IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 380 OF 2020

5 Paisa Capital Limited
a Company registered under Companies Act,
1956 having registered office at IFL House, Sun
Infotech Park, Road No. 16V, Plot No. B – 23,
Wagle Estate, Thane – 400604 Petitioner

versus

Ankit Agarwal
An individual residing at Flat No. 14, Block
A/17, New Siddhivinayak CHS, MG Complex,
Sec – 17, Vashi, Thane – 400703. Respondent

Mr. Kunal Katariya a/w Ms. Jyoti Ghag a/w Mr. Shailesh Prajapati a/w Mr. Vineet Jadhav and Ms. Riti Gada, Advocates, i/by Dua Associates for the Petitioner.

Mr. Pranil Pawar, Advocate, for the Respondent.

CORAM: AARTI SATHE, J.

RESERVED ON: 1st October 2026
PRONOUNCED ON: 30th October 2026

JUDGMENT:

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "**Act**") challenges the arbitral award dated 6th June 2019 passed by the learned Sole Arbitrator (hereinafter referred to as the "**impugned arbitral award**"), and the arbitral award dated 17th October 2019 passed by the Appellate Arbitral Tribunal in Arbitration Matter No. NSEWRO/017303/18-19-ARB-APPL (hereinafter referred to as the "**impugned appellate arbitral award**"), whereby the appeal preferred by the Petitioner came to

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be rejected and the impugned arbitral award dated 6th June 2019 came to be confirmed and the Petitioner was directed to pay Rs.14,30,509/- + Rs.1,62,162/- = Rs.15,92,671/- to the Respondent.

2. Briefly the facts are as follows-

i. The Petitioner is a company incorporated and registered under the provisions of the Companies Act, 1956. The Petitioner is a Trading and Clearing Member and a registered stock-broker with the National Stock Exchange of India Ltd. ("NSE") and the Bombay Stock Exchange ("BSE") in the capital market and derivative segments and is registered with the Securities and Exchange Board of India ("SEBI") under Registration No. INZ000010231. The Petitioner also deals in commodities in accordance with the Bye-laws, Rules, Business Rules and Customs of the Multi Commodity Exchange of India Ltd.

ii. The Respondent is an individual who was registered with the Petitioner as a client/constituent/investor pursuant to a Member-Client Agreement ("MCA") dated 25th October 2016, and in pursuance of the said MCA, a Unique Client Code bearing No. 59912774 was allotted to the Respondent.

iii. On 25th October 2016, Respondent opened a trading account with the Petitioner by filling the account opening form and complying with the KYC process (Know Your Client). All documents executed in furtherance to it, form part of the MCA between the parties. The MCA provides that both parties are bound by the Bye-Laws and the dispute resolution is therefore done under the Bye-Laws. The Respondent commenced trading through his online trading account using his own login credentials and digital contract notes as prescribed by

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SEBI were sent by the Petitioner from time to time to the Respondent's designated email address i.e. ankitagarwal2020@gmail.com.

iv. Between 18th September 2018 and 4th October 2018 (the "**disputed period**"), technical glitches in the Petitioner's software resulted in an excess holding being reflected in the Respondent's Demat account. It is the Petitioner's contention that throughout this period, the Respondent was regularly furnished with contract notes and margin statements, in accordance with the applicable exchange norms, at his registered email address, including during the disputed period.

v. It is the Petitioner's contention that during the disputed period, the trade logs, including the relevant IP addresses and other transaction-specific details, indicate that all trades executed during that period were attributable to the Respondent. Between 3rd September 2018 and 11th October 2018, the Petitioner sent multiple text messages to the Respondent informing him that his margin cover had fallen below 20%. Through the aforesaid text messages, the Respondent was further advised to transfer sufficient funds to maintain the requisite margin. He was also informed that, failing such replenishment, his positions would be automatically squared off in accordance with the Petitioner's Risk Policy.

vi. It is the Respondent's contention that he had previously raised a similar grievance concerning the squaring-off of his positions. An Investor Grievance Resolution Panel (IGRP) meeting was accordingly held on 16th February 2018, wherein the IGRP observed that, being an online trader, the Respondent was aware of market volatility and ought to have remained vigilant and made the necessary

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arrangements to ensure availability of funds in his account. The IGRP accordingly found the Trading Member i.e. the Petitioner justified in squaring off the Respondent's positions and passed an order to that effect.

vii. During the disputed period, the Respondent carried out various trades through his trading account. The Respondent, however, contends that the Petitioner subsequently disputed the Respondent's allegation that the said trades had been executed by the Petitioner itself, without the Respondent's authority.

viii. On 1st October 2018, the Respondent had a debit balance of Rs.1,45,34,795/-, and his Gross Holding Value Cover ("GHVC") stood at 19.41%. In terms of Clause 14 of the Petitioner's Risk Policy, a client whose GHVC fell below 20% was treated as being "at risk" and was liable to be subjected to the square-off process. Accordingly, the Petitioner squared off the Respondent's positions in accordance with the applicable Risk Policy.

