

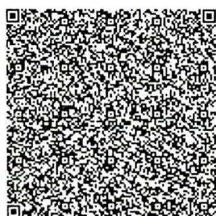


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Consideration Price (Rs.) : 0
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Second Party : [REDACTED]
Stamp Duty Paid By : [REDACTED]
Stamp Duty Amount(Rs.) : 150
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Before the Sole Arbitrator: [REDACTED]
In the matter of Arbitration under Master Circular for Online Resolution of Disputes in the
Indian Securities Market
Matter No: NSE-SB-2024-03-697894
Between

[REDACTED]
Applicant

Complainant

And

[REDACTED]
Respondent

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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.

The above-mentioned matter was referred to CORD via SMARTODR.IN ("**ODR Portal**"), a common Portal established by the Market Infrastructure Institutions ("**MI**") 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 12th July 2024 by CORD, in the present matter.

In the matter no. **NSE-SB-2024-03-697894**, the Arbitration hearing was held on 6th August 2024, at 2.30 pm through CORD Portal via video conferencing and the meeting was represented by the applicant himself and the respondents were represented through [REDACTED] and [REDACTED]. The proceedings were coordinated by [REDACTED] from **CORD**.

A) Statement of case by the Applicant:

The Applicant stated as follows:

1. The Applicant is having Trading accounts with the respondent. The NRI PINS account (Portfolio Investment Account) number is [REDACTED] and NRE Non-PINS account number is [REDACTED]. The Applicant's bank account number linked to PINS account is [REDACTED] and bank account number linked to Non-PINS account is [REDACTED].
2. The SEBI guidelines prescribe that settlement of funds should be credited on T+1 basis. However, the Respondent was crediting the settlement amount on T+3 basis, thereby flouting SEBI laid down guidelines.
3. On Thursday, the 1st February, 2024, he sold 2000 quantity of KPI Green Energy Ltd from his Non-Pins account. His payout got released on T+3 basis on Tuesday, the 6th February, 2024.
4. On 20th February, 2024, he sold 5000 quantity of KPI Green Energy Ltd and 20,000 quantity of GNA Axels Ltd from his Non-Pins account. Payout was released on T+3 basis on 23rd February, 2024.

5. On 19th February, 2024, he sold the stock from his PINS account. Amount was Rs 5 crores Payout was released on T+2 basis. It was delayed by one day. He had issued a cheque of Rs 5 crore dated 21st February, 2024 for purchase of Mutual Fund as a gift for his newly born granddaughter. He had to request the counterparty to hold back the cheque.
6. Tax has to be cut at source . But there is no restriction on paying the amount less maximum possible tax. Documents etc have to be filed by ICICISL but nowhere does it say that they need to wait for any reply before remitting funds. Maximum tax can be 17.96 %.
7. Tax has to be deposited monthly, not daily.
8. NSE can not allow its brokers to openly flout SEBI regulations.
9. The claim is summarised as follows by the Applicant.

Non-Pins account				
Stock Name	Trade date	Trade Value	Payout Date	Remarks
KPI GREEN ENERGY LIMITED	01-Feb-24	37,75,451.36	06-Feb-24	Payout released on T+3
KPI GREEN ENERGY LIMITED	20-Feb-24	81,19,295.68	23-Feb-24	Payout released on T+3
G N A AXLES LIMITED	20-Feb-24	84,86,231.22	23-Feb-24	Payout released on T+3
Pins account				
Various Shares	19- Feb - 2024	68,356,788.59	21-Feb-2024	Payout released on T+2 (after 1 Pm)

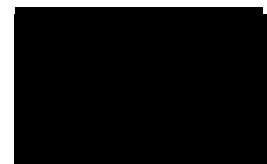
The Delay in payment has been accepted and not disputed by ICICIDIRECT.

Hence the basic question is what compensation / Claims are due to me due to the delayed payment.

