, 1992 and Rules, Regulations and guidelines thereunder, and the requirements of and under any notifications, directives and guidelines issued by the Central Government and any statutory body or local authority or any body or authority acting under the authority or direction of the Central Government relating to maintenance of accounts and records.

(ii) In addition to the requirements as per Regulation 6.1.1 above, every Trading Member of the Exchange shall comply with the following requirements and such other requirements as the Exchange may from time to time notify in this behalf relating to books of accounts, records and documents in respect of his membership and trading on the CM segment of the Exchange.

(iii) A Every Trading Member of the Exchange shall maintain the following records relating to its business for a period of five years either in hard form or non-tamperable soft form

(iv) xxxx

(v) xxxx

(vi) xxxx

(vii) xxxxx

(viii) xxxxx

(ix) xxxxx

(x) Order confirmation slips, Order modification slips as obtained from the trading system of the Exchange

(xi) Trade confirmation slips as obtained from the trading system of the Exchange

(xii) Record of all statements received from the settling agencies and record of all correspondence with them.

(xiii) xxxx

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29. At this juncture, it would be also useful to refer to the relevant Rules Nos. 3.10 and 6.1.4 of National Stock Exchange (Future and Option Segment) Trading Regulations, 2000, which read as under:-

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3.10 MARGIN FROM THE CONSTITUENTS

(a) The Trading Members must demand from its constituents the Margin Deposit which the member has to

provide under these Trading Regulations in respect of the business done by the Members for such constituents.

The Trading Members shall buy and/or sell derivatives contracts on behalf of the constituent only on the receipt of margin of minimum such percentage as the Relevant Authority may decide from time to time, on the price of the derivatives contracts proposed to be purchased, unless the constituent already has an equivalent credit with the Trading Member. The Trading member may collect higher margins from constituents, as he deems fit.

The Trading Member shall obtain a written undertaking from the constituents that the latter shall when called upon to do so forthwith from time to time provide a Margin Deposit and/or furnish additional Margin as required under these Rules and Regulations in respect of the business done for the constituent by and/or as agreed upon by constituent with the Trading Member concerned.

The Trading Member shall demand from his constituents the amounts arising in respect of daily settlement in accordance with the Clearing Corporation Regulations for business done by the Members on behalf of such constituents or such higher amounts, as the Trading Member deems fit. The Trading Member may, if so desire, for administrative convenience maintain the daily settlement margin balance upto a pre-agreed balance level to avoid collecting and paying daily settlement amount on a daily basis, which may be referred to as maintenance margin

The trading member may keep the unutilised margin deposits of its Constituents in bank deposits and pay interest accrued thereon to its Constituents or or utilise the same as per the instructions of such Constituents.

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6.1.4 Every Trading Member of the F&O Segment of the Exchange shall maintain the following records relating to its business for a period of five years:-

(a) Order confirmation slips, order modification slips as obtained from the trading system of the F&O Segment of the Exchange.

(b) Trade confirmation slips and exercise notice records as obtained from the trading system of the F&O Segment of the Exchange

(c) Statements of obligations received from the Clearing Corporation

(d) Record of all statements received from the settling agencies and record of all correspondence with them.

(e) Order Book of Constituents reflecting the following

(i) identity of person receiving the order

(ii) date and time of order received

(iii) name of the person placing the order

(iv) name of Constituent, description and value of derivatives contracts to be bought and sold

(v) terms and conditions of the order stating conditions particularly price/rate limit or price/rate related instructions and time limit on the order (if any). Xxxx"

30. There cannot be any dispute to the fact that relevant regulations, as reproduced and referred to hereinabove, were already in existence much prior to the trade done by respondent in the trading account of the petitioner and the alleged stock transactions took place for the period 2007- 08. Hence, the respondent was legally bound to follow and comply with all these Rules, Regulations and Bye-Laws framed under the law.

