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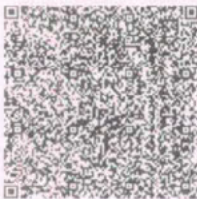
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**INDIA NON JUDICIAL**  
**Government of Gujarat**  
**Certificate of Stamp Duty**

Certificate No. : IN-GJ48611178728605X  
Certificate Issued Date : 31-Jan-2025 01:37 PM  
Account Reference : CSCACC (GV)/ gjcsceg07/ GJ-SUBIP0519/ GJ-SU  
Unique Doc. Reference : SUBIN-GJGJCSCEG0709086781687991X  
Purchased by :   
Description of Document : Article 13 Award  
Description : ARBITRAL AWARD  
Consideration Price (Rs.) : 0  
(Zero)  
First Party :   
Second Party :   
Stamp Duty Paid By :   
Stamp Duty Amount(Rs.) : 300  
(Three Hundred only)



Under the Rules, Regulations & Byelaws of NSEIL Arbitration Ref. No.  
NSE-SB-2024-04-611810



**Before the Hon'ble Arbitral Tribunal (AT) comprising of: -**

- 1) (Retd), Presiding Arbitrator,
- 2) London, Co- Arbitrator,
- 3) Co-Arbitrator.

**HUF 0027556282**

[REDACTED] ..... **Applicant (Investor)**

**PAN:** [REDACTED]

**V/s**

[REDACTED] ..... **Respondent (TM)**

[REDACTED]

Date of opening the Trading A/c with the Resp.TM – 15/06/2020

AP of the Respondent TM - [REDACTED]

RMN of the AP registered with NSE - [REDACTED]

Unique Client Code (UCC in brief) allotted - [REDACTED]

Autho. Representative (AR) of the Applicant – [REDACTED]

AR's Registered Email Id - [REDACTED]

AR's Registered Mobile Number (RMN in brief) - [REDACTED]

Date of the commencement of the Trading in securities -22/06/2020

Initial mode of operation chosen – Online

The 'disputed period' of the trades in the securities – 01/04/2023 to 13/10/2023 -FNO and Commodities Segments.

Date of lodging 1st grievance with the Respondent -22/11/2023

Filing complaint on the SCORES Portal-26/12/2023-SEBIE/  
GJ23/0002570/1

**Constitution of the Arbitral Tribunal (AT) – 04/11/2024 The Limitation aspect**

The intimation of Arbitration was given by both the parties to NSE within 30 days of the receipt the Conciliation Order dated 30/05/2024. The Arbitration claim was filed on 12/07/2024 by the applicant. Thus, it was filed within the permissible time limit.

**The Arbitration Hearings**

The first 'On line' hearing was held on 26/12/2024 @11:30 am. The following persons attended the Arbitration Hearing:

**For the Applicant - 1.**

[REDACTED]

2. [REDACTED]

3. [REDACTED]

**For the Respondent - 1.**

[REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

**CORD - [REDACTED] Case Manager**

**The ORDERSHEET**

1. At the outset, the Arbitral Tribunal (AT in brief) noted that both the parties to the arbitration proceedings claimed that it be recognised as the 'Applicant' in this arbitration matter. After deliberations, the AT clarified that it has recognised [REDACTED], Investor, as the 'Applicant' in this arbitration matter for the following reasons: -

a) The investor was the first party to intimate CORD on 07/06/2024 that she would file an Arbitration application. She

paid them the requisite fees of INR 1,60,000/- on 01/07/2024 and later filed her Statement of Claim (SOC in brief) on 12/07/2024. These facts are undisputed.

