IN THE COURT OF SH. PULASTYA PRAMACHALA
DISTRICT JUDGE, (COMMERCIAL COURT)-01,
PATIALA HOUSE COURT, NEW DELHI

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PULASTYA PRAMACHALA

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(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

OMP (COMM) No. 109/2021

In the matter of: -

Vipin Kumar Jain
3721, Gali Barna, Sadar Bazar,
New Delhi-6.

...Petitioner

Versus

Prrsaar Commodities (P) Ltd.
17A/35, 2nd Floor,
Punjabi Bagh West,
Near Maharaja Agarsain Hospital,
New Delhi-110026.

...**Respondent**

Date of Institution	:	10.11.2021
Arguments heard on	:	05.06.2026
Decided on	:	**04.07.2026**
Decision	:	**Petition is allowed.**

JUDGMENT

DESCRIPTION OF THE CASE

1. Petitioner has filed present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), assailing the arbitral award dated 22.09.2021 passed by ld. Arbitral Tribunal (hereinafter referred to as "AT").

BRIEF FACTS OF THE CASE

2. Briefly stated, petitioner had opened a trading account with respondent in his personal name for trading at NSE/BSE platforms. Petitioner had also opened an account in the name of his firm M/s. Akshay Aluminium Alloys LLP (hereinafter

referred to as “AAA”), for trading on the platform of MCX. Respondent was registered as a broker with BSE. Respondent alleged that petitioner had been engaged in transactions wherein he incurred losses on account of the pricing done by MCX. Since the amount was not being paid by the petitioner, a sum of Rs. 2,77,74,673.59/- had been deducted from the petitioner’s account of MCX. Petitioner alleged that, despite there being no fault attributable to him, the respondent caused him a loss of Rs. 57,17,999/- by preventing him from carrying out transactions in his account. Respondent had invoked arbitration and had filed an arbitration petition under Section 9 of the Act at the Hon’ble High Court, through OMP (1) No. 138/2020, which was filed against petitioner, seeking certain interim orders. Arbitrator was appointed by Exchange. Before the Arbitral Tribunal, the respondent herein appeared as the claimant and filed its statement of claim. Petitioner herein was the respondent, who also filed counter claim. Arbitral Tribunal passed an award of Rs. 1,84,461.82 in favour of respondent herein. The counterclaim of petitioner beyond Rs. 681.92/- was dismissed.

GROUNDS OF CHALLENGE

3. Aggrieved by the arbitral award dated 22.09.2021, petitioner has preferred the present objections under Section 34 of the Act, inter alia, on the following relevant grounds: -

i. That ld. AT erred in assuming jurisdiction over the dispute despite respondent's failure to produce any arbitration clause or written arbitration agreement. Petitioner had specifically objected to the maintainability of the arbitral proceedings on this ground; however, said objection was neither properly considered nor adjudicated. In the absence of a valid arbitration agreement, respondent failed to establish the basis for invoking arbitration, rendering the assumption of jurisdiction by ld. AT legally unsustainable.

ii. That the ledger account filed by respondent did not justify the stand taken by them. Respondent had not filed any contract note issued by the NSE in support of their stand. Hence, there was no basis for respondent to claim margin money and consequently close the positions.

iii. That ld. AT was constituted out of the arbitrators, who were on the permanent panel of the NSE. The objection under section 11 of the Act was taken and NSE could not have overruled the F provisions of section 11 of the Act. No intimation was sent to the petitioner for selecting the arbitrators.

iv. That ld. AT entered into patent illegality by considering the documents, which were filed after the matter was reserved for orders, and petitioner could not get any opportunity to rebut them before ld. AT. On 2nd August 2021, the arguments in the matter were concluded, and the matter was fixed for orders. Ld. AT entered into manifest error accepting Trade Confirmation Ledger and Future & Options Combined Bill after the matter was fixed for Orders.

v. That ld. AT entered into patent illegality by not considering that respondent had only filed statement of account to support his claim, and the same was not sufficient to conclude that the said amount was payable or that respondents were justified in squaring of the contracts.

