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District Name : EastSinghbhum

Stamp Duty Paid By : [REDACTED]

Purpose of stamp duty paid : ARBITRATION AWARD

First Party Name : [REDACTED]

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इस रसीद का उपयोग केवल एक ही दस्तावेज पर मुद्रांक शुल्क का भुगतान के प्रमाण हेतु ही किया जा सकता है। पुनः प्रिन्ट कर अथवा फोटो कॉपी आदि द्वारा इसी रसीद का दूसरे दस्तावेज पर मुद्रांक शुल्क का भुगतान के प्रमाण हेतु उपयोग भारतीय मुद्रांक अधिनियम, 1899 की धारा 62 अन्तर्गत दण्डनीय अपराध है।



Arbitration Matter Ref. No.: NSE-SB-2023-12-356034

[REDACTED] (Applicant)

Category of Applicant: Investor/Constituent

Versus

[REDACTED] (Respondent)

Category of Respondent: Trading Member/Market Participant

Before the Ld. Sole Arbitrator:

[REDACTED]

ARBITRATION AWARD

The undersigned has been appointed as an Arbitrator by CORD, the Online Dispute Resolution (ODR) Institution on 14th February 2024 in the present matter. A meeting was held on date 21st March 2024 at 11:00 am through via video conferencing.

A. ISSUES RAISED BY THE PARTIES:

Issues raised by the Applicant –

[REDACTED]

1. The Applicant opened a trading account with Respondent in the year 2022 and was carrying out trades in cash segment and also primarily in F & O Segment.
2. He was in touch with the Relationship Manager (RM) of the Respondent who was carrying out the trades on his behalf and was also advising/suggesting various trading ideas and strategies.
3. He was regularly paying the margin money as advised by the RM of the Respondent.

[REDACTED]

4. Initially, the RM of the Respondent used to take specific pre-authorisation for the trades; however, later, the Applicant realised that large number of trades were carried out in his account for which he never gave any pre-trade order confirmation.
5. A large number of trades were carried out between November 2022 and February 2023 without his pre-authorised approvals and which had resulted into huge losses to him. In spite of his clearly instructing the RM of the Respondent not to do any trades, he continued to do trades without any pre-trade order confirmation.
6. Out of the trades carried out between November 2022 and April 2023, almost 80% were without the Applicant's pre-trade order confirmation.
7. Even after requesting the Respondent to provide the pre-trade order confirmation for all the transactions, the Respondent failed to provide any such proof.
8. Most of the trades were not initiated by the Applicant but were undertaken by the RM of the Respondent in the account of the Applicant on his own and without taking any prior approval from the Applicant.
9. He admitted having received the SMS/email confirmations from the Respondent intimating the trades executed; however, he was not going through the same since those were voluminous and huge in numbers.
10. The RM of the Respondent acted in a reckless manner causing loss to the Applicant.
11. The Respondent failed to provide any proof that the orders executed in F&O segment were either carried out by him (the Applicant) or with his prior authorisation.
12. The Applicant did not raise any objection or complaint earlier (immediately after the trades were executed) since he did not know about the authority/forum he needs to approach for his grievance.
13. He suffered a loss of Rs. 16.39 lakhs and claimed a compensation of the same amount. The Conciliator proposed a compensation of 20% of the total loss to be paid by the

Respondent which was not acceptable to him. He has claimed a compensation of at least 60% instead of 20% proposed by the Conciliator.

Response of Respondent to the issues raised by the Applicant:

1. Even if there were no pre-trade order instructions, the trades/transactions are binding upon the Applicant since all post-trade confirmations were sent by telephone, SMS, Electronic Contract Notes (ECNs) and Daily Activity Reports followed by pay-in and pay-out statements.
2. There is gross negligence by the Applicant for not raising any objection to the transactions executed by the Respondent. The Applicant cannot be permitted to raise an objection to the validity of transactions after 4-5 months from the last disputed transactions date. The Applicant is estopped from raising any objection as he is barred by the principles of estoppel and negligence.
3. Though there was no pre-trade order confirmations, voice recordings confirm that The Applicant ratified all transactions.
4. As per SEBI regulations, one should undertake transactions in stock market only if he understands the nature of relationship into which he is entering and the extent of risk exposure. Thus, The Applicant cannot take the plea that he does not fully understand the F&O segment.
5. The Applicant's statement that he is not aware of the trades executed in F&O segment is not correct as the RM has confirmed the trades over phone to The Applicant as evidenced by voice recordings.
6. Claim for compensation against losses incurred due to trades executed in his account and having no "pre-authorization" from the Respondent is not justified.
7. The Applicant did not raise any issue about unauthorised trades by the RM on the date of transactions. It indicates that he approved this unacceptable conduct of the RM or ratified the trades which he is disputing now.

8. If The Applicant had faced unauthorised and mis-utilisation of his securities/ funds by the Respondent RM then he would have stopped trading with the Respondent. However, The Applicant is still transacting in F&O segment with the respective branch of Respondent.
9. The alleged claim made by The Applicant/Claimant is false, frivolous, malicious and unsustainable.

