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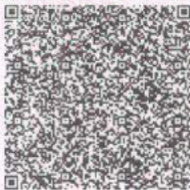
सत्यमेव जयते

INDIA NON JUDICIAL  
Government of Gujarat  
Certificate of Stamp Duty

Certificate No. : IN-GJ76574952237643W  
Certificate Issued Date : 07-Oct-2024 11:27 AM  
Account Reference : CSCACC (GV)/ gjcsceg07/ GJ-SUBIP0519/ GJ-SU  
Unique Doc. Reference : SUBIN-GJGJCSCEG0768835211240696W  
Purchased by :   
Description of Document : Article 5(h) Agreement (not otherwise provided for)  
Description : ARBITRAL AWARD  
Consideration Price (Rs.) : 0  
(Zero)  
First Party :   
Second Party :   
Stamp Duty Paid By :   
Stamp Duty Amount(Rs.) : 300  
(Three Hundred only)

BEFORE THE SOLE ARBITRATOR

In the matter of an Arbitration under the  
Rules, Bye-laws and Regulations of National Stock Exchange of India Limited



NSE/SB/2024-02/285530

SNSE10424A0157 OF 2024 OF CORD

HDF

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## Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.



Between

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] – [REDACTED] ..... **Applicant**

And

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] – [REDACTED]

Trading Member..... **Respondent**

## **I.CLAIM OF THE APPLICANT**

### **As Synopsized by the Applicant**

- Disputed Period:

The present Arbitration is filed by the claimant for the unauthorized trade executed in her account from 6<sup>th</sup> May 2023 to 15<sup>th</sup> October 2023 i.e., disputed period. The grievance has been raised in writing on 22<sup>nd</sup> November 2023 to the respondent which has not been resolved and therefore present arbitration.

- Disputed Trades & Claim:

o All the trades executed in the account of claimant, whether it is an F&O segment or capital market segment is without instruction / consent of the claimant except the 3 specific transactions with respect to purchase of 5000 shares of Vedanta Limited, 5000 shares of Restaurant Brand and 8000 shares of BGR Energy as per the details narrated in SOC para 4 & 5 by paying sum

[REDACTED]

of ₹ 30,00,000 in advance i.e., before buying securities. Numerous transactions have been executed in the account of the claimant without her instruction, knowledge, or information. In F&O Segment trading activities carried out in 58 different scrip which amounted to ₹ 97,93,42,454 and which resulted into loss of ₹ 17,31,866.97. The said Enclosure III is an extract in Excel Sheet from the reports in PDF file derived from back-office software of respondent. The data and figures arrived at is not under challenge but title "I M Financial" has been challenged. In Cash Segment trades were executed in 15 different scrips which resulted in short term / long term gain of ₹ 1,33,339.71 and Intraday loss of ₹ 51,582.95 aggregating net gain of ₹81,756.56.

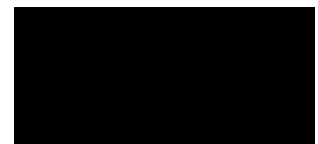
The clarification of amount of Dividend narrated at para 13 of clarification dated 20/08/2024 and Interest on F&O Margin, Interest on delayed payment and Margin Shortage Penalty are segregated from the ledger statement placed on record with SOC as Enclosure I page 28-39.

- Substance of Dispute:

- o Admitted position of no instructions placed by the claimant.
- o Admitted position of no call recording system of designated line (Annexure B email of service provider – submission by respondent dated 26/08/2024 at 05:13 pm).
- o No post trade confirmation as has been envisaged in SEBI circular dated 22<sup>nd</sup> March 2018 during the disputed period.
- o No settlement of trade through banking channel.
- o No execution of POA /DIS to settle the trades.
- o No instruction for pledge.
- o Frequent Short Margin Penalty, Interest on F&O Margin, Interest as delayed payment.
- o The transcript of call recording placed along with the SOD as Annexure M at page 155–157 and at para IV of SOD on page 16-18 is the conversation held through personal mobile of Ekta Punjabi and Claimant and not from designated line with AP. The call recording placed on record by the respondent is through selective and convenient approach by not placing all the conversation by and between claimant and [REDACTED]