- b) The TM sent an intimation dated 11/06/2024 to CORD to file an Arbitration application but made the requisite payment to CORD as late as 17/09/2024. It also filed the Statement of Defense (SOD in brief) dated 30/09/2024 with reference to the SOC dated 12/07/2024 filed by the Applicant Investor. It is confirmed by CORD that the TM sent to them an email dated 28/06/2024 which was referred to as the 'Arbitration application'. However, there is no mention of filing the SOC.
  - c) The TM neither filed a Claim nor a counterclaim in these arbitration proceedings.
  - d) In view of the foregoing, logically, the investor has been recognised by the AT as an Applicant in this arbitration matter. Consequently, the TM would be the Respondent.
2. The Advocate of the Applicant presented the Applicant's Case in details. He alleged many irregularities by the Authorised Person (AP in brief) of the Respondent while executing the offline trade orders placed by [REDACTED] the AR of the Applicant and drew the attention of the AT to the relevant parts of the SOC filed before the AT.
3. The Applicant's Advocate/AP could not answer satisfactorily the query of the AT why Mrs. [REDACTED], the AP of the Respondent TM was not made a 'necessary party' to these arbitration proceedings?
4. The AT noted that [REDACTED], the AR of the Applicant held her own Trading A/c with the Respondent TM thru' the same AP. Whether any unauthorised trades in securities were also alleged in



her own Trading A/c? If so, what is the present status of the resolution of that dispute?

5. The AT noted that the applicant has not brought on its records the important HC citations relied upon by it and quoted during the Hearing in support of the Arbitration claim. The AT also noted that the AR had not given, in writing, her instructions dated 01/04/2023 to the AP of the Respondent TM not to execute any trades in securities in the Trading A/c bearing UCC [REDACTED], during few months' period she would be travelling out of India, the Applicant's illness, planned surgeries, etc. She avoided replying this important query of the AT.
6. The Advocate of the Respondent also made a detailed presentation of their case and referred to the respective parts of the SOD filed before the AT.
7. The AT heard the detailed oral submissions of the Advocates representing both the parties to arbitration.
8. Thereafter the AT issued the following directions: -
  - a. The Applicant to submit the details of the aggregate amount of the disputed trades in securities, date wise.
  - b. Document of proof of not receiving the OTP, from the Respondent, for pledging the securities as alleged in the hearing. As requested in the hearing the respective details be obtained from the CDSL and be submitted to the AT.
  - c. How many trades in securities were executed by the Applicant herself and how many trades in securities were allegedly executed unauthorisedly by the AP of the Respondent TM?
9. The Respondent to the furnish the following: -

- a) The procedure followed by them for placing all the orders for executing the trades in securities including the disputed trade orders in this case.
- b) Amount of FNO and other trades executed mentioning clearly the breakup.
- c) Was pre-confirmation obtained from the Applicant for all the trades in securities as per the procedure prescribed by SEBI?
- d) Whether confirmation was obtained from the Applicant prior to the execution of the disputed trades as prescribed by the SEBI?

As agreed in the hearing the Applicant to furnish these details within one week from the date of hearing with a copy to the Respondent and to CORD. The Respondent, if so desires, to file the reply by 8th January positively with a copy to the Applicant and to the CORD.

The second and final 'On line' hearing held on 10/01/2025 @11:30 am. The following persons attended the Arbitration Hearing: **For the**

**Applicant -** 1. [REDACTED]

2. [REDACTED] (POA Holder & AR of the Applicant)

3. [REDACTED]

**For the Respondent -** 1.

[REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

**CORD-** [REDACTED] Case Manager

**The proceedings of the 2<sup>nd</sup> and Final Hearing: -**

- a) The AT heard both the parties in detail, twice, alternatively. Both the parties were given an equal opportunity to present their submissions and arguments. AT also sought and received necessary clarifications during the hearing.
- b) The AT directed that if either party wishes to submit any additional documents or arguments, such submissions must be made by 17/01/2025. No further extensions will be granted.
- c) After considering the oral submissions made during the hearing, the AT reserved its Order. The case has been closed for the issuance of the Arbitral Award.

**Applicant's SOC summarised:**

1. The Applicant is 65 years old housewife, and a school dropout, with declared annual income below INR 1,00,000/- with no experience of trading in securities. She opened trading cum demat account with the Respondent on 12/06/2020 through their AP - [REDACTED] (Emp Code: [REDACTED] [REDACTED]) and completed the KYC. The Applicant appointed her daughter, [REDACTED] alias [REDACTED] as the Autho.

