IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.157 OF 2021

Peerless Securities Limited … Petitioner
Vs.
Vostok (Fareast) Securities Pvt. Ltd. … Respondent

Mr. Sunny Shah a/w. Mr. Yash Kataria and Mr. Akshay Suresh i/b. Ashwin Ankhad & Associates for Petitioner.

Mr. Sean Wassoodew a/w. Ms. Ashna Shah for Respondent.

CORAM : MANISH PITALE, J.
RESERVED ON : 10th OCTOBER, 2025
PRONOUNCED ON: 14th OCTOBER, 2025

ORDER :

The petitioner has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Arbitration Act') to challenge arbitral award dated 23.02.2021 passed by a sole arbitrator appointed under the bye-laws, rules and regulations of the National Stock Exchange of India. The sole arbitrator has dismissed the claim preferred by the petitioner and upheld an order dated 11.09.2017 passed by the Investor Grievance Redressal Panel (IGRP). By the said order, the petitioner was directed to pay an amount of Rs.7.18 lakhs to the respondent.

2. The facts, giving rise to the present petition, are that the respondent company engaged the services of the petitioner to open a Demat and Trading Account for dealing in shares and securities in Futures and Options and Currency Derivative segments. Accordingly, in January 2016, such an account was opened and necessary documents were executed between the petitioner and the respondent. Thereafter,

certain other group concerns and family members of the respondent also opened such accounts with the petitioner between January 2016 and October 2016. According to the petitioner, such accounts were opened in the light of profits earned by the respondent during the course of trading, upon having engaged the services of the petitioner.

3. On 21.10.2016, the respondent sent a letter to the petitioner, instructing the petitioner not to convey any order / trade confirmation on real time basis through SMS or call as required by the company policy / regulations during market hours. The respondent also irrevocably took responsibility for all the orders placed by the authorized persons / sub-brokers of the petitioner. It was also specified that end of day trade confirmation through SMS / e-mails / calls would suffice and if there were any issues with regard to such confirmation, the respondent would revert back to the petitioner within 24 hours of such confirmation. It is in this backdrop that the trading activity continued and according to the petitioner, during the period between 2016-2017, it regularly updated the respondent about trades executed on behalf of the respondent through Electronic Contract Notes (ECNs) on registered e-mail address of the respondent and by SMSes on the registered mobile number. According to the petitioner, the respondent never raised any grievance with regard to the trade and transactions.

4. On 28.07.2017, the respondent filed complaint before the National Stock Exchange, alleging that the petitioner had fraudulently induced it to open account. By initially giving profits from January 2016 to 2017, the respondent was induced into opening further accounts of its concerns and family members. On this basis, it was claimed that the respondent and others had been duped and they had suffered losses due to the aforesaid acts of the petitioner.

5. On 21.08.2017, the petitioner responded to the complaint and denied the allegations, stating that all the trades and transactions were undertaken with the consent of the respondent. The dispute was referred to the IGRP. The other disputes raised by the concerns and family members of the respondent were also referred to various Members of the IGRP.

6. On 11.09.2017, the IGRP passed orders in all such complaints. While 3 complaints were dismissed, 3 were allowed. The complaint forming subject matter of the present petition was partly allowed. The order dated 11.09.2017 of the IGRP made certain observations against the petitioner to the effect that there were variations in the global reports generated from the offices of the petitioner at Mumbai and Kolkata. While the reports generated from Mumbai office showed profit earned by the respondent, the reports from Kolkata office showed losses; there were certain assurances being given on behalf of the petitioner while certain mandatory post transaction intimations were being given through another channel; the two employees of the petitioner, who were constantly in touch with the respondent, subsequently either left their jobs or they were removed; and the record showed that the respondent had suffered a loss of Rs.14.35 lakhs.

7. At the same time, the IGRP also noted that while the respondent was regularly receiving post transaction intimations from the petitioner, it did not take cognizance of the same and there was no clarity as to why the respondent waited till July 2017 to give a complaint in writing to the National Stock Exchange. On this basis, it was concluded that both the parties, through their actions and inaction, were responsible for the loss and in that light, the IGRP held that the petitioner could be held responsible only for 50% of the loss, which worked out to Rs.7.18 lakhs. Accordingly, the IGRP, by its order dated 11.09.2017, directed the

petitioner to pay a sum of Rs.7.18 lakhs to the respondent.