- Conclusion:

- o SEBI circular dated 22<sup>nd</sup> March 2018 is not admittedly been violated.
- o The trades during the disputed period cannot be said to be in compliance with the provisions of SCRA 1956, SEBI Act 1992 and Rules, Regulations and Circulars issued thereunder, rules, regulations, and bye laws of Stock Exchange.
- o The extension to refer Indian Contract Act, 1872 arises only when there is a circumstance of benefit of doubt which precludes fair and equitable justice.



## **II. STATEMENT OF DEFENCE/ REPLY OF THE RESPONDENT**

As Synopsized by the Respondent

A. Points from the Respondent's Statement of Defense Dated July 29, 2024

### **1. Preliminary Objection**

a. The Applicant revised her Statement of Claim ("SOC"). Added new grounds, modified claim amount and claim amount on basis of Respondent's Statement of Defense dated June 04, 2024.

b. The claim for Rs.18,17,097.80/- is without any basis and without giving any documentary evidences.

c. The Applicant for the first time claimed an amount of Rs.17,31,866.97/- towards loss in F&O segment, which she never claimed in her earlier SOC dated April 24, 2024 nor did she claim this in her Complaint.

d. The Applicant had not provided documentary evidences/proper calculation of other claim amount such as Rs.1,47,500/- (loss on non-receipt of dividend due to unauthorized sale of shares), Rs.10,222.81/- (towards interest on FNO margin), Rs.4995.63/- (towards margin shortage penalty) and Rs.4,269.15/- (towards interest on delayed payment).

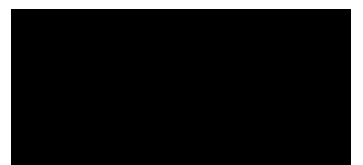
e. The Applicant is not entitled for any interest on claim of Rs.18,17,097.80/- and claim for loss as mentioned in Prayer 3 due to appreciation in value of shares of Vedanta – 5000 shares and Restaurant Brand 1035 shares, same being notional.

f. The claim of the Applicant keeps changing her stance every time and even the Complaint before CORD / IGRP.

g. The Applicant admits of receiving 1000 SMS and email from the Respondent but she could not pay attention and hence ignorance of such communications and thereafter wrongly alleging and challenging the trades showing ignorance of the said messages. Ignorance of such messages and confirmations cannot be excused by the Applicant. Please refer Point 17(i) on page 11 of Statement of Case (SOC)

h. The Applicant received messages from the Exchanges and Depositories on the trades/movement of the shares and never raised any objection.

i. The Applicant from May 06, 2023 to October 15, 2023 received 154 SMS (including Pledge OTP for more than 20 number of times) and 276 emails from the Respondent. The Authorised Person ("AP") of the Respondent also sent Statement of Holding in the month of July 2023, August 2023, October 2023



j. The Applicant never raised dispute inspite of receiving various communications/messages from the Respondent/regulators. As per Annexure 6 of SEBI circular dated August 22, 2011, the Respondent never approached the broker for any dispute within 7 working days from the date of receipt if funds/securities/statement from the Respondent.

## 2. Factual Matrix of the Case

a. The Applicant after having understood policies and procedures, facilities and other essential information, opened an account with the Respondent.

b. Welcome letter sent to the Applicant by Respondent on her registered email address containing the details of the account.

c. The Respondent on March 19, 2021 had sent login id and password on the Applicant registered mobile number and email address to access online trading system which give instant and minute details of transactions executed. However, she failed to raise any concern on real time basis but she has lodged complaint with intention to extract money from Respondent.

d. After the account opening the Applicant was allotted client code 67810677. The Applicant transferred (i) Rs.710/- on March 31, 2021, (ii) Rs.5,000/- on May 06, 2023, (iii) Rs.10,00,000/- on May 08, 2023 and (iv) Rs.10,00,000/- on May 09, 2023.

