



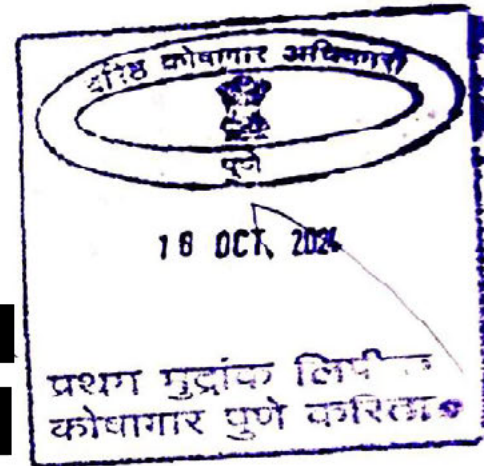
महाराष्ट्र MAHARASHTRA

2024

CU 043270

महाराष्ट्र सरकारच्या कार्यालयात
मुद्रांक लावण्यासाठी स्वतःच्या मुद्रांक लावण्याची वेळीस होण्याची नोंद घ्यावी.
मुद्रांक लावण्याची वेळीस होण्याची नोंद घ्यावी.

अनु. क्र. 24 OCT 2024
मु. श. क्र. 500/-
दस्तावेजा प्रकार: Arbitration Award
हस्त नोंदणी करणारा अधिकारी का? होय/नाही
मिळवणीचे
मुद्रांक
पत्रा
दुसऱ्या पक्षाच्या नावावर
हस्त व्यवहारीचे नाव व पत्ता



परवाना क्र. २२०११३०
७२१, गुरुवार पेठ, पुणे-४११००२

मुद्रांक विकत घेणाऱ्याची सही

BEFORE THE SOLE ARBITRATOR

IN THE MATTER OF ARBITRATION UNDER MASTER CIRCULAR
FOR ONLINE RESOLUTION OF DISPUTES IN THE INDIAN
SECURITIES MARKET

Matter No: NSE-SB-2024-02-734151

Between

[REDACTED]

Address: [REDACTED]

[REDACTED]

Complainant/ Applicant

And

[REDACTED]

Email: [REDACTED]

Address: [REDACTED]
[REDACTED]

Respondent

For Claimant: [REDACTED]

For Respondent: [REDACTED]

CORD (Centre for Online Resolution of Dispute) is an independent institution facilitating and administering electronic Alternative Dispute Resolution via its online platform, <https://platform.resolveoncord.com>, also referred to as Online Dispute Resolution (“ODR”) Institution, having its registered office at Bangalore.

CORD has been empanelled by the National Stock Exchange in accordance with the SEBI Master Circular No. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145 dated August 11, 2023 (“SEBI Circular”) as may be amended/modified from time to time, for undertaking time- bound online Conciliation and online Arbitration.

[REDACTED]

The above-mentioned matter was referred to CORD via SMARTODR.IN (“ODR Portal”), a common Portal established by the Market Infrastructure Institutions (“MII”) in accordance with the SEBI Circular, for harnessing online Conciliation and online Arbitration for resolution of disputes arising in the Indian Securities Market. Further, the parties have accepted the terms and conditions of ODR Portal.

The undersigned has been appointed as Sole Arbitrator on the 17th of August 2024 by CORD, in the present matter.

I. CONTENTIONS RAISED BY THE CLAIMANT

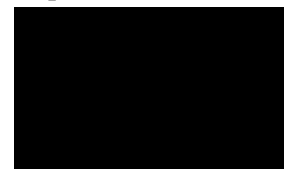
The complainant [REDACTED] raised the following contentions:

- The Respondent failed to execute the Complainant’s open market order to close positions during the upper circuit, resulting in an unmanageable short sale position. The Complainant sought guidance from the Respondent’s customer service but received insufficient assistance regarding the implications of holding a short sale position.
- The Respondent unilaterally imposed a 7% penalty on the Complainant’s account without proper communication of the close-out policy prior to the incident. The Respondent did not adequately disclose the terms and conditions related to the close-out policy and the associated penalties, contrary to their assertions.
- The Respondent claimed that the signed terms and conditions contained clauses justifying the penalty; however, the Complainant found no such provisions in the documentation provided. The Conciliator’s report marked the conciliation as failed due to the Respondent’s inability to provide the required signed terms and conditions, highlighting procedural shortcomings.
- The Respondent initially provided an unsigned copy of the terms and conditions, demonstrating a lack of diligence in record-keeping and communication. The Complainant claims a refund of the penalty, along with interest at 2% per month, as compensation for the delay and unfair treatment by the Respondent.
- The Respondent’s failure to provide a reliable trading application led to significant financial loss for the Complainant, warranting additional [REDACTED]

compensation. The Complainant seeks the Arbitration panel's intervention to secure a full refund of the penalty, interest accrued, and appropriate compensation for the inability to close their position due to the Respondent's actions.