8. On 12.09.2017, another Member of the IGRP dismissed certain complaints made by family of the respondent. According to the petitioner, those complaints were also based on identical facts, which demonstrated the error committed by the IGRP in the present case.

9. Being aggrieved by the order dated 12.09.2017 passed by the IGRP, holding the claim of the respondent to be admissible to the extent of 50%, the petitioner initiated arbitration proceedings under the bye-laws, rules and regulations of the National Stock Exchange. Accordingly, the sole arbitrator conducted the arbitration proceedings.

10. On 23.02.2021, the sole arbitrator passed the impugned award holding against the petitioner and dismissing the arbitration application, thereby upholding the order of the IGRP. The sole arbitrator relied upon Regulation 3.4.1 of the National Stock Exchange (Futures & Options Segment) Trading Regulations (hereinafter referred to as the 'said Regulations') to hold that the petitioner, as a trading member on the Exchange, was required to obtain appropriate confirmed order instructions before placing orders. It was also held that on 25.03.2017, the respondent had instructed the office of the petitioner to send a detailed account of profit and to square up all the positions immediately without delay and yet the trading in the account of the respondent continued till July 2017. It was held that since the precise apportionment of losses between the two parties was not possible, the order of the IGRP, holding both parties to be responsible for the losses, deserved to be confirmed. Accordingly, the impugned award was passed by the sole arbitrator.

11. Aggrieved by the same, the petitioner filed the instant petition. The petition was taken up for hearing and the learned counsel for the

rival parties were heard.

12. Mr. Sunny Shah, learned counsel appearing for the petitioner submitted that the impugned award deserved to be set aside on two counts and in support thereof, he relied upon Section 34(2)(b)(ii) of the Arbitration Act to claim that the arbitral award was in conflict with the public policy of India and he also relied on Section 34(2-A) of the Arbitration Act to claim that the arbitral award was vitiated by patent illegality. On this basis, it was submitted that the impugned award deserved to be set aside. In order to elaborate upon the two grounds of challenge, specific reliance was placed on the recent judgement of the Supreme Court in the case of *OPG Power Generation Private Limited Vs. Enexio Power Cooling Solutions India Private Limited and another*, **(2025) 2 SCC 417**. It was submitted that the said judgement considered in detail the situations in which the aforesaid two grounds could be raised to demonstrate before the Court that the arbitral award deserved interference.

13. In order to support the first ground under Section 34(2)(b)(ii) of the Arbitration Act pertaining to the arbitral award being in conflict with public policy in India, it was submitted that the sole arbitrator erroneously relied upon Regulation 3.4.1 of the said Regulations in disregard to the judgements and orders passed by this Court. In that regard, reliance was placed on judgement of this Court in the case of *Ulhas Dandekar Vs. Sushil Financial Services Private Limited*, **2025 SCC OnLine Bom 715**, wherein it was held that, as per SEBI circular dated 22.03.2018, the aforesaid Regulation 3.4.1 of the aforesaid Regulations was directory and not mandatory. Further reliance was placed on judgement of the Division Bench of this Court in the case of *Erach Khavar Vs. Nirmal Bang Securities Private Limited* (**judgement and order dated 25.08.2025 passed in Arbitration Appeal No.12 of**

2025). It was submitted that this Court in the said judgement recognized the fact that Regulation 3.4.1 of the aforesaid Regulations was made mandatory only pursuant to SEBI Circular dated 26.09.2017 and that, in the facts of the present case, the transactions undertaken by the petitioner could not be said to be unauthorized. It was submitted that the position of law being clear in the light of the aforesaid judgements of this Court, the arbitral award having held contrary to the position of law, clearly gave rise to ground under Section 34(2)(b)(ii) of the Arbitration Act for setting aside the arbitral award.

14. As regards the ground under Section 34(2-A) of the Arbitration Act pertaining to patent illegality, reliance was placed on judgement of this Court in the case of *Dhwaja Shares and Securities Private Limited Vs. Sunita A. Khatod* (**judgement and order dated 22.07.2025 passed in Arbitration Petition No.1424 of 2019**). It was submitted that the arbitral award having confirmed, the responsibility and liability at 50:50 between the parties was unsustainable, particularly when this Court in the said judgement had specifically disapproved of such an approach. According to the learned counsel for the petitioner, it was patently illegal on the part of the sole arbitrator to confirm such an arbitrary order passed by the IGRP. Much emphasis was also placed on orders passed by other members of the IGRP in identical complaints raised by the family members of the respondent, wherein the complaints were dismissed and such orders had attained finality. It was submitted that the findings rendered by the IGRP in the present case and confirmed by the sole arbitrator could also be said to be perverse and hence it was submitted that the impugned arbitral award deserved to be set aside.