e. The Applicant executed her first trade on May 09, 2023 by executing trades in (i) Buy 5000 shares of Restaurant Brands Asia Limited ("Restaurant"), (ii) Buy 5000 shares of Vedanta Limited ("Vedanta") and Sell of Axis Bank Futures, HDFC Bank Futures, Vedanta Futures and sold put option of Finnifty. After posting of invoice in her ledger for these transactions the debit balance in her account was Rs. 14,590.68. SMS was sent for the balance of Rs. Debit 14,590.68 on May 09, 2023.

f. The Applicant does not have the liberty to reject part of the Contract and accept part of the same contract and that too after more than 100 days.

g. The Applicant after 4 months, again transferred Rs.10,00,000/- on October 06, 2023 for the purpose of trading and clearing her debit balance of Rs.2,34,755.22/-. On October 13, 2023, the Applicant admits of buy transaction of BGR Energy Systems Limited (8000 shares) but denied other derivatives transaction executed under the same contract and on the same day (ledger statement), Annexure H of SOD (contract note dated May 09, 2023) and contract note dated October 13, 2023 and (contract note dated October 13, 2023).

h. The Respondent from time to time has sent to the Applicant all trade confirmations via SMS and email on her registered mobile number [REDACTED] and email address [REDACTED]

[REDACTED]. The Applicant authenticated the OTP received by her from CDSL for pledging of her shares after having full knowledge of transactions. Refer Annexure J (SMS Log), Annexure K (Email logs) and Annexure L (pledge report) of SOD. Not only this Applicant demanded her holding statement for the month of July, August and October 2023 which was also sent promptly by Authorised Person of Respondent. Please refer Annexure C of submission filed on August 26, 2024 by Respondent. This amply proves that she had complete control on her trading account and had full knowledge about the transactions carried out by her.

i. The Applicant confirmed to pledge high value of shares (even when she was traveling) of Rs.16,56,084 on May 11, 2023 (traveling), Rs.14,24,333/- on May 25, 2023 (not traveling) and Rs.12,24,658/- on October 20, 2023. Refer paragraph III of 4 of Part B of SOD.

j. The Applicant in call recording dated October 16, 2023 admits of loss of Rs.50 Lakhs in her both account. The Applicant in rest of the recordings dated October 17, 23, 25, 26 and 30 of 2023 dealing comfortable as she understands the nitty gritty of the market and has vast experience in dealing in the market. Refer Annexure M (call recordings) and Annexure N (transcript of call recording dated October 16, 2023) of SOD. As submitted during the hearing, the Respondent submits that during period October 16, 2023 to October 30, 2023, the Applicant traded in derivatives transactions and incurred loss of Rs.1,56,446.

3. The Respondent reply to the contents of the Applicant SOC

- a. The Enclosure III submitted by the Applicant is false, fabricated and forged document as the said document has never produced by the Respondent having document named as [REDACTED]
- b. Points from the Respondent's Additional Documents/Clarifications submission as per direction of the Arbitral Tribunal dated August 22, 2024

1. The Respondent as per the provision of NSE and SEBI guidelines, has followed all the applicable regulations including sending of contract notes and SMS to Applicant regarding trade confirmation.

2. The Applicant at the time of account opening choose not to pledge securities without any other further instruction from the Applicant. She has ensured from day one that no pledge can take place without her knowledge and sanction. Refer page 52 of SOD under the heading 'STANDING INSTRUCTIONS'. Thus, the Applicant every time has authenticated the OTP received by her from CDSL for pledging of shares.

3. The Applicant at the time of account opening with the Respondent has provided the declaration available on the page number 55 of SOD. Some of the important declaration given by the Applicant are available in point no. 1, 2, 3, 4, 5, 11, 12, 13, 14 and 16.

[REDACTED]

4. The Applicant beside providing declaration, has provided confirmation for other terms and conditions under Voluntary Document. Important terms and conditions accepted by the Applicant are available in point no. 2, 10, 11, 12, 13, 15, 19, 20, 29, 30, 32 and 35.