REPLY OF THE RESPONDENT

4. Respondent filed the reply opposing the petition and contended that petition is not maintainable and the contentions therein are erroneous, contrary to law. Respondents replied that the respondent did not declare that they would settle the crude contract at the price of NYMEX or respondent did not say that they would declare the same at 37 Dollars and forfeit the margin money. Respondent submitted that the settlement price was fixed by the MCX, and respondent had no role to play in the same. Respondent further submitted that the trades belonged to petitioner in crude contract, and it is petitioner who was liable and responsible for the loss or profit arising out of those contracts. Respondent further submitted that petitioner, having suffered losses in crude contract at MCX platform, refused to clear the debit balance in its account. Respondent further submitted that they had no option but to file an arbitration claim against the petitioner, and same was awarded in favour of the respondent vide award dated 21.10.2020. Respondent further submitted that petitioner had filed an objection under Section 34 of the Act against the award dated 21.10.2020 and the same was also dismissed by the Hon'ble High Court of Delhi upholding the validity of the award vide order dated 21.10.2020. Thereafter, against the said order, petitioner filed an appeal under Section 37

of the Act and having found no favour with the Court, petitioner had to withdraw the appeal vide order dated 21.10.2020.

5. Respondent further submitted that the present is the case where the arbitration is done under the aegis of NSE in terms of the Bye-laws formulated by NSE and also forming part of the KYC executed by petitioner. Respondent further submitted that petitioner himself filed the counter claim in the said proceedings and now has challenged the arbitration proceeding itself, which is nothing but a malicious attempt on the part of petitioner to get rid of its liabilities. Respondent further submitted that the order passed by ld. AT under Section 17 of the Act had never been challenged by petitioner, therefore, now the same has attained finality and cannot be challenged at this stage. Respondent further submitted that firstly petitioner had carried out the trades and suffered losses, then he blamed respondent. When respondent filed the arbitration for recovery of debit balance, petitioner blamed NSE, and when NSE appointed Arbitrator, petitioner started blaming Arbitrator. Respondent further submitted that Arbitrators are appointed under the provisions of Bye-laws of the NSE, and petitioner has participated in the proceedings before ld. AT and he cannot be now permitted to raise the plea under Section 34 of the Act. Respondent further submitted that, as per his knowledge no person by the name of Nirmal Singh was appointed as the Arbitrator, and it was Sh. K.S Dhingra, who had been appointed as Ld. Arbitrator in the matter, following the mechanism established by the provisions of Bye-

laws of NSE.

6. Respondent further submitted that petitioner had never disputed the amount except by saying that he had not been permitted to trade. Respondent further submitted that imposition of penalty for short margin had never been challenged even by way of oral submissions, before Ld. Arbitral Tribunal. Respondent further submitted that despite repeated intimations, petitioner had failed to reimburse the debit balance in his account and also meet the margin requirement; therefore, respondent had to indulge in settling the position of the petitioner as a last resort. Respondent further submitted and denied that ld. AT entered into patent illegality by considering the statement of account filed by respondent, or that it was false or that the same otherwise bore no clarity or that the entries were maliciously created only to show excessive balance against petitioner or that in the impugned award, there is a patent illegality. Respondent further submitted that during the course of the hearing, when the matter was reserved for arguments, it was petitioner who had raised the issue of wrong execution of the trades as mentioned in the award. It was pointed out to Ld. Arbitral Tribunal by the counsel for the respondent that there was some mistake on the part of the officials of respondent in executing the order placed by petitioner, and the same was subsequently rectified by respondent. Respondent further submitted that in this regard per se, ld. AT sought the explanation and confirmation of the trade rectification.

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7. Respondent further submitted that the said directions for filing for confirmation ledger and bills were made only to look into the controversy raised by petitioner regarding the wrong execution of his trades as mentioned in para 10 of the statement of defence, in the presence of ld. counsel for petitioner, which was not objected to by him. Respondent further submitted and denied that ld. AT entered into patent illegality by not considering that respondent had not produced a single document showing that there was a margin shortfall from the NSE. Respondent further submitted that the present objection raised by the petitioner is an afterthought and raised for the first time in the present proceedings.

ARGUMENTS BY PETITIONER AND RESPONDENT

8. Ld. counsel for petitioner contended that no arbitration clause existed in the agreement executed with respondent. He further contended that no testimony of any witness was recorded in the arbitration proceedings. Petitioner further contended that when the matter was reserved for the award, the respondent filed certain documents and the petitioner was not provided adequate opportunity to take his stand qua those documents.