RESPONSE PROVIDED BY THE

- The Respondent denies the allegations made by the Claimant and contends that all actions undertaken by the Respondent were in strict compliance with the applicable SEBI regulations and the terms agreed upon with the Claimant.
- The Respondent denied the Claimant's allegations of unauthorized transactions being carried out in their trading account. The Respondent asserts that all transactions executed were done based on the instructions provided by the Claimant through recorded communication channels. Any allegations of unauthorized actions are unfounded and not supported by evidence. The Respondent maintains records of all instructions received from the Claimant, which can be submitted for verification.
- The Respondent has at all times provided clear and detailed information to the Claimant regarding fees, charges, and the nature of transactions in their account. The charges applied to the Claimant's account, including brokerage and transaction costs, are consistent with the fee schedule communicated to the Claimant at the time of account opening. There has been no misrepresentation or concealment of information.
- The Respondent has adhered strictly to the procedural requirements mandated under SEBI regulations while managing the Claimant's account. The Respondent has maintained proper communication with the Claimant and ensured compliance with all procedural norms during the execution of trades and maintenance of account records. The Respondent denies any deviation from standard operational procedures.
- The Respondent has fully complied with all applicable SEBI regulations, including those related to the execution of trades, client communications, and record-keeping. The Respondent's practices are consistent with the guidelines outlined by SEBI for registered brokers, ensuring that the Claimant's account was managed in a lawful and transparent manner.
- The Claimant's allegations of non-compliance are based on a misinterpretation of SEBI guidelines and the contractual obligations between the parties. The Respondent has acted in good faith and in accordance with industry standards. The Respondent requested to dismiss these baseless allegations and consider the evidence provided by the Respondent.
- The Respondent denies the Claimant's claim for compensation. The Respondent asserts that the Claimant's financial losses, if any, are a result of market volatility and the inherent risks associated with trading in securities. The Respondent has executed transactions as per the Claimant's



instructions and is not liable for the Claimant's investment decisions or their outcomes.

- The Respondent requested to dismiss all claims made by the Claimant as unsubstantiated and without merit and confirm that the Respondent has acted in compliance with SEBI regulations and industry norms.

II. AS PER THE PERUSAL OF THE RECORD AND SUBMISSIONS MADE BY THE PARTY THE FOLLOWING POINT ARISES FOR DETERMINATION:

1. Whether penalty has been imposed by the respondent wrongly? Opc
2. If point no.1 is decided in favour of the claimant whether the claimant is entitled for reimbursement of penalty imposed, interest and costs as prayed? Opc

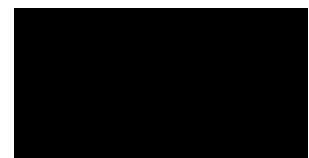
3. FINAL ORDER

1. Yes
2. Yes
3. Claimant Entitled to amount claimed i.e. recovery of 7% penalty imposed, interest @2% and costs.

POINT NO.1 & 2

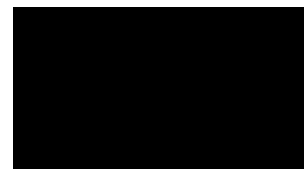
4. Points no. 1 and 2 are taken up together being inter-connected. The relationship between the parties, being trader and trading member, is admitted. It is also admitted that on 02.02.2024 the claimant placed orders with the respondent to close the position of claimant. It was an open market order to close positions by the claimant however as claimed by the respondent upper circuit in an unmanageable position arose which resulted into non closure of positions thereafter the respondent conducted an auction internally and imposed a 7% penalty on the claimant. It is admitted position that for non-closure of the position resulted on account of no fault on the part of the claimant.

The claimant had nothing to do with it and therefore there is no fault on his part. As per the respondent the KYC at the time of opening of the account has been signed by the claimant, as per the regulations he was assumed to know all the rules and instructions and thereby it was not required to communicate



specifically. He was assumed to know it under the provisions of SEBI. No doubt KYC has been signed by the claimant but it was admittedly clear that in the KYC forms or account opening forms this condition of imposing a penalty or conducting an internal auction was neither provided nor it was ever conveyed by the respondent. In case it was necessitated to do so the claimant must have informed of it. Neither he was aware of such provisions nor any paper was signed by him in this regard or say no paper carries the signature of the claimant where by the provisions of imposing penalty may have been provided. As to under which provision the internal auction was conducted by the respondent that has not been made clear Just claiming that it comes under the provisions and the fact the claimant was supposed to know is not justifiable ground. Even if the provisions are always available on the official site the penalty could not have been imposed unless there was a signed document. It is clear that no obligation was there on the claimant in addition to placing the order for closure. The proceedings were required to be looked into by the respondent when the NSE was dealing with it whereas the respondent has claimed that the respondent had nothing to do with the proceedings of the NSE AT THE TIME OF THE CLOSING OF THE POSITIONS. IT IS AN ADMITTED POSITIONS that the respondent charges a commission for the transaction if nothing was to be done by the respondent as to what was the occasion for claiming the charges or in case the interest of the claimant was not to be watched by the respondent.

In view of the facts coming on the record in my opinion the claimant has not committed any fault by placing the order for closing the position. The respondent who should have taken care but instead of taking care respondent opted to conduct an internal auction at its own without taking the claimant in confidence, moreover, the plea of the respondent that the claimant was supposed to know that penalty would be imposed is not tenable unless any document is produced whereby, he may have agreed for it. It is clear that there is no such document available with the respondent to establish that any document exists in this regard thus in my opinion the conduct of the respondent is devoid of any legal sense and the penalty imposed after conducting an internal auction is wrong thereby the claimant is entitled for the refund of penalty



imposed @7% along with interest @2% per month and the arbitration fee paid thus the points are decided accordingly.

RELIEF

The claim petition is allowed and the claimant is entitled for the amount of rupees 4,97,041/- along with interest which comes in total to the tune of rupees 5,46,745/- and the amount of rupees 21,340/- as arbitration fees or say the claimant is entitled for the amount of rupees 5,68,085/- and for future interest @ 10% per annum up till final realization of the amount from the date of award.




Sole Arbitrator
District and Sessions Judge (Retd.)