ix. Even after the aforesaid square-off, the Respondent continued to have a debit balance of Rs.1,03,21,756/-, with his GHVC standing at 6.15%. In terms of Clause 15 of the Risk Policy, the Petitioner issued intimation to the Respondent, calling upon him to clear the outstanding debit balance and provide adequate funds so as to avoid further square off of his positions.

x. It is the Petitioner's contention that despite receiving intimation from the Petitioner, the Respondent failed to transfer adequate funds towards the outstanding debt. The Petitioner accordingly proceeded with the square-off process in accordance with its Risk Policy. The relevant exhibit annexed to the petition comprises the SMS logs pertaining to the square-off process, as well as the e-mail

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communication addressed by the Petitioner to the Respondent prior to initiating the said process. The Petitioner squared off the Respondent's remaining open positions in accordance with the applicable Risk Policy. Notwithstanding the aforesaid square-off, a debit balance of Rs. 6,55,695/- continued to remain outstanding in the Respondent's account. On 5th October 2018, the Petitioner after raising repeated requests and reminders addressed a notice to the Respondent calling upon him to clear the debit amount of Rs. 6,55,695/-. It is the Petitioner's contention that despite receipt of the notice dated 5th October 2018, the Respondent failed to clear the outstanding dues payable to the Petitioner. Instead, on 9th October 2018, the Respondent filed a complaint against the Petitioner with the NSE, disputing the Petitioner's claim and seeking compensation to the tune of INR 15,00,000/- from the Petitioner to avoid payment of the outstanding amount.

xi. It is the Petitioner's contention that the Respondent in his complaint has admitted having traded on 25th September 2018 through the trading apps/ terminal provided by the Petitioner and never disputed a single trade carried out.

xii. On 19th October 2018, the Petitioner submitted a detailed reply and clarification in response to the Respondent's aforesaid complaint before the NSE along with relevant supporting documents. Thereafter on 22nd October 2018, the Respondent not being satisfied with the Petitioner's clarification dated 19th October 2018 raised further counter queries. On 31st October 2018, a conference call was scheduled by NSE between the parties to enable them to discuss and reconcile their respective differences, however, during the conference call, the Respondent raised issues different from those originally raised. The Petitioner

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accordingly requested the Respondent to furnish all his concerns and issues in writing to enable the Petitioner to address the same.

xiii. On 2nd November 2018, an IGRP meeting was held before the NSE. Upon considering the representations and documents submitted by both parties, IGRP observed that the squaring off, of the Respondent's position was in accordance with the applicable policy/documents and held that the Respondent's claim was not tenable. The IGRP accordingly passed an order of even date in favour of the Petitioner. It is the Petitioner's contention that despite the IGRP's order dated 2nd November 2018 and repeated requests and follow ups by the Petitioner, the Respondent failed to clear the outstanding debit amount. The Respondent also stopped responding to calls made by the Petitioner's representative regarding the recovery of the outstanding debit amount. It is the Petitioner's contention that the Petitioner again forwarded a copy of the legal notice dated 5th October 2018 to the Respondent, and according to the Petitioner the Respondent refused to accept the aforesaid notice and threatened the Petitioner's executive with allegation of harassment and molestation concerning his spouse. The Petitioner further contends that the Respondent assaulted and intimidated the Petitioner's executive.

xiv. Thereafter, on 15th November 2018, the Respondent approached SEBI with a further complaint *inter alia*, contending that 16 queries raised by him had not been answered during the IGRP proceeding. Pursuant thereto, the Respondent on 26th November 2018 submitted his queries along with the supporting documents and sought a detailed clarification for all the concerns raised by the

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Respondent before SEBI.

xv. It is the Petitioner's contention that the Petitioner has submitted their response/clarification in relation to every issue which was raised by the Respondent. It is further the Petitioner's contention that the Respondent continued to approach the Petitioner's Customer Support Team concerning the outstanding debt. The Petitioner's Customer Support Team communicated to the Respondent and requested him to clear the outstanding amount. On 19th November 2018, instead of clearing outstanding debt, the Respondent issued a notice of even date to the Petitioner disputing the Petitioner's claim and raising further allegations.

xvi. On 27th December 2018, upon receipt of Respondent's aforesaid notice dated 19th November 2018, the Petitioner submitted a detailed reply of even date to SEBI along with the relevant supporting documents addressing the allegations and issues raised by the Respondent.

xvii. The Petitioner also submitted a statement/communication before Vashi Police Station on 14th January 2019 in relation to the complaints/allegations against the Petitioner. Thereafter on 17th January 2019, the Petitioner submitted a detailed point wise clarification to SEBI in respect of the 16 queries raised by the Respondent. Further on 18th January 2019 in response to the further 35 queries raised by the Respondent, the Petitioner submitted another detailed clarification to SEBI. It is the Petitioner's contention that SEBI took the clarifications on record and raised no further concerns thereafter.

xviii. It is the Petitioner's contention that the Respondent alleged that the

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trade carried out in Respondent's account during the disputed period were not executed by the Respondent and the trade was carried out by the Petitioner in Respondent's account. The Respondent further alleged that he had not received contract notes and SMS notifications in respect of every trade reflected in the margins/stock holding statement and, in the Futures & Options Segment (hereinafter referred to as "F&O segment"). On the basis of the aforesaid allegations, the Respondent claimed to have suffered losses amounting to Rs.15,00,509.31/- during the disputed period. It is the Petitioner's contention that they disputed the said claim and contended that the allegations are false and contrary to the trading records and documents.