Representative (AR in brief). The Respondent provided her the login ID and password on the Registered Mobile Number (RMN) - [REDACTED] for accessing the online trading system. This system allows the clients to access their accounts at any time to review transactions, positions, and ledger statements. Further, contract notes, margin statements and other statements could be accessed on her registered email Id viz. [REDACTED]. The Applicant was allotted an UCC [REDACTED] and she commenced trading in the capital segment on 22/06/2020.

2. The Applicant claimed to be a 'long term investor' opted for trading in the cash segment, MF & SLBS, by online mode. Later she opted for the offline mode. Within two weeks, she opted for trading in the FNO Segment as also in the Commodity Derivatives. From 22/06/2020 to June, 2023, she executed numerous transactions only in the Cash Segment but none in the FNO Segment and in the Commodities. She has claimed that she never pledged any securities for margin purpose. She also contended that the Respondent never provided the call recordings to verify the pretrade confirmations.
3. She opted for internet trading, and the Respondent provided the login ID and password on the RMN for accessing the online trading system. It allows clients to access their accounts at any time to review transactions, positions, and ledger statements. Further, the contract notes, margin statements and other statements could be accessed on her registered email Id.
4. On 01/04/2023 AR personally met AP [REDACTED] & [REDACTED] her Dealer & Husband and instructed verbally not to trade in the UCC [REDACTED] in any segment then onwards, till further instructions.
5. The Applicant stated that the trades executed in the in the UCC [REDACTED] during the disputed period in both the Cash and FNO segments were carried out without her instruction.
6. The Applicant did not access the account by logging into the 'Blink' trading platform of the TM during the disputed period. Consequently, all the trades executed during the disputed period were unauthorized.
7. The Applicant asserted that the present complaint pertains to unauthorized trades executed over 140 trading days during the "Disputed Period". These trades were carried out unauthorisedly



and without financial settlement through the banking channel in both the Cash and FNO segments under the UCC [REDACTED].

8. The Applicant was taken aback and was deeply distressed upon discovering the unexpected debit balance in the account. Acting immediately to address the issue, the Applicant prioritized rectifying the debit balance as the first step. During this process, the Applicant orally inquired about the holdings in the account and, relying on the information provided at that moment, placed orders for the sale of securities without independently verifying the accuracy of the holdings conveyed. Subsequently, the Applicant approached AP to review and understand the discrepancies arising from various reports, ultimately uncovering the way the account had been misused.
9. The Applicant states that, as per the regulatory provisions mandating intimation and disclosure of trades, her daughter had developed a practice of checking notifications via mobile and email **only when she had instructed executing trades in securities**. However, during the disputed period, her daughter was preoccupied with family matters, travelling abroad, and other commitments. As such, neither the Applicant nor her daughter issued any trade instructions. Consequently, neither she checked any trade related emails nor the SMS.
10. Between 10/05/2023 and 21/05/2023, the AR was on the pilgrimage of Chardham Yatra. On 18/05/2023 the applicant suffered a minor accident, requiring hospitalization, surgery, and complete bed rest along with physiotherapy for about 8 weeks. Later, she travelled internationally on the following occasions:
  - a. 24/07/2023, to 03/08/2023: To Bali and Malaysia.
  - b. 21/09/2023 to 27/09/2023: To Dubai for official work. During these periods, international mobile roaming was not activated,

and her SIM card remained switched off. Supporting documents, including copies of tickets and visa stamps have been submitted.

11. The Applicant stated that these circumstances were well known to the AP and her dealers. Given the schedule of the AR, it is evident that she did not read promptly the SMS or email notifications sent by the Respondent, as no trades were instructed during this period.
12. During the disputed period, the Respondent executed hundreds of trades in the Applicant's UCC [REDACTED]. The details thereof are provided overleaf in a tabular form to facilitate reading & understanding.