31. As regards lack of margin money, Our own Hon'ble High Court in case of Trexim Corporation (supra), which is relied on behalf of petitioner/ objector, has categorically held that the margin money requirement was mandatory, to quote:-

"Margin money requirement was mandatory

9. Trexim had raised several objections to the claims of Fortis before the Arbitral Tribunal. One of them was that Fortis had not taken margin money from Trexim for the transactions it claimed to have entered into on the NSE on behalf of Trexim and that this was contrary to the mandatory requirement of the NSE Regulations.

10. The Arbitral Tribunal in the impugned Award has itself noticed that the Bye Laws 19 to 22 of Chapter IX of the Bye Laws of NSEIL requires margins to be placed by the Member with the NSE and Bye Law 26 sets out the effect of the failure by a Member to deposit the margin with the NSE. Bye Law 26 states that a trading Member failing to deposit the margins as provided in the Bye Laws and Regulations shall be required by the relevant authority "to suspend its business forthwith." Further its states that "a notice of such suspension shall be immediately placed on the trading system and the suspension shall continue until the margin required is duly deposited."

11. Regulation 3.9 (a) CMR deals with the obligation of the constituent to deposit margin with, the Member. It mandates that "The Trading Members shall buy securities on behalf of the constituent only on the receipt of margin of minimum such percentage as the relevant authority may decide from time to time, on the price of the securities proposed to be purchased, unless the constituent has already an equivalent credit with the broker".

Regulation 3.9 (b) spells out the consequences of the constituent failing to make the full payment to the Trading Member for the execution of the full contract within two days of the contract note having been delivered for the

cash shares or before the pay-in-day (as fixed by NSE for the concerned settlement period), whichever is earlier unless "the constituent has already an equivalent credit with the Trading Member." The loss, if any, would be met from the margin money of the constituent. Further, where a Member purchases or sells for the constituent without margins as prescribed, the Member could entail penalties that can be levied at that time by the NSE.

12. A plain reading of Regulation 3.9 CMR makes it clear that unless the constituent has credit with the Member which is "equivalent" to the value of the shares purchased, the deposit of margin money by the constituent is a must before the Member can buy shares on behalf of the constituent. Also, the delivery of contract notes concerning the purchase of shares by the Member to the constituent is mandatory for determining the two day period within which the constituent has to make full payment. The only exception again is if the constituent already has an equivalent credit with the Member. A breach of the requirement by the Member, i.e. a Member proceeding to buy shares without the constituent depositing with the Member the margin money entails penalties for the Member. There can, therefore, be no mistaking of the mandatory nature of the requirement of both the margin money being deposited by the constituent and the making of full payment by the constituent within two days of delivery to it of the concerned contract notes. This Court fails to appreciate how and on what basis the Arbitral Tribunal concluded that "The wording of Regulation 3.9 is at best directory against the Broker/Member but not totally prohibitory in the sense that a violation would make an Order of purchase/sale as non-est. Even the extent of requirement of margins is a fluid situation." In the view of the Court, the above conclusion is patently erroneous and based on an incorrect reading of the relevant CMR provisions. The very edifice of the transactions in a stock exchange would be rendered weak if the requirement of margin money deposit and settlement of accounts within a short period after the transaction is entered into are not strictly enforced.

13. The error in the impugned Award in this regard is apparent when the transactions claimed by Fortis to have been entered into by it on behalf of Trexim in February and March 2000 are considered. Fortis claimed that it had purchased 21,400 shares of HFCL on 5th January 2000 at a price of Rs. 1,65,93,771.50. There was a requirement of payment of 20% margin money. Since the transactions in the said shares were considered volatile an

additional margin of 105.28% was required. This worked out to nearly Rs.68 lakhs. Admittedly Trexim made no payment of margin money for this transaction to Fortis. Also, clearly Fortis had no ,,equivalent credit" in the account of Trexim to permit the purchase by Fortis of such a large tranche of shares of HFCL on behalf of Trexim. Also, surprisingly despite the requirement of settling the payment within two days of delivery of the contract, Fortis appears not to have made any written demand against Trexim in relation to the above transactions at any time between January and March 2000 and till such time it filed a claim before the NSEIL. According to the Respondent the said shares were sold on 11th January 2000 at a value of Rs. 1,53,11,048.50 at a loss of Rs. 12,82,723/-. The original contract notes in respect of the said transactions were not produced by Fortis before the Arbitral Tribunal. There is considerable force in the submission of Trexim that it was not possible that a broker earning a brokerage of Rs. 19,260/- in respect of a transaction of 21,400 shares should have invested amounts aggregating to Rs. 68,00,000 in providing margin to the NSEIL and run the risk of such a considerable loss.