xix. On 8th February 2019, the Petitioner submitted a statement before Wagle Police Station in response to a police complaint/ allegations made against the Petitioner. Finally on 18th February 2019, the Petitioner invoked arbitration against the Respondent at the NSE in accordance with the applicable NSE/BSE Rules, Bye-laws and Regulations. The arbitration proceedings were conducted before the learned Sole Arbitrator appointed through NSE Centralized Arbitrator Appointment Process (CAAP). The Petitioner filed their statement of claim seeking recovery of Rs.6,53,166/- from the Respondent.

xx. Thereafter on 1st April 2019, the Respondent filed his statement of defense and counter claim in the arbitration proceedings. The Respondent, *inter alia*, claimed an amount of Rs.15,00,509.31/- towards alleged losses suffered during the disputed period. On 12th April 2019, the Petitioner filed a statement of rejoinder to the Respondent's statement of defense and counter claim disputing the

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claims and allegations raised by the Respondent. The Respondent thereafter filed his sur-rejoinder and written notes of arguments.

xxi. The matter was heard by the learned Sole Arbitrator where both parties advanced their respective submissions. During the course of hearing, the learned Sole Arbitrator directed the parties to submit additional clarifications. Pursuant thereto, in compliance with the directions of the learned Sole Arbitrator, on 30th April 2019 the Petitioner submitted statement of clarification addressing the issue raised during the arbitral proceedings.

xxii. On 6th June 2019, the learned Sole Arbitrator passed the impugned arbitral award whereby the Petitioner's claim was rejected, and the Respondent's counter claim was partly accepted to the tune of Rs. 14,30,509/- and a further amount of Rs.1,62,162/- was awarded towards 1,260 bonus shares of Adani Gas Ltd.. In the impugned arbitral award, the learned Sole Arbitrator rejected the Petitioner's claim of Rs. 6,53,166/- on the grounds that the Petitioner's responses were evasive, no cogent explanation had been furnished for the second e-mail address, and the explanation attributing the discrepancy to a typographical error was unacceptable. The learned Sole Arbitrator further observed that the Petitioner had sent e-mails reflecting varying amounts in respect of the debit balance in the Respondent's ledger. Insofar as the counter claim of the Respondent of Rs.14,30,509/-, the learned Sole Arbitrator held that the Petitioner had not dealt with the contentions raised in the Respondent's statement of defense dated 1st April 2019 save and except by denying it. Insofar as the claim of Rs. 1,62,162/- toward 1,260 bonus shares of Adani Gas Ltd., the same was allowed on the ground

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that the Petitioner had advanced no cogent reasons for the same. According to the Petitioner, the allegations of the Respondent that the Petitioner itself executed the unauthorized trades in the derivative segment appeared only within the recital of the Respondent's contentions introduced by the words "*Respondent further submitted that*" and it is the Petitioner's contention that there was no finding in respect thereof.

xxiii. On 4th July 2019, the Petitioner filed an appeal with the NSE against the learned Sole Arbitrator's award dated 6th June 2019 seeking to set aside the said impugned arbitral award. The NSE thereafter constituted the Appellate Arbitral Tribunal, and on 23rd September 2019, personal hearing was granted to both the parties and written arguments were filed before the Appellate Arbitral Tribunal.

xxiv. On 17th October 2019, the Appellate Arbitral Tribunal by way of the impugned appellate arbitral award rejected the Petitioner's appeal and confirmed the impugned arbitral award dated 6th June 2019 passed by the learned Sole Arbitrator. It is the Petitioner's contention that the Appellate Arbitral Tribunal held that both Petitioner and Respondent have the responsibility to notify each other of any abnormality in the traders trading system observed by them. The Appellate Arbitral Tribunal further held that the Petitioner was in breach of the aforesaid duty and that the Respondent was equally in breach thereof. The Appellate Arbitral Tribunal observed that the Respondent, being aware of his own trading position, ought to have immediately brought any anomaly to the Petitioner's attention. However, the Respondent failed to do so until the Petitioner debited the amounts arising from the excess margin extended to him. The liability

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was nevertheless imposed on the Petitioner only on the ground that as the Petitioner was in agreement that there was a system glitch in their account which had given excess margin to the Respondent, the Appellate Arbitral Tribunal came to the conclusion that the losses on account of the aforesaid margins had to be borne by the Petitioner and further held that the aforesaid glitch was not suitably and in time notified to the Respondent.

xxv. It is in the background of the aforesaid facts that the Petitioner has challenged the impugned appellate arbitral award which upholds the impugned arbitral award dated 6th June 2019 by way of the present Section 34 petition.

3. Mr. Kunal Katariya along with Ms. Jyoti Ghag, Mr. Shailesh Prajapati, Vineet Jadhav and Ms. Riti Gada instructed by Dua Associates appeared on behalf of the Petitioner. Mr. Pranil Pawar appeared on behalf of the Respondent.