**Cash Segment**

**Amount in INR**

No. of Scrip in which trade executed	Buy Quantity	Buy Value	Sell Quantity	Sell Value	Gain / Loss
28	1,22,106	<b>1,94,65,171</b>	1,22,106	<b>1,98,32,960</b>	3,67,789

**FNO Segment**

No. of Scripts traded	Buy Quantity	Buy Value	Sell Quantity	Sell Value	Gain / Loss
190	37,48,935	<b>165,66,08,631</b>	37,48,935	<b>165,21,71,821</b>	-44,36,810

13. The Applicant states that the mode and manner of order placement and execution would necessitate a hotline connection operational at both the ends during the trading hours (9:30 AM to 3:30 PM), which was not the case in this matter.
14. During the disputed period, the settlement of trades was achieved through the misuse of creating and invoking a pledge, **mis**

**utilising the Power of Attorney (POA) executed solely for the settlement of market trades.**

15. The Applicant stated that the Respondent TM neither provided pretrade instructions nor any post-trade confirmations.
16. During the disputed period, the Respondent failed to ensure the prerequisites of quarterly settlement of accounts for the Applicant under the running account settlement system for two consecutive quarters.
17. The Applicant stated that it was under the impression that an online trading platform, "Blink," had been provided for trading purposes. Therefore, there was no reason or occasion to focus on market reports, promotional messages, or other relevant communications.
18. **The Applicant's account UCC [REDACTED] was found to have been settled through methods other than banking channels. This raises a critical question:** for an account where settlement obligations were consistently unmet via banking channels for over 140 trading days, how could such operations have been allowed to continue without intervention?
19. The Applicant stated that the Respondent cannot evade its obligations as defined in the broker-client relationship, particularly given the Applicant's status as a senior citizen and the Respondent's position as a leading share broker.
20. In view of the foregoing, the Respondent has failed miserably to fulfill its duties as a member of the NSE and as a SEBI-registered intermediary to prevent unauthorised trading, thereby prioritizing brokerage earnings at the cost of the Applicant's funds and securities. **The Respondent's major lapses are as follows:**
  - i. Trades were neither executed on the Applicant's instructions nor supported by any cogent evidence, such as pre-trade

instructions or post-trade confirmations, including voice recordings or phone records during the disputed period.

- ii. The Respondent failed to provide evidence of the Applicant's access to the "Blink" online portal during the disputed period to demonstrate any knowledge or awareness of the trades.
- iii. No receipts or payments through the banking channel were produced by the Respondent, despite a persistent debit balance in the Applicant's account, for which interest was charged periodically.
- iv. The Respondent failed to comply with the running account settlement requirements by not providing any account settlement during the disputed period.
- v. The Respondent could not justify the voluminous transactions (amounting to ₹3,38,73,76,714/- across FNO, Cash and the Currency Segments) based on the Applicant's profile, historical trading behaviour, and precedent of no FNO trading, it did not provide appropriate evidence to support these trades.
- vi. Neither the placement of orders nor the consequent settlement of trades was justified through any evidence or regulatory mechanism.

21. Applicant made serious efforts to ascertain the truth regarding the discrepancies by contacting the office of the AP. However, no satisfactory response or evidence was provided to address the imbalance in the shares reflected in the demat account and ledger account, particularly in the absence of corresponding entries in the bank account. Subsequently, the Applicant, along with her daughter, submitted a combined grievance to the Respondent via email on 22/11/2023. The grievance was neither acknowledged nor assigned an internal reference number.