14. Another transaction is the purchase of 65,000 shares of MTNL on 25th February 2000 in the value of Rs. 1,88,32,103.15. These were allegedly sold on 29th February 2000 for Rs. 26,68,402.47. Even in relation to the aforesaid purchase no margin was provided by Trexim. Further, another 1,00,000 shares of MTNL were claimed to have been purchased by Fortis on 2nd March 2000 for a sum of Rs. 3,20,12,307.57. During the period from 8th to 10th March 2000, 3,80,000 shares of MTNL for a value of Rs.9,53,32,884.20 were purchased. Again, for these transactions no margin amount was paid by Trexim. Fortis also did not produce contract notes, signed in duplicate by Trexim, evidencing the placing of an order by Trexim on Forits for these purchases. It is unbelievable that transactions worth crores of rupees could have entered into by Fortis without any margin money being deposited by Trexim.

15. Fortis claimed before the Arbitral Tribunal that there was "sufficient credit" in Trexim"s account in relation to the settlement period 8th to 14th March 2000 and even earlier. Fortis claimed that there was credit for a settlement between 5th January and 11th January 2000 and up to December 1999 of Rs. 8.59 lakhs approximately. The Arbitral Tribunal failed to note that these credits were too meager when compared to the actual value of the transactions compared concerning the HFCL and MTNL

shares. In any event this did not constitute ,,equivalent credit" as mandated by the Regulations. This was too obvious for the Arbitral Tribunal not to have noticed. It seems to have gone by the fact that in the past for certain transactions in September 1999 involving sale and purchase of MTNL shares Fortis had remained exposed for a liability of Rs. 1 crore approximately. That still did not explain how Fortis could possibly have purchased shares for several crores of rupees on behalf of Trexim, and that too for two months in succession, without Trexim paying it any margin money. The Arbitral Tribunal also overlooked the fact that apart from not paying any margin money, Trexim also did not settle the ,,full payment" in respect of the above purchases within ,,two days" as required by the CMR. Yet Fortis had not raised any written demand for the said payment against Trexim at any time soon thereafter Fortis itself had not deposited with NSE the margins for these transactions. These factors lend credence to the submission of Trexim that the transactions indulged in speculatively by Fortis and it was trying to somehow recover the shortfall. The Arbitral Tribunal''s conclusion that the margin money requirement was not mandatory story is contrary to the Regulations and the conclusion that there was sufficient credit available in Trexim"s account with Fortis is contrary to the evidence on record."

32. Thus, it is quite evident from bare perusal of the aforesaid Judgment that the requirement of margin money is mandatory requirement. In the case in hand, the petitioner / objector has clearly shown that there was negative balance in his trading account, which fact is nowhere disputed or even denied by the respondent / trading member. However, the Ld. Appellate Arbitral Tribunal has not taken into consideration the aforesaid Judgment, whereby, the Hon'ble High Court has clearly held that requirement of margin money is primary and mandatory requirement.

Contract Notes

33. Apart from above, Ld. Appellate Arbitral Tribunal while passing the impugned appellate arbitral award dated 08-2- 2019, has, nowhere, concluded that the Contract Notes were signed and executed by petitioner at any point of time in respect of stock trading transactions in question. Although, the respondent/ trading member produced Contract Notes during arbitration proceeding but it is important to highlight that same are not found to bear any acknowledgment or receiving of the petitioner/objector. In this backdrop, the possibility of such Contract Notes being self generated documents cannot be ruled out and thus, it was not safe or proper on the part of Ld. Appellate Arbitral Tribunal to rely upon them.