4. Learned counsel on behalf of the Petitioner submitted that interference under Section 34 of the Act becomes crucial, inasmuch as, the impugned appellate arbitral award dated 17th October 2019 upholding the impugned award dated 6th June 2019 has been rendered without considering the facts and without giving any findings on the issues which were pressed before the Appellate Arbitral Tribunal. It is therefore his submission that the award suffers from patent illegality, and such patent illegality is on account of the fact that the impugned appellate arbitral award which upholds the impugned arbitral award dated 6th June 2019 does not render any finding on the issues raised which goes to the root of the matter requiring interference of this Court. He further submitted that, by the impugned arbitral award dated 6th June 2019, the learned Sole Arbitrator rejected

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the claim of Rs. 6,53,166/- on the ground that the Petitioner failed to substantiate the said claim by cogent evidence and that the answers furnished by the Petitioner in response to the queries raised before the learned Sole Arbitrator were evasive and that the explanation offered by the Petitioner in respect of the alleged typographical error was also not found to be satisfactory. He further submitted that there are no findings in respect of the aforesaid issue in the impugned appellate arbitral award dated 17th October 2019, and further an error in the email address and an inconsistency in the figures stated in correspondence are no answer to the claim for a debit balance which the Respondent has never reconciled.

5. He further submitted that the Appellate Arbitral Tribunal failed to appreciate that, during the disputed period, all the trades executed by the Respondent in his account were required to be considered. He submitted that the Petitioner had demonstrated that 22 orders had been placed, which had resulted in 302 square-off trades being carried out in accordance with the Risk Policy applicable to the account, which policy had been agreed to and understood by the Respondent at the time of opening the account. It was submitted by him that the aforesaid material was neither considered by the learned Sole Arbitrator nor by the Appellate Arbitral Tribunal and, consequently, no finding was rendered in respect thereof. He further submitted that the Respondent's counter claim of Rs. 14,30,509/- which was allowed by the learned Sole Arbitrator by impugned arbitral award dated 6th June 2019, was only allowed on the ground that the Petitioner had not all dealt with the Respondent's contention save and except by denial, could not be a ground to allow the counter claim in favor of the

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Respondent and the same being upheld by the Appellate Arbitral Tribunal. He further submitted that, there was no finding in the impugned arbitral award dated 6th June 2019 or in the impugned appellate arbitral award as to who executed the trade, and whether the trade was unauthorised. Further, there was no finding connecting the fault of technical glitch to the loss and damages and also the amount of Rs. 15,00,509.31/- which was claimed by the Respondent was not claimed on any evidentiary basis.

6. He further submitted that insofar as, the technical glitch which resulted in additional margins in the hand of the Respondent was a fact that the Respondent was well aware of, inasmuch as, an intimation by way of SMS on the registered mobile number of the Respondent about squaring off of trades executed by the Petitioner, requesting the Respondent to maintain the adequate/required balance in order to avoid the liquidation of his position was informed. He submitted that the Respondent had never disputed his awareness of the additional margins made available to him on account of the technical glitch in the online portal. In fact, the Respondent availed himself of the benefit of such additional margins and continued to trade in substantial volumes. It was his contention that all trades were done by Respondent himself by using his own credentials and with a malafide intention of making profits and same was not denied by the Respondent. He further submitted that there were few other customers who had faced the same issue of technical glitches and they had volunteered and approached the support team of the Petitioner which was not done by the Respondent and it is only when he started suffering losses on trades executed by him that the Respondent raised

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frivolous claim of Rs.15,00,509.31/.

7. He further submitted that insofar as, the sale of bonus shares of Adani Gas Ltd. were concerned, the same were carried out by the Petitioner in consonance with their Risk Policy and also that the Respondent was always aware at the time of account opening itself that the said form specified "*In case there is a debit balance in my account, the Petitioner could sell the securities at its sole discretion on behalf of the Respondent*". He submitted that the pendency of a complaint before SEBI did not operate to suspend such authority of the Petitioner, nor has any provision been identified which would have such an effect. He further submitted that once that being the position the Petitioner was well within their rights to sell off the bonus shares of Adani Gas Ltd. as there was a debit balance in the Respondent's account. He further submitted that neither impugned arbitral award dated 6th June 2019 nor the impugned appellate arbitral award, render any finding in respect of the above submission. He further submitted that the only basis on which the loss suffered by the Respondent on account of trading on excess margins has been attributed to the Petitioner is that both parties were found to be in breach of their respective obligations to inform each other of the technical glitch. He submitted that, while arriving at such conclusion, no finding was rendered as to whether the trades in question were unauthorised, whether the trades were executed in accordance with the Risk Policy of the Petitioner, or whether the loss suffered by the Respondent was in fact attributable to the technical glitch in the Petitioner's online portal.