22. On 26/12/2023, the Applicant lodged a complaint with SEBI through the SCORES platform, bearing reference number SEBIE/GJ23/0002570/1. Subsequently, the NSEIL convened a meeting of the Applicant and the Respondent.
23. The present application is filed for unauthorized trades carried out during the "Disputed Period" in Cash as well as FNO Segment in UCC [REDACTED] by the AP of the Respondent **to the tune of more than ₹339 Crores, which is humanly impossible** (Enclosure XII – page 80-160 of Additional Submissions dated 31/12/2024 by the Applicant).
24. As the Respondent was quite reluctant to resolve the grievance for over 3 months, the Applicant filed a complaint on the SMART-ODR platform on 23/04/2024. The matter was later referred to CORD via SMARTODR.IN ("ODR Portal"), a unified platform established by Market Infrastructure Institutions ("MII") as per SEBI guidelines. The platform facilitates online Conciliation and Arbitration for disputes in the Indian Securities Market, as outlined in SEBI Master Circular No. SEBI/HO/OIAE/OIAE\_IAD-1/P/CIR/2023/145 dated 11/08/2023.
25. The Conciliator's report dated 30/05/2024, declared the conciliation process as "Unsuccessful and the matter stands unresolved." It directed the TM to credit an amount of ₹18.50 lakhs, representing 75% of the brokerage earned, to the Applicant's account as the "Admissible Claim Value."
26. **The Applicant prayed that: -**
- a. To declare that unauthorised trades were executed in the UCC [REDACTED] during the 'disputed period', without any instructions by the Applicant and without financial settlement through

banking channel and to pass the claim of trading loss, notional loss, interest on FNO margin, credit balance in the ledger, aggregating INR 70,26,709/- rounded off [c.f. para 24 the SOC] together with simple interest @ 18.00% p.a. and

- b. A sum of INR 3 lakhs towards legal fees and costs,
- c. Any other relief as may be deemed fit in the impugned matter.

**Respondent TM's SOD summarised:**

1. The Respondent, denied, ab initio, all the statements, allegations, averments, and contentions made in the Arbitration Application, the SOC which are contrary to and/or inconsistent with what is stated in the SOD.
2. The Applicant's new Trading account UCC [REDACTED] was activated on 15/06/2020, through the Respondent's AP [REDACTED]. Prior to that, the AR approached the AP in June 2020 to execute the KYC process. The Applicant opened an online account by digitally completing the account opening form. The Respondent provided the Applicant with comprehensive information about its policies, procedures, and facilities, including methods for tracking daily transactions, trade confirmations, contract notes, ledger statements, and margin statements. The Applicant signed the necessary documents and completed the KYC process to commence trading activities.
3. The Respondent sent a 'Welcome Letter' to the Applicant's registered email address. It provided details of the investor grievances email address [REDACTED] the Respondent's customer service contact information, and the registered office's contact details for assistance with account-related queries or transactions. It also advised the Applicant to report any discrepancies in the account particulars within seven days of receiving the welcome kit.

4. The Applicant opted for internet trading, and the Respondent provided the login ID and password on the registered mobile number for accessing the online trading system. This system allows clients to access their accounts at any time to review transactions, positions, and ledger statements.
5. The Applicant commenced trading on 22/06/2020. Over time, she transferred an aggregate amount of ₹66,00,710/- to her trading account and received an aggregate pay-out of ₹8,38,478/85 as reflected in the Ledger Statement (Annex- D).
6. **From 17/07/2020, she commenced trading in the commodity derivatives' segment.** She executed 64 trades in this segment upto 12/12/2023 for an aggregate value of INR 70 lakhs. The Applicant appointed her daughter, [REDACTED] as her AR with authority to handle her account, including placing orders online or offline and gave her extensive rights to manage the Applicant's UCC [REDACTED]. Trade confirmations were sent to the Applicant's RMN and the ECNs, margin statements, and other important and relevant communications were emailed to [REDACTED].
7. Transaction notifications were sent to the Applicant's RMN by the Exchange and any movement of securities in the Demat A/c was notified by the Depository. Despite receiving these vital alerts, the Applicant never reported any unauthorized transactions to the Respondent, Exchange, or the Depository. Had any transactions been executed without her knowledge, the Applicant would have reported them **and taken immediate action to halt further trading**. Instead, no such reports were made, and trading activity continued uninterrupted, confirming that the Applicant was aware of the transactions. The claim of unauthorized transactions appears to be an afterthought intended to recover the trading losses.