15. On the other hand, Mr. Sean Wassoodew, learned counsel for the respondent submitted that none of the grounds raised on behalf of the petitioner to assail the arbitral award arise in the present case. It was

submitted that the respondent did not engage the services of the petitioner for regular transaction on the Stock Exchange, but the services were specifically engaged for futures and options. It was submitted that the very nature of the said trading transactions concerned an agreement to buy or sell shares for a future point in time and this required specialized inputs from the petitioner, which claimed to be an expert in advising on investments. According to the respondent, assurances with regard to profits were given to it on behalf of the petitioner and hence, the respondent was lured into engaging the services of the petitioner.

16. It was submitted that initially fixed amounts towards profits were given to the respondent without any further details and this induced the respondent to further engage the services of the petitioner. The two employees of the petitioner, who were in constant touch with the respondent, continued to induce the respondent into investments and eventually, it was not made clear as to whether the said two employees were removed from services or they left on their own.

17. It was further submitted that conflicting global reports were received from the offices of the petitioner located at Mumbai and Kolkata. Since the reports from Mumbai office showed profits, the respondent was further induced; but later, the global reports generated from Kolkata office of the petitioner showed losses. It was in this backdrop that the respondent had instructed the employee of the petitioner at Mumbai on 25.03.2017 to send a detailed account of profit and to square up all the positions immediately without delay. Instead of following the said instruction, the trading in the account of the respondent was continued till July 2017, resulting in losses, for which only the petitioner could be held responsible.

18. It was submitted that reliance placed on the judgements of this

Court, indicating that Regulation 3.4.1 of the said Regulations was directory and not mandatory, could be of no assistance to the petitioner, for the reason that when dispute arose between the parties, the petitioner was required to produce appropriate evidences of post trade confirmations. In this case, no such confirmations were produced by the petitioner, and therefore, the IGRP as well as the sole arbitrator were justified in holding the petitioner responsible for the losses suffered by the respondent.

19. It was submitted that reliance placed on orders passed by the IGRP on complaints of others can be of no consequence, so long as the impugned arbitral award of the sole arbitrator recorded cogent reasons for holding against the petitioner.

20. As regards apportioning the losses at 50:50 and directing the petitioner to bear responsibility for half of the losses, it was submitted that the law laid down by this Court in the case of **Dhwaja Shares and Securities Private Limited Vs. Sunita A. Khatod** *(supra)* cannot come to the aid of the petitioner, for the reason that in the present case, it was not the sole arbitrator, who undertook the exercise of apportioning the losses at 50:50, but in the arbitral award, the sole arbitrator merely considered the approach adopted by the IGRP and on taking a reasonable view in the matter, confirmed the order of the IGRP. It was submitted that therefore, the petitioner had failed to make out its case on both the grounds of challenge raised in the instant petition. On this basis, it was submitted that the instant petition deserved to be dismissed.

21. This Court has considered the rival submissions in the light of the position of law laid down by the Supreme Court and this Court on the grounds of challenge specifically raised on behalf of the petitioner i.e. Section 34(2)(b)(ii) of the Arbitration Act, concerning the arbitral award

being in conflict with public policy of India and Section 34(2-A) thereof, which concerns an arbitral award vitiated by patent illegality.

22. In its judgement in the case of **OPG Power Generation Private Limited Vs. Enexio Power Cooling Solutions India Private Limited and another** *(supra)*, the Supreme Court has taken into consideration and elaborated the law on the concept of public policy of India. After referring to earlier judgements in this regard, the Supreme Court in the said judgement has observed as follows:-

> "55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.
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> 56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:
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> (a) violation of the principles of natural justice;
> (b) disregarding orders of superior courts in India or the binding effect of the of the judgment of a superior court; and
> (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.
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> However, while, assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii)."