8. He therefore submitted that the impugned appellate arbitral award which

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upholds the impugned arbitral award dated 6th June 2019 suffers from severe infirmities which goes to the root of matter requiring interference of this Court under Section 34 of the Act. He submitted that the excess margin credited on account of the system fault merely resulted in making available an additional opportunity to the Respondent to trade, and that the outcome of trading on such additional margin necessarily carried with it the corresponding risk of either incurring a loss or earning a profit, depending upon the Respondent's trading decisions and skills. He sought to place reliance on the decision of **Kotak Securities Vs. Gajanan Ramdas Rajguru**[1] to contend that in a situation where on account of erroneous margin trade available to the constituent/investor was concerned, where the constituent/investor used his own skills and risk for earning profits, in such a situation the Court had held that where profits were made by the constituent/investor on erroneous margin trades, the broker therein could not appropriate the profits, inasmuch as, if it was a loss situation, the constituent/investor would have been liable to repay the amount of loss to the broker therein. He submitted that applying the aforesaid findings and analogy to the facts of the present case, just as the Petitioner in present case could not retain profits earned by the Respondent on the erroneous margins provided to him, similarly the incurring of losses by the Respondent could not be foisted upon by the Petitioner and hence the facts of **Kotak Securities** (supra) cover the present case. He submitted that insofar as the issue on wrong email id of the Respondent was concerned the Respondent had received digital contract notes as mandated by

[1] **Comm. Arb. Petition No. 788 of 2024 decided on 3.12.2025, 2025:BHC-OS:23272**

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SEBI and ledger accounts on the designated email id. ankitagarwal2020@gmail.com and by way of SMS on Respondent's registered mobile number. He submitted that the email id of ankitagarwal@gmail.com was a typographical error in the statement of claim/case dated 18th February 2019 and it was not a deliberate attempt on part of the Petitioner to not send any contract notes, logs, margin statements to the Respondent on which issue there is no finding in the impugned appellate arbitral award passed by the Appellate Arbitral Tribunal upholding the impugned arbitral award dated 6th June 2019.

9. He also submitted that the Appellate Arbitral Tribunal gave no finding of unauthorized trading and gave no consideration to the connection between the glitch and the loss of Rs.14,30,509/- incurred by the Respondent. He further submitted that there was no finding as to who executed any trade, no finding that any trade was unauthorized, no finding connecting the technical glitch and loss and no reason for the sum awarded as against the Rs.15,00,509.31/- claimed by the Respondent.

10. He also sought to place reliance on the decisions of **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.**[2], and **Associate Builders vs. Delhi Development Authority**[3] to contend that when a reasoning of an award is unintelligible and findings which are based are on no evidence the said award would necessarily be perverse, and considering that in the facts of the present case, there were no findings in the impugned appellate arbitral award upholding the impugned arbitral

[2] **(2019) 20 SCC 1**

[3] **2015 (3) SCC 49**

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award itself, the same would warrant interference. He also sought to place reliance on **Erach Khavar Vs. Nirmal Bang Securities Pvt. Ltd.**[4] to contend that when a constituent/investor is aware of trade executed in his accounts and fails to raise any objection within a reasonable time, such transactions cannot thereafter be treated as unauthorised.

11. *Per contra*, learned counsel on behalf of the Respondent submitted that the impugned appellate arbitral award upholding the impugned arbitral award requires no interference, inasmuch as, the same have been passed considering the entire factual conspectus and also on an appreciation of the aforesaid facts. It was his submission that given the limitations prescribed under Section 34 of the Act, the interference of this Court was not warranted. He submitted that the Respondent being an online account holder of the Petitioner was completely dependent on the trading terminal provided by the Petitioner to execute all his trade. The Respondent had raised his complaint about unauthorized trades in his account, and it was confirmed by the Petitioner that no F&O segment transactions had been executed by the Respondent. He further submitted that the learned Sole Arbitrator in the impugned arbitral award dated 6th June 2019, had rightly come to the conclusion that the defence of technical glitch/technical error adopted by the Petitioner was only a ploy to conceal unfair and unlawful practices of the Petitioner.

12. He submitted that the Petitioner without any prior notice sold out all the

[4] **ARBITRATION APPEAL NO. 12 OF 2025 (Bom HC)**

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positions of the Respondent under the pretext of Risk Policy which was clearly in violation of Rules and Regulations and NSE Bye-Laws. He further submitted that the learned Sole Arbitrator in impugned arbitral award dated 6th June 2019 had correctly observed that it was hard to believe that there was any technical glitch during the disputed period, inasmuch as, there was no written communication by the Petitioner to the Respondent, insofar as, the aforesaid technical glitch/error was concerned. He further submitted that the Petitioner by squaring off the transaction of the Respondent was in violation of their own Risk Policy and the squaring off was therefore contrary to the aforesaid Risk Policy.

13. He submitted that the Respondent totally relied on the trading terminal system, which sent pop up messages about utilization of excess limits and rejection of orders and during the disputed period none of such popups were intimated to the Respondent. He therefore submitted that the loss which had occurred was only on account of the Petitioner's default and the same had been rightly upheld by the learned Sole Arbitrator and by the Appellate Arbitral Tribunal, and hence the findings given in the aforesaid award requires no disturbance or interference.

14. He also sought to place reliance on the decision of the Delhi High Court in the case of **Reliance Securities Ltd. vs. Vivek Sharma**[5] to contend that a Trading Member would be responsible to compensate the constituent/investor who suffered the losses due to technical glitches. He also sought to differentiate the decision of **Kotak Securities Ltd.** (supra) of this Court on the ground that it was rendered on a different fact pattern and hence could not be applied.