Claims due to Delay in Payments

a) Late Payment of 01-06 Feb = Rs 3.4 Lakh

The Applicant had informed ICICIDIRECT (in email) that the shares were sold with the specific purpose of buying Paytm shares. Since the money came in late, the Paytm shares are bought at a higher price. This is documented in emails attached. (Email Chain 1)



b) Late Payment of 19-21 Feb = Rs 5 Lakh

The Applicant had informed ICICIDIRECT that the shares were sold with the specific purpose of paying Rs 5 Cr by Cheque and had given the Cheque to be encashed on 21st morning. Since the money was not released on 20th Feb and account balance on 21st Morning was insufficient, the Cheque was encashed only on 23rd February 24. The Rs 5 Lakh is demanded as compensation for the embarrassment of having to ask for an issued cheque to be withheld.

c) Late Payment of 20-23 Feb = Rs 6 Lakh

The Applicant had informed ICICIDIRECT (in email) that the shares were sold with the specific purpose of buying a lakh share of Apollo Microsystems. Since the money came in late, the said shares were purchased at a higher price (Rs 6 higher). This is documented in emails attached. (Email Chain 2)

d) Total Claim is sum of Ser 1 ,2 and 3 above = Rs 14.4 Lakh.

10. Hence the total claim preferred by the applicant for the loss incurred is Rs 14.40 lacs as follows :

Trade in Non- PINS account (1 st February,2024 to 6 th February)	Rs 6.00 lacs
Trades in Non-PINS account(20 th Feb. 24 to 23 rd February,24)	Rs 3.40 lacs
Trade in PINS account (19 th Feb, 24 to 22 nd Feb., 24)	Rs 5.00 lacs

TOTAL Rs 14.40 lacs

(B) STATEMENT OF DEFENCE BY THE RESPONDENT:

The respondent submitted the defence statement incorporating the following.

1. The Applicant has opened an online trading account with the Respondent in 2003 and was given a login id and password and is allowed access of different modes of trading platforms. Trade Web, exe, Mobile app using which client can place or modify his/her orders, view daily trades, track margins, including details of margin available, margin utilized for positions taken and transfer funds. The Applicant is also given web notifications on the trading terminal regarding information of his open positions from time to time. The Respondent submits that the fund transfers on its trading portal through the payment gateway are updated on an immediate basis. The Applicant is conversant about all these procedures.
2. The Applicant is aged about 68 years, executed client-member agreement, individual client registration form and other documents and became constituent of the Applicant and established

privity for buying and / or selling and dealing in securities and trading in F&O segment (carry forward of positions in Future Stocks, index, intra-day trading etc.) through the Respondent on NSE. The Respondent submits that the Applicant is aware of stock market operations, Future & Options trading mechanism, clearing, settlement and risk management systems and nuances of market dynamics and the need to meet settlement obligations in time. The Applicant is a Graduate by education.

3. The Respondent further submits that the Applicant has signed mandatory risk disclosure document for dealing in capital market and F & O (Futures & Options) segments. The Applicant also signed mandatory investors rights and obligations document at relevant time.

4. The Respondent states that the Applicant has opened his account with the Respondent in the year 2003. Since inception or opening of the account, The Applicant has been raising some or the other issues.

5. It is pertinent to note that the Applicant since inception of the account is probably never raised any dispute on this aspect as the Respondent has been making the Payments of Pay-out following the same system.

6. It is also pertinent to note that the Applicant has claimed opportunity loss as can be observed from the Applicants' Statement of claim para 1, 2 & 3 which not tenable and needs to be dismissed.

7. The Respondent states that as per the norms set, by the Regulator, claims on notional losses or opportunity loss cannot be claimed as they cannot be undertaken by the exchange. The Respondent would like to bring to the kind notice of the Ld. Arbitrator that as per the regulations and its process laid down by the NSE under complaints not taken up at the Exchange under Complaints against Exchange Members, it is clearly stated that "Claim for notional loss, opportunity loss for the disputed period or trade".

8. The Respondent hereto annexes the NSE Investors Guide Complaint as Exhibit '3'. The opportunity loss claim is outside the purview of the Exchange. Several arbitration orders have been passed in NSE arbitration wherein such claims are not admitted and dismissed on the grounds that is beyond the purview.

9. The Respondent states that based on the conditions stated above in Investors Guide Complaint itself the Arbitration order needs to be considered and the entire statement of claim be dismissed with costs.