34. The importance of Contract Notes has also been discussed in detail in Para Nos. 16 to 20 by Hon'ble Delhi High Court in Trexim Corporation (supra). Same are reproduced here as under:-

> *"16. On the question of non-production of contract notes, the factors that weighed with the Arbitral Tribunal were that the order number and unique number were generated by the NSE system and these could not be manipulated by the broker. The Arbitral Tribunal compared the contract notes filed by Fortis on 8th, 9th, 10th and 14th March 2000 with the Trade Done Reports (TDRs) filed by Fortis under hard and softy copy for the period from January to March 2000 covering all the transactions executed through the NSE. According to the Arbitral Tribunal this showed that the trades done followed one another within seconds/sub seconds in logical sequence. The Arbitral Tribunal noted that the contract notes gave all the matching details relating to order number, trade number, trade time, quantity for the relevant dates. Although Fortis had not produced the acknowledged copy of the contract note (duly signed by Trexim) it was explained by the fact that the contract note was not prepared at the moment of the trade transaction but after completion of the days" trading. Further, the offices of Fortis and Trexim were physically in the same area and, therefore, Fortis" assertion of delivery of contract notes through messenger was acceptable. Even Trexim"s witness Shri Arvind Kapur admitted that contract notes used to be delivered by messenger and by courier. It was, however, noted by the Arbitral Tribunal that Trexim "has no proof of*
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> *returning the signed copies of contract notes to the Claimant (Fortis) for the admitted transactions." The Arbitral Tribunal accepted Fortis" submission that there was a general practice between the parties of delivery/receipt of contract notes through messenger with neither maintaining a peon book/dispatch register. Shri Arvind Kapur"s denial of being present at Fortis" office on 25th February and 14th March 2000 was held to be false. As regards the non production of the order books the Arbitral Tribunal held that "substantially all the factors required to be detailed in an Order book were available" in the TDRs in which the code TC representing Trexim was used by Fortis. Therefore it was held by the Arbitral Tribunal that the placement of order by Trexim on Fortis was proved.*
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> *17. There are several problems with the above conclusions of the Arbitral Tribunal. The impugned Award itself notes that under Regulation 3.5.1 for trades executed in the format prescribed by the NSE, every Trading Member "shall issue a contract note to his constituents." In terms*

of Regulation 3.5.2 such contract note "shall be signed by a Trading Member or his Authorised Signatory or constituted Attorney. Under Regulation 7.1.17 every Trading Member is required to keep copies/duplicates of the contract notes and details of the statements which are required to appear on the contract notes. These cannot but be considered to be mandatory requirements of the Regulations.

18. The Arbitral Tribunal itself noted in the impugned Award: "True, the Claimant (i.e. Fortis) has not produced the acknowledged copy of the contract notes (duly signed by the Respondent)" i.e Trexim. It also noted the SEBI Circular dated 18th November 1993 that required Member brokers to insist on the clients returning the "duplicate copy of the contract notes duly signed by them in token of their having received the contract notes" Also, the Arbitral Tribunal noted that the contract notes produced by Fortis were "photocopies of copies kept at the Claimants (Fortis) office" and that "the copies kept at the office were not produced in spite of notice to produce during evidence (on) the plea that these were not traceable then." Yet, the Arbitral Tribunal seems to have excused this abject failure on the part of Fortis to produce credible proof of the transactions having been entered into upon orders placed on it by Trexim on the specious reasoning of there being a ,,general practice between the parties".

19. The mere presence of Shri Arvind Kapur in Fortis" office, or the proximity of the offices of Trexim and Fortis, could not make up for the lack of proof of the transactions running into crores of rupees having been entered into on behalf of Trexim by Fortis without the mandatory requirements of the NSE Regulations being complied with. The TDRs were documents prepared by Fortis and they required to be corroborated by contemporaneous documents evidencing the authorization of those transactions by Trexim. There was no such credible documentary corroboration in the evidence produced by Fortis before the Arbitral Tribunal.