[5] **2010 SCC OnLine Del 3748**

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15. The submissions as canvassed by the learned counsel on behalf of the Respondent can be summarized as follows:

(a) Learned counsel on behalf of the Respondent submitted that the Petitioner was responsible for reflecting inflated holdings and F&O trades in the Respondent's account. He submitted that the Petitioner had admitted that the margin statements furnished by them were incorrect and that, according to the Petitioner, the error/glitch could not be detected during the disputed period, which extended over more than fifteen days. He further submitted that the Petitioner squared off all the positions of the Respondent without issuing any prior notice, purportedly in exercise of its powers under the Risk Policy, in clear violation of the applicable Rules and Regulations, the NSE Bye-laws and other governing provisions. He submitted that the Petitioner also failed to discharge its fiduciary obligations by acting in violation of Regulations 4.5.2 and 4.5.3 of the NSE Capital Market Regulations. He further contended that the Petitioner raised false claims in respect of trades allegedly executed in F&O segment (Equity Derivatives), despite the admitted position that the Respondent had never traded in F&O segment (Equity Derivatives).

(b) He further submitted that the Respondent had substantially established his case by placing on record cogent reasons and supporting documents, whereas the Petitioner had failed to demonstrate any patent illegality in the impugned appellate arbitral award, which upheld the arbitral award dated 6th June 2019.

(c) He further contended that the Petitioner's entire case is founded upon re-appreciation of the evidence and reconsideration of the factual findings recorded

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by the Appellate Arbitral Tribunal as well as learned Sole Arbitrator. Such an exercise, according to him, was impermissible in proceedings under Section 34 of the Act. He further submitted that the Appellate Arbitral Tribunal, being an appellate and affirming forum, was not required to reiterate in the impugned appellate arbitral award each of the findings already recorded in the arbitral award dated 6th June 2019.

(d) He further submitted that the Respondent's counter-claim was merely intended to restore the Respondent to the position in which he stood prior to the disputed period. The counter-claim was based on cogent calculations and supported by relevant documentary evidence, which, according to the learned counsel, had been duly considered by the learned Sole Arbitrator while passing the impugned arbitral award dated 6th June 2019 and by the Appellate Arbitral Tribunal while passing the impugned appellate arbitral award.

ANALYSIS AND FINDINGS

16. I have heard learned counsel for the parties for some length of time and have perused the papers and proceedings along with the impugned appellate arbitral award which upholds the impugned arbitral award dated 6th June 2019. At the outset, I am of the view that the provisions of Section 34 of the Act, which are now well-settled by various decisions of the Supreme Court and this Court, allow interference in an arbitral award only in exceptional circumstances, as set out in Section 34 of the Act. The primary ground on which learned counsel for the Petitioner assails the impugned appellate arbitral award which upholds the impugned arbitral award dated 6th June 2019, is that the same is patently illegal

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considering that the impugned appellate arbitral award which upholds the impugned arbitral award dated 6th June 2019 has been passed without rendering any findings in respect of the issues which have been canvassed before the Appellate Arbitral Tribunal. He has submitted that the issue of patent illegality would arise in this case, inasmuch as, the non-rendering of findings would go to the root of the matter. To advance his proposition, learned counsel on behalf of the Petitioner has taken me through the operative part of the impugned appellate arbitral award and also impugned award passed by the learned Sole Arbitrator.

17. I am of the view that the impugned arbitral awards, and particularly the impugned appellate arbitral award suffers from infirmity and being conscious of the contours of Section 34 of the Act which allows interference only in exceptional circumstances, I am of the view that the aforesaid impugned appellate arbitral award which upholds the impugned arbitral award dated 6th June 2019 is an award which was passed without rendering any findings on the issues canvassed before it.

18. The primary issue which ought to have been considered by the Appellate Arbitral Tribunal was in respect of the losses that the Respondent had suffered on account of online trading during the disputed period on account of a technical glitch/error which had occurred on the trading portal of the Petitioner offering the Respondent higher margins to trade. It is on this issue as to whether the loss would have to be borne by the Petitioner or the Respondent in the facts of the present case was a task and an exercise that had to be undertaken by the Appellate Arbitral Tribunal by examining the facts and the records available before it. However, on perusal of the impugned appellate arbitral award upholding the impugned arbitral

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award dated 6th June 2019, it is evident that the said exercise has not been undertaken, considering that only the submissions of the parties have been reproduced verbatim and the operative part only records that both the Petitioner and the Respondent had the responsibility to notify each other of any abnormality in the trade or trading system observed by them. It is on this basis that since the system/technical glitch was not reported by either party and especially the Petitioner to the Respondent that the losses arising to the Respondent on account of excess margin allocation have been foisted on the Petitioner.