10. The Respondent states that the Applicant sold 2000 qty of stock KPIGLO on 01st, February, 2024 from his NRE Non-Pins Account [REDACTED] linked with bank account [REDACTED]

and the payout was released on 6th February, 2024 T+3 working day. Similarly, for the trade done on 20th February, 2024 the credit has been done on T+3 working day.

On 19th February, 2024 the complainant has sold the stock from his PINS account [REDACTED] linked with bank account-[REDACTED] and the payout got released on T+2 working day.

11. Transactions in NRE accounts require remitter of funds viz. ICICI Securities to report remittance of funds to Income Tax Dept. before credit is effected in Bank account. It is pertinent to note that in some instances, the Respondent gets delayed response/acknowledgement from Income Tax Dept, due to which the funds credit is effected on T+3 working day.

Since we cannot remit funds without this acknowledgement, we shall not be able to credit funds on T+2 working days. It has been Respondent's endeavour to complete the settlement within stipulated time frame as mandated by regulators. However, due to reporting requirement as per Regulation the delay was unavoidable. Hereto annex is the copy of contract notes dated 01 February 2024, 19 February 2024 and 20 February 2024 as Exhibit '4'

12. The Respondent submits the following regulatory norms to be followed

It can be observed that relevant portion of Section 195, Income Tax Act, -FA, 2023 which mandated every person making payment to non-resident withhold tax stipulates

Extract of Section 195 which mandates every person making payment to non-resident withhold tax —

"195. 58 59 [(1) 60Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest 61 [(not being interest referred to in section 194LB or section 194LC)] 62 [or section 194LDJ 63] or any other sum chargeable under the provisions of this Act 64 (not being income chargeable under the head "Salaries" 65 [***J)

Shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force" "79 [(6) The person responsible paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed. 80 J"

Extract of Section 195 (6) which mandates every person making payment to non-resident shall furnish information in prescribed form to tax authorities —

"(6) The person responsible for paying to a ~~non-resident~~ ^{resident}, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall

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furnish the information relating to payment of such sum, in such form and manner, as may be prescribed. (Form is prescribed in Rule 37BB extract provided below)"

Furnish information in Form 15CA before remittance. Further, form 15CB i.e. CA certificate is mandatory to be filed before Form 15CA

"37BB. (1) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum chargeable under the provisions of the Act, shall furnish the following, namely:

- (a) in Part C of Form No. 15CA after obtaining a certificate in Form No. 15CB from an accountant

(4) The information in Form No. 15CA shall be furnished,

(i) electronically under digital signature in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) 34a[or the Director General of Income-tax (Systems)] under sub-rule (8) and thereafter printout of the said form shall be submitted to the authorized dealer, prior to remitting the payment

(ii) electronically in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) 34a[or the Director General of Incometax (Systems)] under sub-rule (8) and thereafter signed printout of the said form shall be submitted to the authorized dealer, prior to remitting the payment."

(iii) The Respondent states that in the lines of the above para under section 37BB. it has been clearly stated that signed printout of the said form shall be submitted to the authorized dealer, prior to remitting the payment.

The Respondent hence has not violated the norms but adhered to the regulatory norms as stated above and hence delay in making payments.

11. The Respondent states assuming but without admitting the calculation according to the Respondent could be as follows as opportunity loss needs to be dismissed.

Sr No.	Released Amount	On Date	No of days taken	No of delayed Days	Rate of delayed payment interest	Amount of Refund, if any

ALH2

1		06.02.2024	5 days	4 days	12.35%	*4492
2		23.02.2024	3 days	2 days	12.35%	*4830
		23.02.2024	3 days	2 days	12.35%	*4706
4.		21.02.2024	2 days	1 days	12.35%	*16918

Sr. No.	Released Amount	On Date	No of days taken	No of delayed Days	Rate of delayed payment interest	Amount of Refund, if any
1		06.02.2024	5 days	4 days	7%	
2		23.02.2024	3 days	2 days	7%	
3.		23.02.2024	3 days	2 days	7%	
4.		21.02.2024	2 days	1 days	7%	

The Respondent states that the Ld. Conciliator has levied 12.35% interest rate based on the Overdraft interest normally charged by the ICICI Bank on its customers. The Ld. Conciliator ought to have considered the normal FD interest rate approx. 7% and not 12.35%.