20. Given the nature of the transactions and their value, the Arbitral Tribunal ought to have insisted upon submission of proper documentary proof by the claimant Fortis including proof of deposit of margin money by Trexim, originals of contract notes signed by way of acknowledgment by Trexim as available in the records of Fortis, and order books maintained in the regular course of business by Fortis strictly in accordance with the requirements of the Rules, Bye Laws and Regulations of the NSE. Absent these essential pieces of evidence, Fortis"

claim was liable to be rejected to be rejected by the Arbitral Tribunal. The conclusion reached by the Arbitral Tribunal in the impugned Award that Fortis bad proved the placing of orders on it by Trexim for the transactions in question is based on no credible evidence. It is therefore not possible to legally sustain the impugned Award."

35. In view of the aforesaid judgment of Hon'ble Delhi High Court in case of Trexim Corporation (supra), this Court is fully in agreement, with the arguments, as advanced by the Ld. Counsel for the petitioner that the impugned appellate arbitral award, suffers from patently illegality, which fact has been completely ignored by Ld. Appellate Arbitral Tribunal. Since, this fact goes to the root of the matter, therefore, there is no force in the submission raised on behalf of the respondent that there is no scope of interference by this Court in exercise of its power conferred under S. 34 of the Act of 1996.

36. Full Bench of Hon'ble Supreme Court of India in the case: of "*Kinnari Mullick and Another Versus Ghanshyam Das Damani*" in Civil Appeal No.5172 of 2017 decided on April 20, 2017, has held that the Court has no power to remand the case to the Arbitrator after decision of Section 34 of the Act of 1996. The said view was also endorsed by the Hon'ble Supreme Court in the subsequent decision passed in the case of "Radha Chemicals v. Union of India" in Civil Appeal No.
10386 of 2018 decided on October 10, 2018.

37. The net result of the aforesaid discussion is that impugned appellate arbitral award dated 08-2-2019 passed by Ld. Appellate Arbitral Tribunal has failed to recognize the well settled principles of law, as enunciated by various dictums and therefore, the said award is held to be patently illegal and thus, same is liable to be set-aside."

18. On the afore-extracted basis, the learned District Judge allowed the Section 34 proceedings in favour of the Respondent herein and set aside the Appellate Arbitral Award dated 08.02.2019, meaning thereby that they restored the original Single Arbitrator's award.

CONTENTIONS OF THE APPELLANT:

19. The learned senior counsel for the Appellant would firstly contend that the learned District Judge has erred in applying the relevant law, which stands crystallised by various judgments of the

Hon'ble Supreme Court, including that of ***Oil and Natural Gas Corporation Limited v. Discovery Enterprises Private Limited and Another***[8] and ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[9].

20. He would thereafter seek to assail the findings of the learned District Judge in respect of the non-adherence to the relevant regulations of the NSE in respect of margin money.

21. He would refer to Rule 3.9 which is extracted hereinbefore and seek to submit that the said rule provides the trading member, that is, the Appellant herein, has a right to demand margin deposit. He would seek to canvass that there was no mandate that trades would be carried out only in the event that margin deposits were received.

> "3.9 MARGIN REQUIREMENTS
> 3.9.1 Subject to the provisions as contained in the Exchange Bye-laws, Clearing Corporation Bye-laws and such other regulations as may be in force, every Trading Member/Participant shall in respect of trades in which he is a party, deposit a margin with F&O Segment of the Exchange /Clearing Corporation/Clearing Member, in the manner and to the extent specified by the F&O Segment of the Exchange /Clearing Corporation. Whenever a margin is payable by a Participant, it shall pay such margins directly to the Clearing Member, unless otherwise directed by the F&O Segment of the Exchange /Clearing Corporation.
> 3.9.2 The F&O Segment of the Exchange / Clearing Corporation shall specify from time to time derivatives contracts, the settlement periods and trade types for which margin would be attracted.
> 3.9.3 The F&O Segment of the Exchange/Clearing Corporation/Clearing Member shall levy initial margin and such other margins on derivatives contract of such amounts and in such manner as may be specified from time to time by the Relevant Authority
> 3.9.4 The margin shall be deposited with the F&O Segment of the Exchange /Clearing Corporation within such time as may be notified by the F&O Segment of the Exchange / Clearing Corporation from time to time.
> 3.9.5 The F&O Segment of the Exchange /Clearing Corporation shall specify from time to time such categories of securities that would be eligible for a margin deposit as also the method of