19. The impugned appellate arbitral award upholding the impugned arbitral award dated 6th June 2019 fails to record any finding on the averments raised by the parties before arriving at the conclusion it has reached at. The Appellate Arbitral Tribunal was required to adjudicate rival contentions and record its findings on the rival contentions and other issues arising for determination. A mere reproduction of the submissions advanced by the parties could not constitute an adjudication of the dispute, inasmuch as, the impugned appellate arbitral award did not disclose what weighed in the mind of the Appellate Arbitral Tribunal in accepting one contention and rejecting the other one, nor did it disclose the material issues arising for consideration. The impugned appellate arbitral award to my mind therefore suffers not only from inadequacy of reasons but fails to disclose the adjudicatory findings themselves. This Court is not empowered under Section 34 of the Act to supply missing findings or to undertake an independent adjudication of the merits and hence the non-supply of reasons would warrant the aforesaid interference in the present case. The operative portion of the Appellate

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Tribunal Award is reproduced below –

> "Findings and conclusions of Appellate Bench.
>
> After going through the entire records, papers, proceedings and documents of the present Appeal including the original proceedings held before the lower Bench we are of the considered view that the both Appellant - Trading Member and Respondent have the responsibility to notify each other of any abnormality in the trade or trading system observed by them. In this case, the Appellant firstly even though being aware of the glitch in his systems failed to notify his clients suitably and allowed his clients to continue trading. Secondly, when few other clients notified the Appellant of an issue in his system, he still failed to send notification to all his clients. Neither did he notify the exchange of this technical glitch and its impact thereon. The Respondent on his part should have been aware of his positions and should have raised any anomaly to the Appellant immediately which he failed to do until the Appellant raised the debit in his account due to excess margin issued to him. However, as the Appellant is in agreement that there was a system glitch in his account which gave excess margin to his clients to trade and also as he did not suitably and timely notify his clients; he is liable for any losses arising out of this excess margin allocation. Therefore, we do not deem it necessary to interfere with the Award given by the lower Arbitral Tribunal. In view of this, we pass the following order:
>
> APPELLATE ORDER / AWARD
>
> 1) The Appeal filed by the Appellant is rejected. Accordingly, the impugned award passed by the lower Arbitral Tribunal is confirmed.
>
> 2) No orders as to the cost of arbitration.
>
> 3) The Award is signed and issued in three originals, one for each of the parties and one for the record of the National Stock Exchange of India Limited."

20. Considering that in the aforesaid facts and on a perusal of the operative portion of the impugned appellate arbitral award, it is clear that the Appellate Arbitral Tribunal has not answered the following issues which were raised by the parties:

i. Whether the technical glitch/error actually resulted in constituent/investor receiving excess margin/credit?

ii. Whether the Respondent's trades and resulting losses were attributable to that technical glitch/error?

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iii. Whether the MCA entered into between the Petitioner and the Respondent mandated/cast an obligation upon either parties to inform either of them about the technical glitch/error on the online trading platform?

iv. Whether indeed the Petitioner had not informed the Respondent of the technical glitch/error, and there was an obligation on the Petitioner to monitor and communicate the Respondent about the erroneous additional margin available to him and the consequent exposure/ losses that he would suffer if traded on that?

v. Whether the timely communication to the Respondent by the Petitioner would prevent or reduce the losses?

vi. Whether the only finding that both parties were under an obligation to report the technical glitch/error and had failed to do so would warrant the entire loss being faced by the Petitioner?

vii. Whether the Petitioner was correct in contending that the email id. supplied by them in the statement of claim i.e. ankitagarwal@gmail.com was merely a typographical error and all other correspondence had the correct email id of the Respondent being ankitagarwal2020@gmail.com.

viii. Whether the Petitioner was right in squaring off the Respondent's account and selling the shares of the Respondent without his consent in view of the Risk Policy of the Petitioner considering that there was a debit balance in the trading account of the Respondent?

21. All these are questions which are rival contentions advanced by the parties

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which have neither been considered nor any finding has been rendered on them by the Appellate Arbitral Tribunal. This Court, therefore, cannot undertake the exercise to adjudicate upon these issues and come to an independent finding under Section 34 of the Act, and would be thus constrained to set aside the impugned appellate arbitral award which suffers from the vice of being an award rendered without giving findings on contentious issues.

22. My aforesaid view is fortified by the decision of the Supreme Court in the case of **I-Pay Clearing Services (P) Ltd. v. ICICI Bank Ltd.**[6],where the Supreme Court had refused to remand the matter back to the Arbitral Tribunal, and set aside the arbitral award and held that an arbitral award that does not render findings on contentious issues is perverse and is liable to be set aside on the ground of patent illegality under Section 34 of the Act. The relevant paragraphs of the aforesaid decision are reproduced below:-

> 38. In absence of any finding on Point 1, as pleaded by the respondent and further, it is their case that relevant material produced before the arbitrator to prove "accord and satisfaction" between the parties, is not considered, and the same amounts to patent illegality, such aspects are to be considered by the Court itself. It cannot be said that it is a case where additional reasons are to be given or gaps in the reasoning, in absence of a finding on Point 1 viz. "whether the contract was illegally and abruptly terminated by the respondent?".
>
> …
>
> 41. Under the guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the arbitrator, where there are no findings on the contentious issues in the award. If there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself. Under the guise of either additional reasons or filling up the gaps in the reasoning, the power conferred on the Court cannot be relegated to the arbitrator. In absence of any finding on contentious issue, no amount of reasons can cure the defect in the award.
>
> 42. A harmonious reading of Sections 31, 34(1), 34(2-A) and 34(4) of the Arbitration and Conciliation Act, 1996, make it clear that in appropriate cases, on the request made by a party, Court can give an opportunity to the arbitrator to