15) In view of the above submission's, the Respondent therefore prays:

1. The entire claim of the Applicant deserves to be dismissed and the alleged claim of Rs. 14.40 lakhs be rejected on basis of merits as well as on the basis of the NSE Investors Guide Complaint.

2. The Respondent reserves its rights to file additional reply on receipts of various documents called for, if required.
3. The Respondent craves leave to refer to and rely upon Exchange / SEBI circulars various Arbitration Awards / Judgements etc. passed in the similar kind of matters
4. The Respondent craves leave to add, amend and alter the present reply if necessary and if so advised and in the interest of natural justice.

C) HEARINGS / OBSERVATIONS / CONCLUSIONS:

1. The Respondent provides online trading platform to its constituents through its unique 3 in 1 account. The 3 in 1 account is a joint offering by ICICI Bank Ltd and I-Sec that integrate the Trading account and beneficiary demat account.
2. Transactions in NRE accounts require the respondent to report details of remittance of funds to Income Tax Department before credit is effected in Bank account.
3. In some instances, they get delayed response / acknowledgment from Income Tax Deptt., due to which the funds credit is effected on T+3 days.
4. It has been their endeavour to complete the settlement within stipulated time frame(T+1) as mandated by regulators. However, due to reporting requirement as per I.Tax regulations, the respondent has taken a stand to wait for confirmation from IT department and remit funds thereafter , in respect of the aforesaid trade transactions of the applicant .
5. On 1st February, 2024, the Complainant sold 2000 quantities of stock KPI Green Energy Ltd. The payout was released on 6th February,2024 , T+3 working day after receipt on 05/02/24 of Form 15 CB Confirmation from Income Tax. Trade value was Rs 37,75,451=36 and TDS was Rs 4,55,327.00
6. Two trades were done from Non-PINS account on 20th February,24, KPI Green Energy Limited and GNA Axles Ltd. Payout was done on 23rd February, 2024 after receipt on 22/2/24 of Form 15CB confirmation from Income Tax Department. Trade values were Rs 81,19,295.68 and 84,86,231.22 and TDS values were Rs 9,79,202.00 and 15,30,926.00

As per Income Tax rules, due date for deposit of TDS is 7th of next month (Except for March which is 30th April). TDS for February, 2024 was deposited on 7th March, 2024.

7. The respondent insisted on their stand that balance of settlement amount can be released only after the response / acknowledgment from the Income Tax Department has been received.
8. The respondent enclose relevant portions of Rule 37BB, Income Tax Rules, 1962 and Section 195, Income Tax Act, 1961-FA, 2023.
9. Relevant portion of Section 195, Income Tax Act,1961-FA, 2023 which mandates every person making payment to non-resident withhold tax stipulates:

“195. 58 59 [(1) 60Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest 61 [(not being interest referred to in section 194LB or section 194LC)] 62 [or section 194LD] 63 [***] or any other sum chargeable under the provisions of this Act 64 (not being income chargeable under the head "Salaries" 65 [***]) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force”

“79 [(6) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed. 80]”

Relevant portion of Rule 37 BB, Income Tax Rules, 1962 about furnishing information in Form 15CA before remittance and Form 15 CB (i.e. CA certificate mandatory to be filed before Form 15CA stipulates:

“37BB. (1) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum chargeable under the provisions of the Act, shall furnish the following, namely:— (i) the information in Part A of Form No. 15CA, if the amount of payment or the aggregate of such payments, as the case may be, made during the financial year does not exceed five lakh rupees; (ii) for payments other than the payments referred in clause (i), the information,— (a) in Part B of Form No. 15CA after obtaining,— (I) a certificate from the Assessing Officer under section 197; or (II) an order from the Assessing Officer under sub-section (2) or subsection (3) of section 195; (b) in Part C of Form No. 15CA after obtaining a certificate in Form No. 15CB from an accountant as defined in the Explanation below sub-section (2) of section 288.