[8] (2022) 8 SCC 42
[9] (2019) 15 SCC 131

> valuation and amount of securities that would be required to be so deposited against the margin amount.
> 3.9.6 The procedure for refund/adjustment of margins shall be such as may be notified by the F&O Segment of the Exchange/Clearing Corporation from time to time.
> 3.9.7 The F&O Segment of the Exchange / Clearing Corporation shall from time to time, impose upon any particular Trading Member/Participant or category of Trading Member/Participant any special or other margin requirement."

22. He would also seek to contend that there is no contemporaneous record which would evidence as to what was the minimum margin deposit that was required to be made.

23. He would further refer to Rule 3.11 to contend that the requirement of margin money or margin deposit was not an absolute mandate, and Rule 3.11 provides that in default of a person not making the payment, the Appellant herein had an option of selling off the securities which lay credited in the account of the Respondent herein for the purpose of recovering any monetary shortfalls.

24. He would thereafter seek to assail the findings in respect of the necessity of maintaining records of the trades that are carried out by the trading member, by contending that these records were not available as the Appellate Arbitration took place only in the year 2019. It is further stated that Rule 6.1.4 of the **NSE (Future and Option Segment) Trading Regulations, 2000**[10], as well as Rule 6.1.4 of the NSEIL (Capital Market) Regulations, 1994, only provided for the retention of the records for a period of 5 years. Therefore, there was no obligation upon the Appellant to retain such records beyond that period, and the view taken by the learned District Judge on this aspect is clearly erroneous.

[10] NSE Regulation

CONTENTIONS OF THE RESPONDENT:

25. ***Per contra***, it would be urged by the learned counsel for the Respondent that no margin money was ever deposited, demanded, or maintained, and as per the governing norms, no trades could lawfully have been conducted in the absence of margin deposit. It is contended that without maintaining the margin deposit, since no trades could have been carried out, no liability or debit could lawfully arise, and any such conduct would fundamentally be in violation of the NSE and SEBI trading norms. He would thus submit that the alleged amount claimed by the Appellant is fictitious and unenforceable.

26. It would further be contended by the learned counsel representing the Respondent that there is no material on record to show that any of the trades were executed on the instructions or advice of the Respondent. The Respondent neither issued any written instructions nor conveyed any oral or telephonic mandate authorising the trades. It is also stated that before the Sole Arbitrator, the Appellant had failed to establish any authorisation, contract notes, signed confirmations, or voice recordings, and the Sole Arbitrator had, therefore, correctly held that the trades were unauthorized.

27. Learned counsel of the Respondent would submit that the Appellate Arbitral Tribunal erroneously reversed this factual finding on the ground that regulatory mechanisms were not well developed in the year 2007–08. However, it would be submitted that such a reasoning is misconceived, as the legal obligation to obtain confirmed instructions prior to executing trades was not dependent on the advancement of technology, but was, even at the relevant time, mandated under Regulation 3.4.1 of the NSE Regulations, which

clearly required the trading member to act only on properly confirmed instructions of the client.

28. Thus, the learned counsel for the Respondent would support the impugned judgment in its entirety and submit that there is clear violation of the relevant rules and regulations and the finding of the learned Appellate Arbitral Tribunal in respect of the various contentions that came to be negated by the Impugned Judgment were clearly wrong, necessitating the interference by the learned District Judge, and that the same brooks no interference of this Court in exercise of its powers under Section 37 of the Act.

ANALYSIS & DECISION:

29. We have heard the learned counsel for both parties and, with their valuable assistance, examined the entire record of the Appeal.

30. We are of the firm opinion that the Impugned Judgment requires no interference. The learned District Judge has taken into account the various rules and regulations that are prescribed and which are mandatory in nature and which had been given a complete go by.

31. Undoubtedly, the trades as carried out by the Appellant were patently illegal and against the regulatory mechanism that has been put in place for the protection of the investors.