#### 5. Applicability of Contract Act

a. The contract executed on the platform of Stock Exchange is governed by the Rules, Regulations and Bye-laws of that particular Exchanges/Depository and Indian Contract Act.

b. As per NSE Bye law 14 of Chapter XI (Arbitration), besides having provisions of Byelaws and regulations shall be subject to the provisions of the Act (i.e. the Arbitration and Conciliation Act, 1996) to the extent not provided for in these byelaws, or the Regulations.

c. As per NSE Byelaw 20 of Chapter XI (Arbitration), provides that the Byelaws shall be read in conjunction with the provisions of any circular, guideline, norm, instructions (by whatsoever name they may be called) issued by SEBI in this regard, as well as any other law in force. Thus, besides having byelaws, regulations, guideline, norm and instructions (issued by SEBI), the Act and any other law in force shall be applicable.

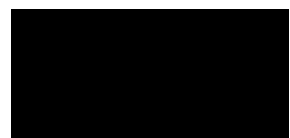
d. As per section 19 of the Act, the Arbitral Tribunal is not bound by Code of Civil Procedure, 1908 (CPC) or the Indian Evidence Act, 1872 (IEA). Thus, there is no exclusion of the Contract Act but the Arbitration Act only excludes CPC and IEA. Thus, the Arbitral Tribunal is not bound by CPC and IEA and the Act doesn't exclude the Contract Act and further Byelaw 20 of the NSE Byelaws gives powers to read in conjunction with any other law. In view of the same, Contract Act is applicable and having paramount importance in the present dispute.

#### 6. Applicability of Sections 196 to 200 of Indian Contract Act (Doctrine of Ratification)

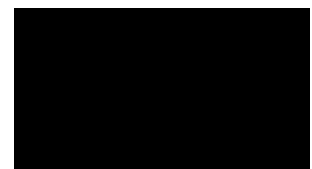
a. The Indian Contract Act is Law of the Land and the same also applies to arbitration. At one hand the Applicant argued about void, voidable, etc. contract to favour her arguments and on other hand when the question of applicability of the provisions comes the Applicant is denying the same.

b. The following expressed or implied acceptance of contract by Applicant for the trades executed in her account attracts Section 196 and 197 of Indian Contract Act:

- Implied Act - Not disputed: (1) Receipt of contract notes / margin statement on emails (2) Not disputed SMS received on her mobile number for trades executed in her account and for movement of stock in her account. On the contrary Applicant has admitted the facts of receiving all electronic communication in Point No. 17(i) on page 11 of her SOC.
- Implied Act - Not disputed: Pledge confirmation SMS.