23. On the aspect of the patent illegality, the Supreme Court in the said judgement referred to the position of law clarified in the case of *Associate Builders Vs. Delhi Development Authority*, **(2015) 3 SCC 49**, wherein it was held that an arbitral award would be patently illegal, if it is contrary to the substantial provisions of law of India or provisions of the Arbitration Act or the terms of contract between the parties. On the aspect of perversity, in the said judgement, again reference was made to the earlier judgement in the case of **Associate Builders Vs. Delhi Development Authority** *(supra)*, wherein it was held that a decision of the arbitral tribunal could be held to be perverse if its findings were based on no evidence or the tribunal took into account something irrelevant or it ignored vital evidence in arriving at its decision. Thus, the position of law with regard to the aforesaid two grounds of challenge specifically raised on behalf of the petitioner, is fairly clear and it needs to be applied to the present case.

24. A perusal of the impugned arbitral award shows that it has discussed the rival submissions in the light of the material on record and after considering the rival submissions, the order passed by the IGRP has been confirmed. A perusal of the order of the IGRP dated 11.09.2017 shows that it has attributed acts and omissions on the part of both the parties, while analyzing as to what were the reasons for the loss to the extent of Rs.14.34 lakhs suffered by the respondent. On the one hand, the IGRP has held against the petitioner on the grounds of the general authority procured from the respondent as per letter dated 21.10.2016; variations in the global reports generated from the offices of the petitioner at Mumbai and Kolkata; communications between the petitioner and the respondent on two parallel channels, one pertaining to post transaction intimations and other pertaining to assurances given to the respondent about the principal amount being intact and about the

returns; and the two relationship managers of the petitioner having left their jobs, without any clarity as to whether they were removed or they left on their own. On the other hand, the IGRP held against the respondent to the extent that although it was receiving regular post transaction intimations from the petitioner, it did not take any cognizance of the same and that, there was no clarity why the respondent waited till July 2017 to submit a complaint in writing against the petitioner. On this basis, it was held that both the parties, by their actions and inaction, had contributed to the losses, eventually concluding that the petitioner could be held responsible for loss to the extent of 50%, amounting to Rs.7.18 lakhs.

25. A perusal of the arbitral award of the sole arbitrator shows that while broadly, the sole arbitrator has agreed with the findings of the IGRP, further detailed reasoning has been recorded. The sole arbitrator specifically recorded that, around 25.03.2017 the respondent had strongly instructed the petitioner to send a detailed account of profit and to square up all the positions immediately without any delay, but the petitioner continued trading in the account of the respondent till July 2017. On this basis, it was concluded that the respondent was made to cough up a substantial amount against losses till 03.07.2017. The arbitral tribunal also held against the petitioner on the basis of the letter dated 21.10.2016, whereby the respondent instructed the petitioner not to convey orders / trade confirmations on real time basis and observed that obtaining such letter was an irregularity. Although it was noted that real time messages were being sent, the sole arbitrator held that the allegation of the respondent, that unauthorized and fraudulent trades were undertaken resulting in losses, could be accepted. Reliance was placed on Regulation 3.4.1 of the said Regulations and it was held that despite the instructions given on 25.03.2017 by the respondent, trading

continued till July 2017, resulting in losses to the respondent. Thereafter, the sole arbitrator also drew inference against the petitioner with regard to its two employees leaving the organization. But, it broadly agreed with the IGRP about the responsibility to be equally shared between the parties for the losses, thereby rejecting the arbitration application of the petitioner and upholding the order of the IGRP.

26. Having considered the order of the IGRP and the impugned arbitral award in detail, this Court finds that certain vital aspects were not appreciated in the correct perspective and that, the position of law in the facts and circumstances of the present case, inures to the benefit of the petitioner. It is found that the sole arbitrator, in the impugned award, has placed much emphasis on the respondent 'strongly instructing' the petitioner to give a detailed account of profit and to square up all the positions as per instructions given on 25.03.2017. Record shows that there was no such written instruction ever given by the respondent. This was merely an allegation made in the complaint filed before the IGRP. In such circumstances, the sole arbitrator could not have placed much emphasis on the alleged instruction given by the respondent to the petitioner on 25.03.2017. The emphasis placed by the sole arbitrator and the IGRP on the conflicting global reports from Mumbai office as well as Kolkata office is based on an assumption that the global reports showing profits had induced the respondent into continuing trading in futures and options. But the dates of the reports show that while the reports were received from the office at Mumbai in April 2017, from the Kolkata office, the reports were received in May 2017. Such dates do not justify the claim of the respondent that conflicting reports resulted in the respondent continuing in the trade activity. This is also contrary to the claim of the respondent itself that it had given instructions on 25.03.2017 to the petitioner to give detailed account of profit and to

square up all the positions immediately without delay. Such claims cannot stand together, which the sole arbitrator appears to have ignored. The IGRP also failed to appreciate this aspect of the matter.