(2) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum which is not chargeable under the provisions of the Act, shall furnish the information in Part D of Form No. 15CA. “

“(4) The information in Form No. 15CA shall be furnished,— (i) electronically under digital signature in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) 34a [or the Director General of Income-tax (Systems)] under sub-rule (8) and thereafter printout of the said form shall be submitted to the authorised dealer, prior to remitting the payment; or (ii) electronically in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) 34a [or the Director General of Income-tax (Systems)] under sub-rule (8) and thereafter signed printout of the said form shall be submitted to the authorised dealer, prior to remitting the payment.”

11. While the above regulations make it mandatory to the remitter to deduct the tax at source, there is no restriction on paying the amount after deducting permissible tax. Nowhere it is stipulated that remitter needs to wait for any reply before releasing the remaining settlement funds.

12. In the instant case, the Respondent has released the amount (i) of Rs 37,75,451.36 on 6th Feb,24, i.e. 4 days late, (ii) Rs 81,19,295.68 on 23/02/24, i.e., 2 days late (iii) Rs 84,86,231.22 on 23/02/24 , i.e. 2 days late, (iv) Rs 5 crore (of PIN account) on 22/02/24, i.e. 1 day late.

13. The respondent admitted that there were such delays as stated above, but the delays were attributed to the IT regulations, as discussed in point 8 and 9 above .

14. The Applicant is a long standing valuable customer of the respondent for trading with them for 21years.

15. The applicant had referred to some disputes in the past regarding system issues and non credit of shares on due dates , which were sorted out.

16. The Applicant informed that the defendant should have given credit on T+1 basis, in respect of the disputed 3 cases, referred herein, as per agreed terms. The respondent has also not contested the delay in giving credit . The respondent came out with an offer to compensate the applicant with payment of interest for the delayed period for the amounts supposed to have been paid on T+1.

17. During Arbitration both the parties were called upon to discuss any amicable compromise settlement. Both the parties took some time for discussions and the compromise suggested by the respondent for the compensation of the interest amount for delayed credit was not acceptable to the Applicant .

18. The Applicant vide mails addressed to the respondent on 5 th feb 2024 and 22nd feb 2024, had made it very clear that, due to non receipt of credit on T+ 1 basis as per SEBI guidelines and agreed terms, the applicant was deprived of buying the identified shares at a lower price and hence he had to pay more to buy 1 lakh shares of Apollo Micro systems and Paytm shares. Losses on account of these two payment delays as per statement of claim para 9 a). Rs. 3.40 lakhs and as per statement of claim para 9 c) Rs 6.00 lakhs. totalling Rs 9.40 lakhs.

19. The Applicant had also made a claim of Rs 5.00 lakhs, as damages, on account of a cheque issued for Rs 5 Crs could not be honoured on account of delayed credit given by the respondent, thus resulting in reputational loss. The details are given in para 9 b) of statement of claim.

20. Having gone through all the documents and hearing detailed presentation by both the parties, it is concluded that the Applicant had suffered real losses on account of delayed payment in respect of cases referred in para 9 a) and 9 c) of the statement of claim. It is pertinent here to mention that while IT regulations are to be followed, there is no restriction on paying the amount less tax, on the stipulated dates. Documents etc have to be filed by the respondent but nowhere does it say that they need to wait for any reply before remitting funds. Hence the delay on the part of the respondent is not justified and the applicant had given proper notice to the respondent on the need to get the funds credited on T+ 1 day for his scheduled plan of investment. The losses claimed by the applicant on account of non payment of cheque for Rs 5 crores is considered as notional and it is outside the purview of this Arbitration.

It is concluded that the actual losses to the extent of Rs 9.40 lakhs are suffered by the Applicant in real terms as per para C 18) as above.

AWARD

The respondent is directed to pay Rs 9,40,000/ (Rs. Nine Lakhs Forty Thousand only) to the Applicant within 30 days for the date of this award, failing which interest at the rate of 7% P A is payable till settlement.

There is no order for costs on either side.


ARBITRATOR