- Expressed Act - Accepted: Pledge confirmation by OTP verification and authorizing pledging of shares.
- Expressed Act - Transfer of funds of Rs.10,00,000/- on October 06, 2023 to clear debit in her account and to carry out further trades.
- Expressed Act - Accepted: buy trade of 5000 shares of Restaurant Brands Asia Limited, 5000 shares of Vedanta Limited on May 09, 2023.
- Implied Act – Accepting cash transactions and denial of derivative transactions done on the same date which were part of the same contract note by virtue of which a contractual obligation is created for both the parties. Details of transactions other than cash transactions are - Sell trade of Axis Bank Futures, HDFC Bank Futures, Vedanta Futures and put option of Finnifty on May 09, 2023.
- Expressed Act: Trades referred to in the above point is that of May 9, 2023. Applicant in her claim has demanded cash profit of Rs.28000 for the contract raised on the even date. However message received by Applicant for the available balance in her account on May 09, 2023 was Rs.14,590.68/- (debit), on May 10, 2023 was Rs. 9,919.40/- (debit) and on May 12, 2023 was Rs.9,225.18/-, which was not objected by the Applicant.
- Expressed Act - Accepted: buy trade of 8000 shares of BGR Energy Systems Limited on October 13, 2023.
- Implied Act - Accepted cash transactions and denial of derivative transactions done on the same date - buy/sell trades in derivative segment on October 13, 2023.
- Expressed Act – Accepted in call recording dated October 16, 2023, admitted a loss of Rs.50 Lakhs in both the accounts. In SOC she has admitted in Point No. 16, Page No. 10 that for the first time on October 19, 2023 she has downloaded few reports from Blink Trade App and she came to know about loss in her account but 3 days prior to that i.e. on October 16, 2023 she admits loss of Rs. 50 lacs in telephonic communication with AP office. Recording and transcript of the same is at Annexures M and N of SOD. This proves her malafide intention.
- Implied Act – As per Annexure – 6 of SEBI Circular dated August 22, 2011 (Which is part of SOD – Annexure D), the client has to bring any dispute arising out of statement of account or settlement to the stock broker in writing preferably within 7 working days from the date of receipt of funds/securities/statements. The Applicant by not raising dispute within 7 days has ratified the transactions.
- Implied Act – Accepted Statement of Holding sent to the Applicant. The Applicant through her expressed and implied acts has ratified. The acts as per the Section 199 of the Contract Act. The Respondent submits that:
  - a. The Applicant has authorized OTP received by the Applicant from CDSL in order to pledge her securities. OTP authorization by the Applicant itself is expressed act of her.
  - b. As per clause 4 of Annexure A of SEBI circular dated February 25, 2020 provides Operational Mechanism for margin pledge by way of physical instructions or electronic instructions. As per the said SEBI Circular, OTP verification is mandated and without OTP verification by the Applicant it is not at all possible that the securities of the Applicant shall be pledged.





- c. The Applicant by OTP verification expressly ratified her act of pledging her securities and also transactions in her account. Section 196 and 197 of the Indian Contract Act, clearly states that the person can either ratify or disown the act of the Person who acted on his/her behalf without authority. If the person expressly ratifies then such act cannot be disowned later.
- d. The Applicant in voice recording dated October 16, 2023 has ratified the losses in her account. The Applicant did not object to the loss and did not question about any trades for which the loss has arisen. This call recording proves that the Applicant was fully aware about the transactions in her account and she has given unconditional implied acceptance of trades in her account.
- e. The Applicant accepting trades in equity and disputing derivatives transactions. Ratification for equity trades on same dates amounts to ratification for futures and options trades on same dates covered under the same contract note and so is the case for all transactions.

d. Position of Pre-trade confirmation

- f. The pre-trade confirmation can be in any other mode which is expressed by using the word 'etc.' In exceptional circumstances as per SEBI Circular dated March 22, 2018. As per Appellate Arbitration Award dated July 04, 2024 in Anand Rathi Share and Stock Brokers Limited V/s Prince Naresh Saxena wherein the requirement of having any pre-trade confirmation is not taken into consideration but based on facts and circumstances of the case – “580. A plain reading of the above provision, which also has been relied upon by both the parties vide their respective pleading before this Appellate Arbitral Tribunal. There is no standard format of words anywhere or in any provision which specifies that only a particular format or those particular words only would communicate placing of an order by a client/constituent”
- g. Thus, SEBI has left upon to the interpretation of the courts/tribunal what can be considered under technical failure and also etc. and also further SEBI has left the interpretation to be made depending upon the merit of the case.
- h. The Respondent states that the voice logger installed at the office of the Authorised Person was not functioning due to landline issue and also telephone issues. Refer Annexure B of Additional Documents/Clarifications submission (dated August 26, 2024) of the Respondent.

C. Points from Objection to the Applicant's undated submissions filed on August 20, 2024 which was submitted as rejoinder On August 20, 2024 at 04.55 pm

- 1. The Applicant has filed not additional documents/clarification and argue on section 194 and 201 to 204 of Indian Contract Act but the Applicant has filed the Rejoinder / Written Submission to the Respondent's oral argument placed before the Arbitral Tribunal in second hearing dated August 16, 2024.