B. OBSERVATION OF THE ARBITRATOR

1. The Applicant stated that there were more than 11000 trades, which were transacted during the relevant period; however, he does not have clear and comprehensive list of which are the trades carried out with his prior consent and which are the trades which do not have his prior consent. On being queried that some of the trades which he alleges to have been made without prior orders could have resulted into gains also, Complainant stated that the claim amount of Rs. 16 lakhs relates to a few major trades after netting of the losses with the gains. However, no detailed breakup of the loss claimed into the list of individual trades, the loss and gains in respect of each such trade have not been provided nor shared with the Respondent.
2. The Applicant also confirmed that he actually had been receiving the details of all transactions through SMS/emails/contract notes etc. However, he did not go through the same in depth immediately as they were too voluminous (some days even 200 to 300 nos. a day). If the Applicant had been vigilant enough to read and understand all the confirmatory messages immediately on daily basis, he would have very well-known and realised that trades were being carried out without his prior orders and he could have raised objections immediately. The Applicant failed in doing so and raising objections after a period of 4 to 5 months is not correct.
3. While there may be some merit in his claim that some trades were not based on his prior consent, why didn't he raise the objection immediately ? Failure to do so gives the impression that he was aware and consenting to the trades and because the trades resulted into loss, he is raising the claim at a much later date. If the trades had resulted

into a net profit, would the Applicant still have brought it to the attention of the Respondent and surrendered the gains? Definitely No.

4. This is very clear from the actions and intentions of the Applicant that he did not sufficiently exercise the care and diligence required from his end; believed and left it to the RM of Respondent hoping that he would gain from the transactions.
5. While there may still be a merit in his claim that some transactions were carried out without his prior approval, unless such transactions are individually identified, verified and facts established – it would be nothing but a mere vague and general across the broad claim which cannot be considered for awarding any compensation.
6. As regards the defence submitted by Respondent, they had just relied upon the statements that all trades were communicated to the Applicant through SMS/emails/contract notes etc. and that the Applicant was fully aware of the trades entered into his account. The second argument put forth by them is that the Applicant did not raise any complaint immediately but only after 5 or 6 months delay thereby reasoning that he had given his implied consent to the trades and hence cannot raise any objections now at a much later stage.
7. The Respondent did not put up any defence argument that all the trades were done and backed up by prior authorisations. On being specifically asked during the personal hearing, they stated that while some of the trades would have been based on prior authorisations, they were not in position to confirm that all the trades were based on specific prior authorisations of Complainant.
8. The actual grievance by the Applicant was that many trades were carried out without his prior authorisations for which there was no absolute denial by the Respondent and the Respondent was not in a position to substantiate with records that all trades were carried out with prior authorisation only. Instead, they were relying upon the fact that the trades executed were in the knowledge of the Applicant.
9. As a Trading Member, the Respondent's job was to execute trades only upon specific authorisation or instructions from The Applicant/Constituent and to ensure that no

trades get executed without any order from the Applicant (which should be recorded as a proof). It's the Trading member's obligation to maintain the records and the onus is on the Trading member to prove that prior authorisations from the the Applicant existed whenever a dispute arose at a later stage. Moreover, as an organisation, the Trading Member is expected to put in place, a strong, robust and reliable systems and processes in place to ensure that no trades gets executed without client's instructions. They also should have commensurate internal controls, checks and audit processes to ensure if their own staff/representatives are following the rules or if there are any deviations and wrong doings within their own setup.

10. The Respondent could not make any statement clearly to the above effect nor could produce recordings/documents to prove that all trades were executed only with the prior authorisation of the Applicant. Hence, in my view, the Respondent failed to ensure their basic obligation that all trades carried out in the Applicant's account were based on the prior authorisations only and no trade was executed without any such prior authorisation.
11. While there has been a failure at their own end to ensure all the trades were actually carried out based on the client's prior authorisations and no single trade has been executed without prior authorisation, the Respondent cannot take the defence of the happenings post trade like having ensured timely communication of the trades vide SMS/email communications, delivery of contract notes etc. The Applicant's failure to look onto post trade communications and raise objections in time cannot justify or cover up the Respondent's failure in the first instance.
12. Similarly, the Applicant has also failed in his basic duty of studying, reviewing and understanding the various communications received from the Respondent about the various trades executed and timely raise the objections, if any. The Applicant's argument that he could not be expected to study such voluminous number of messages or that he doesn't understand the same fully cannot be a reason to justify his actions of not raising objections immediately and timely. In a way, by not going through the trade details in time and raise objections immediately if they were unauthorised only prove that he was silently concurring to all such trades. It only proves that he has raised objections at this late stage because the trades have resulted into net loss position. Had

the trades resulted into net profit, he would have accepted everything as right and normal and claimed the profits as his rightful belonging.

13. In my view, both the parties failed to carry out their duties and obligations in the first place; however, they have been arguing and taking as defence the failure of the other party (ignoring their own failures) as a right to claim for compensations. Failure of other party cannot justify, cover up and negate one's own failure.
14. This stand of the parties cannot be accepted, and I hold both the parties as guilty of failure to discharge their own responsibilities that had created the present situation.
15. Based on the above observations, the Applicant's claim can be dismissed as bereft of any merit. But it would result into miscarriage of justice as the Respondent also is equally guilty of failure in carrying out his responsibilities.
16. In the overall dispensation of equity, fairness and justice and to ensure both parties own up their failures and pay up for consequent financial losses, I consider it appropriate and just that the total loss of Rs. 16.39 lakhs as claimed be borne equally by both the parties. In other words, the Respondent will compensate and pay to the Applicant, Rs. 8.195 lakhs (50% of the claim amount) and the Applicant has to bear the balance amount of Rs 8.195 lakhs (balance 50%).

C. AWARD

1. The Respondent/Trading Member/Market Participant shall pay a sum of **Rs. 8,19,500/- (Rupees eight lakhs nineteen thousand and five hundred only)** to the Applicant within 30 days of this award.
2. Interest shall be paid at the rate of 7.5% p.a. (simple interest) for any delay beyond 30 days on the amount paid beyond 30 days period.
3. Cost of this proceeding to be borne by the parties in accordance with the Circular issued by SEBI dated July 31, 2023 as updated from time to time.



[Signature of the Arbitrator]

Place: 

Dated: 31st March 2024