9. Ld. counsel for petitioner further contended that Paragraph-4 of the statement of defense/counter claim and reply to the same by respondent, are in arbitral record. He argued that petitioners' amount was lying in the trading account, which was not further accounted by respondent. Petitioner further contended that statement of account shows the amount of Rs. 51,84,751.66,

which couldn't be withdrawn by petitioner. However, petitioner was allowed by Hon'ble High Court to use it. Petitioner further contended that no account for this credit in his account, was explained by respondent, still the counter claim was rejected.

10. Ld. counsel for respondent supported the award, and argued on the lines of plea taken in the reply.

APPRECIATION OF ARGUMENTS, LAW & FACTS

11. The crux of the legal principles explained by superior courts in respect of ambit of Section 34, is that Arbitrator is a Judge of the choice of the parties and his decision, unless there is an error apparent on the face of the award which makes it unsustainable, is not to be set aside even by the court, even if the court of law could come to a different conclusion on the same facts. The court cannot reappraise the evidence and it is not open to the court to sit in appeal over the conclusion of the Arbitrator. It is not open to the court to set aside a finding of fact arrived at by the Arbitrator and only grounds on which the award can be set aside are mentioned in the Arbitration Act. Where the Arbitrator assigns cogent grounds and sufficient reasons and no error of law or misconduct is cited, the award will not call for interference by the court in exercise of the power vested in it.

12. In **Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49**, Hon'ble Supreme Court held that an award could be said to be against the public policy of India, inter alia, in the following circumstances:-

"1. When an award is, on its face, in patent violation of a

statutory provision.

2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.

3. When an award is in violation of the principles of natural justice.

4. When an award is unreasonable or perverse.

5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.

6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."

13. Hon'ble Supreme Court in the case of ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India, 2019 SCC OnLine SC 677***, held that under Section 34 (2A) of the Act, a decision which is perverse 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. A finding based on the 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 characterized as perverse. It was held that 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.

14. In the present case, first objection of petitioner is based on plea that there was no agreement for arbitration. However, petitioner

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has not disputed the fact that it was in agreement with respondent for trading in NSE, and that respondent was the broker for such purpose. The arbitration in such matters is provided under the Bye laws of NSE itself, and admittedly on application of respondent, NSE had appointed the arbitrator for resolution of dispute between petitioner and respondent. Thus, there was no need to have a separate agreement between petitioner and respondent for arbitration. Petitioner was bound by the statutory Bye laws of the NSE, while accepting to trade on NSE. Hence, this objection is liable to be rejected.

15. Next relevant objection is based on plea that after the matter was reserved for orders, ld. Arbitrator accepted further documents from respondent and considered them, even without affording petitioner to take a stand in respect of those documents. The fact that those documents were accepted at the last stage, after reserving the matter for orders, is not disputed by respondent. Respondent has taken plea that such documents were directed by ld. Arbitrator to be filed by respondent, on certain factual objections taken by petitioner in statement of defence. Respondent has also pleaded that counsel for petitioner did not object against those documents, which were in the nature of Trade Confirmation documents. In my opinion, once ld. Arbitrator opted to direct for filing of such documents, vide which respondent sought to show correct situations regarding the trades (in the backdrop of admitted mistake on the part of the officials of respondent in executing the order placed by

petitioner, and subsequent rectification of the same by respondent), it was incumbent upon ld. Arbitrator to afford an opportunity to the petitioner to take a stand in respect of those documents. However, ld. Arbitrator went on to rely upon those documents, in order to return a finding in favor of respondent. This approach was certainly in the teeth of settled norms of fair opportunity being given to both the parties, and was in violation of principle of natural justice.

16. Secondly, I also find that award is silent in respect of the credit amount showing in favour of petitioner in the statement of account, which petitioner was allowed to use but was forbidden to withdraw. That amount had to be adjusted against the established claims against the petitioner. But, as already mentioned herein-above, award does not discuss that amount at all. This situation leads to a possibility of completely ignoring a piece of evidence, which had its impact upon the final findings.

DECISION

17. In view of my foregoing discussions, observations and findings, I do find that award in question suffers from perversity. Hence, petition is allowed and award in question is set aside.

File be consigned to record room after due compliance.

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Pronounced in the Open Court on this 04th Day of July, 2026

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