## 2. Objection of the Applicant's undated Rejoinder

- a. There is no direction from the Arbitral Tribunal to file Rejoinder on the Respondent's oral argument.
- b. The Rejoinder is filed by the Applicant in the guise of the filing additional documents / clarification. Therefore, should not be accepted.

## 3. Reply to the Applicant's undated Rejoinder

- a. The Applicant has not filed revised SOC as per the direction of the Arbitral Tribunal and has modified the basis and amount of claim. The Arbitral Tribunal dated 10-Jun-2024 12:40 PM directed to remove any and all reference of the Conciliation but the Applicant has completely revised her claim. Section 23 (3) of the Act, only states about amend or supplement claim.

b. The consideration is one of the essential of valid contract and the Applicant has paid the consideration for the purchase/sell of shares and derivatives instruments.

c. The case laws of New India Civil Erectors, Delhi Development Authority, In Associated Engg, Nav Bharat, Bharat Cooking are not applicable at all. The said case laws only deals about the jurisdiction of the arbitrator but the Applicant has failed to substantiate whether the Courts in the above case laws have actually dealt with the Contract Act.

In view of the above submission of bullet points, the Respondent also request the Arbitral Tribunal to consider the various detailed submissions of the Respondent.

## III. HEARINGS

1. Three Hearings were held, the Minutes whereof are reproduced below:

### Minutes of the 1<sup>st</sup> hearing held on 22nd July 2024 at 03:30 pm

The following parties were present before the tribunal:

For Claimant:

[REDACTED]  
[REDACTED]  
[REDACTED]

For Respondent:

1. [REDACTED]
- [REDACTED] – [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

CORD: Case Manager, [REDACTED]

1. The first virtual hearing for the case NSE-SB-2024-02-285530-[REDACTED] was conducted by this tribunal on July 22, 2024, via Zoom VC under the SEBI NSE empanelled ODR institution CORD.
2. The Tribunal heard both parties and issued the following orders:
  - i. The Tribunal accepts the revised Statement of Claim submitted by the Claimant.
  - ii. The Tribunal grants the respondents time until July 29, 2024, to submit the Statement of Defense in response to the revised Statement of Claim.
  - iii. The Tribunal directs the respondents to submit an English transcript of any telephonic conversations between the claimant and respondent, to be submitted along with the revised SOD by 29th July 2024.
  - iv. The matter is adjourned, with the second hearing scheduled for August 5, 2024, at 11:30 am.

Date: 22 July 2024.

**Minutes of the 2<sup>nd</sup> hearing held on 16th August 2024 at 03:30 pm**

The following parties were present before the tribunal:

For Claimant:

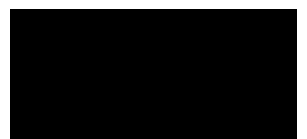
1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

For Respondent:

1. [REDACTED].
2. [REDACTED] – [REDACTED]
3. [REDACTED]  
[REDACTED]
4. [REDACTED]

CORD: Case Manager, [REDACTED]

1. The second virtual hearing for the case NSE-SB-2024-02-285530-[REDACTED] was conducted by this tribunal on August 16th, 2024, via Zoom VC under the SEBI NSE empanelled ODR institution CORD. Initially an opportunity was provide to the respondents to put forward their defense to the revised SOC.
2. The Respondent contends that the Applicant's Statement of Claim (SOC) should be dismissed as it is allegedly false, frivolous, and dishonest. The Applicant has revised her claim multiple times, changing the grounds and amounts after the Respondent's initial Statement of Defense (SOD), which the Respondent argues should not be allowed. The Respondent challenges the Applicant's claims, particularly regarding losses in the F&O segment, non-receipt of dividends, and other alleged financial damages, citing a lack of supporting documents. The Respondent also notes that the Applicant received numerous communications and confirmations from the Respondent and related entities during the disputed period, suggesting that the Applicant was



well-informed and aware of her transactions. The Respondent asserts that the claims are without basis and calls for the Applicant to provide all supporting documentation.