32. We are, in fact, quite taken aback by the finding of the learned Appellate Arbitral Tribunal as well as the contentions of the learned Senior Counsel for the Appellant herein that, since at the relevant period of time, the regulatory mechanism as it existed was not very robust, the conclusion drawn by the learned Appellate Arbitral Tribunal was clearly sustainable since it was predicated on the

conduct of the Respondent herein which clearly evidenced that he was always aware of the trades that have been carried out. Based on this completely unsustainable presumption in favour of the Appellant the Appellate Tribunal sought to take note of the alleged past conduct of the parties in transacting, and made it the touchstone to decide against the Respondent herein.

33. We are of the considered view that the acts of trading by the Appellant were clearly unilateral with absolutely no sanction by the Respondent. Such a unilateral manner of conducting business is against the regulatory mandate which binds and governs the Appellant herein.

34. The Appellant violated the requisite provisions of the NSE Regulations, namely Rules 3.9 and 3.11, concerning the requirement of carrying out trades only upon the receipt of margin money, and also the maintenance of a margin deposit.

35. We also take note of the fact that the Respondent, in fact, had a negative balance, and the entire argument of the Appellant in support of the alleged lack of a robust regulatory mechanism is totally unsustainable and, to our mind, seeks to further a patent illegality that vitiates the trades carried out by the Appellant.

36. It also emerges from the record that SEBI had initiated adjudication proceedings against the Appellant for, inter alia, unauthorized trading, non-issuance of contract notes, and permitting trades despite debit balances, which culminated in a consent order dated 27.04.2012, wherein the respondent deposited ₹12,00,000/- towards settlement. Though not conclusive of liability in the present litigation, the said regulatory action does indicate a pattern of trading conduct by the Appellant that is not entirely above board, thereby

lending weight to the Respondent's assertion against the Appellant's unauthorised trade practices.

37. We are also of the considered view that the rules and regulations had mandated maintenance of records, for which the repository and record keeper would have to be the Appellant. There is no question of the Respondent, in any manner, having to maintain any record in respect of that. The argument that the Appellant was mandated under the relevant rules and regulations to maintain the record just for a period of five years is only to be rejected since the parties had been at *lis* from the year 2010, thus knowing fully well that these records would be extremely material of the purpose of adjudication. In these circumstances, such an argument is preposterous, to say the least.

38. We are also in agreement with the learned District Judge as respects the importance that has been ascribed to the regulatory mechanism by virtue of the Judgment of this Hon'ble Court in ***NHAI v. Hindustan Construction Company Ltd***[11]**,** and ***Trexim Corporation Limited vs. Fortis Securities Limited***[12]. The Judgment, read in conjunction with the manner in which the Appellant has conducted its affairs, clearly leads us to conclude that there has been scant regard shown by the Appellant to the relevant regulatory mandate.

39. For the above-mentioned reasons, we are of the firm opinion that the award passed by the learned Appellate Arbitral Tribunal was patently illegal and at apparent variance with the relevant legal requirements and thus being patently illegal, resulted in it being set

[11] 2017 SCC OnLine Del 10273
[12] 2012 SCC OnLine Del 174

aside by the learned District Judge, by the Judgment which has been assailed herein.

40. Apart from the fact that the Appellant is clearly guilty of sharp practices and carrying out unauthorised trades merely to generate income by way of commissions for the alleged trades, we are also of the view that the Respondent has been at the unfortunate receiving end of unnecessary and continued harassment by the Appellant, having been forced to continue litigating since the year 2010, and that too in respect of acts and omissions that were done in the year 2007-2008.

41. We also find the justifications sought to be rendered by the Appellants totally meritless and mere eyewash. The Appellant also appears to be attempting to overwhelm the Respondent with a view to induce litigation fatigue. We, therefore, deem it appropriate to dismiss the present appeal with costs of Rs. 1,00,000/- in favour of the Respondent, which shall be paid within two weeks.

42. The Appeal, along with pending application(s), if any, is disposed of in the above terms.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

DECEMBER 18, 2025/v/her