8. In August 2022, the Applicant sent an email to the AP and sought the activation of the FNO segment. It was rejected. In March 2023, the Applicant again sought the activation of the FNO segment. The Respondent made a video call to the Applicant to confirm such request.
9. Annexure E (Pages 69–116) of the SOD contains an SMS log, but the SMS pertaining to the disputed period start only on Page 102, referencing trade confirmations that were never sent to the RMN. Pages 102–116 show repetitive SMSs with identical timestamps, seemingly to inflate the submission. Moreover, the log fails to comply with Section 65B of the Evidence Act (Section 63 of the Bharatiya Sakshya Adhiniyam, 2023), lacking the required certification for authenticity.
10. The Respondent asserted that the Applicant made requests for pledging shares via OTP authentication, received OTPs from the Depository for confirmation. The pledge requests were processed only after OTP authentication, indicating the Applicant's authorization. It is noteworthy that the Applicant pledged 15 scrips valued at ₹42,15,957/80 on 24/05/2023, 14 scrips valued at ₹40,58,036/60 on 08/06/2023, and 10 scrips valued at ₹22,25,326/40 on 08/09/2023, demonstrating her awareness of the regular trading activities in UCC [REDACTED] during the 'disputed period'.
11. The Respondent submitted that the call recordings, demonstrate the Applicant's daughter's regular and comfortable communication with the Authorized Person (AP). In a recording dated 16/10/2023, the Applicant acknowledged a loss of ₹50 Lakhs in both the trading accounts. It is evident that the AR was aware of the losses incurred in both the Applicant's and her own account. This acknowledgment



served as an admission that she was monitoring the accounts and transactions. Despite being aware of the losses, the AR did not raise any immediate complaint with the Respondent.

12. The Respondent submitted that the Applicant filed a complaint before CORD in April/May 2024. In response, the Respondent filed a reply on 09/05/2024. The Applicant stated that following the submission of the complaint and reply, a Conciliation meeting was held. The Conciliator heard the matter on 28/05/2024, and directed the Respondent to pay a sum of INR 18.50 Lakhs to the Applicant.
13. The Respondent submitted that, pursuant to SEBI and MSEIL guidelines, all transaction confirmations were sent to the Applicant's RMN and registered email Id, and were not objected. No concerns /disputes were raised with the Respondent; no complaint was filed either with SEBI or with the NSEIL. Call recordings revealed the Applicant discussing transaction details and technicalities with ease, indicating her sound understanding of trading and investment. Notably, the Applicant did not approach the Respondent with any concerns during her trading period. She filed a complaint as late as 22/11/ 2023.
14. The Respondent denied the Applicant's claim of limited exposure to the Capital Market and that she has never engaged in speculation. It further denied that the Applicant only invested in the Cash Segment of the Capital Market until 31/03/2023. The Respondent asserted that the Applicant has concealed the fact that she traded in the Commodity Derivatives' Segment from July 2020 to June 2023, as evidenced by the transaction statement (c.f. **Annex-M**). It should be noted that while the Applicant denied engaging in speculative trades, she was actively involved in the highly volatile and high-risk commodities market from 17/07/2020 to June 2023.

15. The Respondent denied that the Applicant called on the AP on 01/04/2023, and orally instructed not to trade in any segment, till further instructions as Applicant has no corroboratory proof to that effect. The Respondent also denied the Applicant's claim of being shocked by the debit balance and her subsequent actions of placing sell orders without verifying the securities holdings.
16. The Respondent emphatically stated that the Applicant was aware of the transactions in her trading account, as she was regularly updated via various communication channels, including her registered mobile and email. The Applicant confirmed her intention to pledge high-value shares and, in a call on 16/10/2023, admitted to incurring a loss of INR 50 Lakhs across both accounts. After 13/10/2023, the Applicant continued to trade in both capital and derivative segments, with a debit balance of Rs. 2,73,449/25 by 23/10/2023, arising from transactions executed after that date. Additionally, despite claiming to have only engaged in capital market transactions, the Applicant was involved in commodity trading for 3 years from 17/07/2020. Given the volatile nature of the commodity market, this further underscored the Applicant's familiarity with high-risk trading.
17. The Respondent denied the claim that the trades executed in the Applicant's account were without instructions and that the absence of login to 'Blink' Portal during the disputed period constitutes unauthorized trading. The Respondent asserted that the Applicant was actively monitoring her account, as evidenced by the call recordings from October 16, 17, 23, 25, 26, and 30, 2023, where the Applicant clearly acknowledged a combined loss of Rs. 50 Lakhs in both the trading accounts. This acknowledgment is considered a ratification of the trades under the Indian Contract Act. Additionally,

the Respondent clarified that quarterly settlements occur only when there are no open positions and a credit balance exists in the account.