3. The claimant's representative however informed that the claimant did not receive any communication to her registered number. Hence, she was not aware of any of the transactions that happened in her account. The tribunal directed the claimant to check in with the depositories as to why there was not communication received for the pledging.

4. A brief discussion was held on SEBI's circular dated March 22, 2018, focusing on what constitutes unauthorized trades and the related exceptions. The Tribunal clarified that the SEBI Circular leaves no room for interpretation and must be adhered to strictly as written.

5. The Tribunal heard both parties and issued the following orders:

i The Tribunal is providing a final opportunity to both parties as a final hearing on 22nd August 2024 at 03:30 pm. There will not be any further adjournments and the matter will be reserved for award.

ii The Tribunal grants the respondents time until August 20, 2024, 05:00 pm to submit all the additional documents/clarifications.

### **Minutes of the 3<sup>rd</sup> hearing held on 30th August 2024 at 03:30 pm**

The following parties were present before the tribunal:

For Claimant:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

For Respondent:

1. [REDACTED]
2. [REDACTED] – [REDACTED]
3. [REDACTED]  
[REDACTED]
4. [REDACTED]

CORD: Case Manager, [REDACTED]

1. The third virtual hearing for the case NSE-SB-2024-02-285530\_ [REDACTED] was conducted by this tribunal on August 30th, 2024, via Zoom VC under the SEBI NSE empanelled ODR institution CORD.

2. The Arbitral Tribunal provided both parties to opportunity to raise the contentions.

Detailed discussions regarding the impact of provisions of the Indian Contract Act were conducted.

3. The Tribunal posed questions regarding the voice recordings placed on the record. The hearing was concluded with certain directions informed by the arbitrator.

4. The Tribunal heard both parties and issued the following orders:

i The Tribunal reserved the matter for award.

ii The Tribunal grants the respondents time until 09th September 2024, 05:00 pm to submit a brief of all contentions raised.

Dated: 02 September 2024



#### IV. FINDINGS AND REASONING

2. The Applicant is admittedly a Constituent Client of the Respondent, with a duly executed KYC/MCA by and between both parties.
3. The so called “Preliminary Objections” raised by the Respondent are not preliminary objections at all, but merely frivolous objections to the Applicant’s Statement of Claim.
4. These misconstrued “Preliminary Objections” are therefore rejected and dismissed as not being preliminary objections within the meaning and context of the term.

##### **I. Regarding the question of the transactions being unauthorised under the SEBI Circular of 22<sup>nd</sup>. March, 2018**

5. This Tribunal Finds and Reasons that, regardless of the precedents placed before this Tribunal by the Respondent, the fact remains that there is no record whatsoever of any pre-trade instruction/confirmation being given by the Applicant to the Respondent in any recordable form as enumerated by the said circular for the period of the disputed trades, which was from 6<sup>th</sup>. May, 2023 till 15<sup>th</sup>. October, 2023.
6. The Respondent’s belated submission at the third Hearing, with a letter purporting to be from the company that installed the voice logger, which, incidentally, it claims to have taken about one year to repair, to be too little too late, and this Tribunal is of the opinion that the said letter is insufficient proof regarding the inoperability of the voice logger. In any case, the Respondent had other options available to record any pre-trade instructions as enumerated in the said SEBI Circular.
7. **Thus, this tribunal Finds and Reasons that the Respondent failed to produce any record of pre-trade instructions being given to the Respondent by the Applicant.**
8. **THUS, THIS TRIBUNAL FINDS AND REASONS THAT THE DISPUTED TRADES ARE UNAUTHORISED UNDER THE SAID SEBI Circular.**

##### **II. Regarding the applicability of the Indian Contract Act, 1872 to this Reference**

9. This Tribunal concurs with the Respondent that the Indian Contract Act, 1872, does apply to transactions that take place on the floor of the Exchange, and under the SEBI Act, adhering to the Rules, Regulations and Bye-Laws of the Exchange and SEBI.
10. **Thus, this Tribunal Finds and Reasons that the Indian Contract Act, 1872, with all its sections, does apply to the present Reference.**
11. **THUS, ALL THE SECTIONS OF THE INDIAN CONTRACT ACT, 1872 REGARDING RATIFICATION OF UNAUTHORISED TRANSACTIONS APPLIES TO THE PRESENT REFERENCE.**