27. Apart from this, the findings of the arbitral tribunal show that Regulation 3.4.1 of the said Regulations has been held to be mandatory and hence, the petitioner is held responsible to make good the losses of the respondent. There is substance in the contention raised on behalf of the petitioner that the judgements of the learned Single Judge of this Court in the case of **Ulhas Dandekar Vs. Sushil Financial Services Private Limited** *(supra)* and the Division Bench of this Court in the case of **Erach Khavar Vs. Nirmal Bang Securities Private Limited** *(supra)* lay down the law that Regulation 3.4.1 of the said Regulations is, at best, directory and not mandatory. Thus, it can be said that the impugned arbitral award is in conflict with the said established position of law and hence it is in conflict with public policy of India under Section 34(2)(b)(ii) of the Arbitration Act.

28. An attempt was made on behalf of the respondent to contend that, even if the requirement was directory, the petitioner could not escape the necessity of producing evidences like post trade confirmation in supporting its case. But, this Court finds substance in the contention raised on behalf of the petitioner that enough material was placed on record to show that the respondent was continually made aware through emails and SMSes about the trades undertaken on the Exchange. In fact, the declaration / letter of understanding dated 07.01.2016 sent on behalf of the respondent at clause 5 specifically authorized the petitioner to accept favourable orders and instructions over the phone and in case, such consent was to be withdrawn, the respondent was to be informed in writing at least a week in advance from the date of the withdrawal. Clause 4 of the said document required the respondent to bring to the

notice of the petitioner within 7 days, any queries pertaining to a contract note. None of these steps were undertaken by the respondent. This Court is not impressed by the contention raised on behalf of the respondent that when many e-mails and SMSes were being received, the respondent was not expected to go through each one of them. It is to be noted that the IGRP as well as the sole arbitrator acknowledged the fact that the respondent was receiving regular post transaction intimations from the petitioner, but it did not take cognizance of the same. Therefore, this Court finds substance in the contentions raised on behalf of the petitioner.

29. There is also substance in the contention raised on behalf of the petitioner that even if the arbitral award found losses suffered by the respondent, the extent of liability of the petitioner ought to have been determined on proper and cogent evidence. This Court in the case of **Dhwaja Shares and Securities Private Limited Vs. Sunita A. Khatod** *(supra)* held that simply halving the amount claimed by the aggrieved party and awarding it, amounts to an irrational and unreasoned approach. In fact, it was deprecated as being akin to a *panchayati* approach in such matters. Such an approach also shows that the learned arbitrator proceeded on the basis of no evidence to reach such a conclusion. This clearly takes it into the arena of Section 34(2-A) of the Arbitration Act, pertaining to patent illegality. It also goes into the zone of perversity as recognized by the Supreme Court in its judgement in the case of **Associate Builders Vs. Delhi Development Authority** *(supra)*. Hence, this Court finds substance in the contention raised on behalf of the petitioner on the said count also. In this regard, the learned counsel for the respondent placed much emphasis on the fact that it was not the sole arbitrator, who had simply halved the amount claimed but he had simply confirmed the order of the IGRP. Such contention cannot come

to the aid of the respondent as the learned arbitrator could have insisted on empirical evidence for ascertaining the extent of loss, if any, caused to the respondent on account of the actions or inaction on the part of the petitioner. Having failed to do so, the arbitral award is clearly hit by Section 34(2A) of the Arbitration Act. The orders of the IGRP in the other complaints made on identical facts show that diametrically opposite findings were rendered. These were completely ignored by the learned arbitrator, although they could be said to be relevant while considering the rival contentions in the arbitral proceedings.

30. This Court is conscious of the fact that while exercising jurisdiction under Section 34 of the Arbitration Act, the Court does not sit in appeal but interference is warranted only when specific grounds enumerated under the said provision are made out. In view of the discussion hereinabove, this Court is convinced that the grounds of challenge raised on behalf of the petitioner are made out and hence the impugned award deserves to be interfered with.

31. In view of the above, the petition is allowed. The impugned arbitral award dated 23.02.2021 is quashed and set aside.

32. Pending applications, if any, also stand disposed of.

(MANISH PITALE, J.)

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