[6] (2022) 3 SCC 121

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> resume the arbitral proceedings for giving reasons or to fill up the gaps in the reasoning in support of a finding, which is already rendered in the award. But at the same time, when it prima facie appears that there is a patent illegality in the award itself, by not recording a finding on a contentious issue, in such cases, Court may not accede to the request of a party for giving an opportunity to the Arbitral Tribunal to resume the arbitral proceedings.
>
> (emphasis supplied)

23. I am further of the view that the impugned appellate arbitral award upholding the impugned arbitral award dated 6th June 2019 also suffers from the vice of not recording findings at all, and once that being the position, interference under Section 34 of the Act is warranted. Considering that the impugned appellate arbitral award upholding the impugned arbitral award dated 6th June 2019 has not made a finding on the rival contentions and also there are no findings on the evidence which the parties have sought to place reliance on, the same suffers from patent illegality which goes to the root of the matter, and the same cannot be remitted back to the learned Sole Arbitrator, unless consented by the parties under the guise of additional reasons and filling up gaps in the reasoning. In my view, the present impugned appellate arbitral award upholding the impugned arbitral award dated 6th June 2019 is also a perverse award which goes to the root of the matter inasmuch as no findings have been rendered on the contentious issues. Such perversity, striking at the root of the matter, constitutes a ground for interference with the impugned appellate arbitral award under Section 34(2A) of the Arbitration and Conciliation Act, 1996. My view is fortified by the decisions of the Supreme Court in **Ssangyong Engg. & Construction Co. Ltd. v. NHAI**[7] and **Associate Builders v. DDA**[8], wherein it has been held that an arbitral award is liable

[7] **(2019) 15 SCC 131**

[8] **2015 (3) SCC 49**

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to be set aside on the ground of patent illegality under Section 34(2A) of the Act, if the Court *prima facie* ascertains that the arbitral award is perverse, and such perversity goes to the root of the matter. It would be relevant to reproduce the relevant paragraphs of the aforesaid decisions in this regard: -

> Ssangyong Engg. & Construction Co. Ltd. v. NHAI
>
> 37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short,what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.
>
> **38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.**
>
> **39. To elucidate, para 42.1 of Associate Builders, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to-set aside an arbitral award. Para 42.2 of Associate Builders however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.**
>
> **40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders, namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).**
>
> **41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.**
>
> (Emphasis supplied)
>
> Associate Builders v. DDA
>
> **31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires**

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some degree of explanation.It is settled law that where:

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) Ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, it was held : (SCC p. 317, para 7)

> "7.... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In Kuldeep Singh v. Commr. of Police, it was held : (SCC p. 14, para 10)

> "10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

...

42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example it an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

> "28. Rules applicable to substance of dispute.—(1)-(2) (3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.

43. In McDermott International Inc. v. Burn Standard Co. Ltd., this Court held as under : (SCC pp. 225-26, paras 112-13)

"112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in

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> passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. [See Pure Helium India (P) Ltd. v. Oil and Natural Gas Commission and D.D. Sharma v. Union of India.]
>
> 113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award."
>
> (Emphasis supplied)

24. I am therefore of the view that interference under Section 34 of the Act is warranted in the facts of the present case, more so as, there has been no plausible view at all which the Appellate Arbitral Tribunal had arrived at to reach the conclusion it had reached at or to uphold the impugned arbitral award of the learned Sole Arbitrator. Though Section 34 of the Act holds the hands of this Court to re-appreciate evidence and to substitute a possible/plausible view which has already been taken by the Appellate Arbitral Tribunal, however in the facts of the present case, no view has been arrived at, at all by the Appellate Arbitral Tribunal. It is in the absence of these findings that the impugned appellate arbitral award which upholds the impugned arbitral award dated 6th June 2019 suffers from the vice of being a non-speaking award which is liable to be set aside. Once that being the case, the authorities relied upon by learned counsel on behalf of the Petitioner and Respondent to contend on the merits of the case need not be dealt with, inasmuch as, the very contentious issues have not been dealt with, in the impugned appellate arbitral award which upholds the impugned arbitral award dated 6th June 2019, which this Court seeks to set aside.

25. Considering the aforesaid settled principles of law and the facts and

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circumstances of the present case, I am of the view that the impugned appellate arbitral award suffers from patent illegality, inasmuch as, no findings have been rendered on contentious issues which go to the root of the matter. The material/contentious issues which have not been considered and on which no findings have been returned are set out in paragraph no. (20) herein-above.

26. Therefore, as there are no findings on the aforesaid contentious issues, interference under Section 34 of the Act is warranted. The impugned appellate arbitral award upholding the impugned arbitral award dated 6th June 2019 is set aside. Any amount deposited in Court shall be released within the expiry of **one month** from the date on which this judgment is uploaded on this Court's website. The petition is allowed, and interim application(s), if any, do not survive and are accordingly disposed of. No costs. The parties are at liberty to initiate fresh arbitration proceedings in respect of the present dispute in accordance with law.

(AARTI SATHE, J.)

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