##### **III. Regarding Ratification of the disputed transactions**

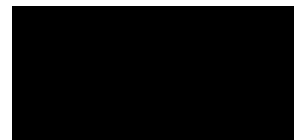




12. This Tribunal has taken grave consideration of all the various facts presented to it, and has applied existing Indian law to these facts.
13. Thus, this Tribunal Finds and Reasons that:
- a. The Applicant has consistently verified the OTP sent to the Applicant's registered mobile number by CDSL to pledge her shares for transactions on the Exchange executed for her by the Respondent.
  - b. These verifications by the Applicant amount to ratification of the unauthorised trades executed by the Respondent in the Applicant's trading account with the Respondent.
  - c. The call recording of 16<sup>th</sup>. October, 2023, albeit made from an unregistered mobile number by the Respondent to the Applicant, amply exhibits the Applicant accepting that there was a loss of RS.50,00,000/= in her account with the Respondent.
  - d. However, the very same conversation also shows the Respondent making decisions for execution of trades in the Applicant's account, to which the Applicant agrees when promised a recovery from the loss incurred in her account.
  - e. To this Tribunal, this conversation reflects on the fact that the Respondent regularly made such decisions on the Applicant's behalf. This behaviour of the Respondent shows that the Respondent greatly exceeded its mandate as per the KYC/MCA executed by and between the Applicant and the Respondent. This behaviour also flaunts and ignores the Rules, Regulations and Bye-Laws of the Exchange and, importantly, SEBI.
  - f. This Tribunal Finds and Reasons that the Respondent, has acted, if not as a Portfolio Management Service, then as a very close parallel to it in its interaction with the Applicant.**
  - g. This Tribunal brings to the notice of the Exchange and SEBI the actions of the Respondent in the present Reference.**

### CONCLUSIONS


14. This Tribunal has Found and Reasoned that the disputed transactions are unauthorised under the SEBI Circular of 22<sup>nd</sup>. March, 2018.
15. These unauthorised transactions, however, have been ratified by the Applicant *vide* her pledging of shares as well as conversations recorded on 16<sup>th</sup>. October, 2023 and thereafter.



16. This Tribunal further Finds and Reasons that the Respondent has acted in a manner far exceeding its mandate, and in deliberate opposition to the Rules, Regulations and Bye-Laws of the Exchange and SEBI.
17. It is the firm opinion of this Tribunal that there was a tacit understanding between the Respondent and the Applicant regarding placement of orders, and their execution by the Respondent on the Applicant's behalf, and that the dispute regarding the unauthorised transactions has only been brought before this Tribunal by the Applicant because she suffered a loss. This is further exemplified by the call recording of 16<sup>th</sup>. October, 2023.
18. This Tribunal Finds and Reasons that both, the Applicant and the Respondent are equally mired in the present Reference, and thus the onus is shared equally by each party to this dispute.
19. This being so, this Tribunal Finds and Reasons that there exists no justification in Awarding any part of the Claim raised by the Applicant.
20. This Tribunal makes a note here that this Reference has been delayed due to the dilatoriness of the Respondent.
21. Thus, after taking full and careful cognisance of all the facts placed before it, and all the facts alluded to that are missing, this Tribunal makes the following Award:

## **AWARD**

- 1. This Tribunal, consisting of the Sole Arbitrator, issues the following Award:**
- 2. The Applicant's Claim is rejected and dismissed.**
- 3. No Award as to the Applicant's Claim.**
- 4. No Award as to costs.**
- 5. No further Award.**
- 6. This Award is signed and issued in three originals, one copy to be retained by the Exchange and one copy each to be delivered to the Applicant and the Respondent.**

 this 19<sup>th</sup> day of September, 2024

**Sole Arbitrator:**