18. It is admitted by the Applicant that her AR did not respond to the emails and SMSs received from the Respondent, during the disputed period, as she was preoccupied with overseas travel and caring for the Applicant. However, the Respondent submitted that despite her overseas travel, the Applicant expressly consented to the pledging of shares. The Applicant's claim that she did not activate international roaming during her trips to Bali, Malaysia, and Dubai is false. The Respondent has provided evidence, including SMS logs (Annexure E) and the Pledge Report (Annexure J), showing that the Applicant authenticated OTPs for pledging shares during her travels, which disproved her claim of not receiving or responding to communications from the TM as also from the depository.
19. The Respondent clarified that a voice logger was installed at the office of the AP (Code - [REDACTED] as late as 18/12/2021, **the site was not ready then!** The technical issues with the landline and telephone system caused the system to malfunction. The calls started getting recorded as late as 13/06/2024 but AP did not opt for the Caller Id facility. A printout of the email dated 26/07/2024 from the Respondent's Technology Solution Provider confirming this issue is enclosed as **Annexure – N**.
20. The Respondent questioned the authenticity of the claim that they had settled the trades by misusing the creation and invocation of pledges under the Power of Attorney (POA). They claimed that without OTP authentication, no pledge request can be processed. The SEBI Circular dated February 25, 2020 [Annexure A], explicitly outlined the operational mechanism for margin pledges, stating that

OTP confirmation from the client is required for the pledge/re-pledge process. Relevant clause of Annexure A is quoted below:

***"4. On receipt of the margin pledge instruction either from the client or by TM / CM as per the POA, DP of a client shall initiate a margin pledge in the client's account and the status of instruction will remain pending till confirmation is received from client/pledgor. The client will submit acceptance by way of One Time Password (the 'OTP') confirmation on mobile number / registered e-mail id of the client or other verifiable mechanism. Such OTP confirmation from client shall also be required, if securities of such client are being re-pledged. The Depositories shall develop a verifiable mechanism for confirmation of the pledge by the client."***

The procedure of the pledge/repledge is as follows:

- a. Placing of pledge request on call, email and application.
- b. After request, the client receives an email and SMS from the Respondent, which contain link to the OTP.
- c. The client on clicking OTP, the client will be redirected to page to insert PAN.
- d. After the insertion of PAN, the Client will be redirected to CDSL page.
- e. After the redirection of CDSL page, the Client will receive OTP on his/her registered mobile number and email address.
- f. The Client will confirm and consent the pledge request by after entering OTP and verify.
- g. Post confirmation of OTP, the client receives an email from CDSL confirming the pledge



This demonstrated that the Applicant actively and expressly consented to the pledging of shares, and no transaction could have taken place without her consent and approval. Furthermore, the Applicant received all contract notes, messages, and reports from the Respondent, the Authorized Person (AP) of the Respondent, and the CM Regulator SEBI and others viz. NSE, NSDL, and CDSL never raised any objections during her trading. The Applicant's current claims appear to be an afterthought aimed at recovering her losses from the Respondent, indicating an attempt to mislead the AT by withholding material information. Additionally, **the AP issued holding statements for the months of July 2023, August 2023, and October 2023 on July 17, 2023, August 25, 2023, and October 23, 2023, respectively which were unsigned, unstamped. It is violation of extant NSE Instructions.**

21. On page 9 of the Account Opening Form, under the section 'B. STANDING INSTRUCTIONS,' the Applicant explicitly addressed instructions regarding the Depository Participant (DP) by stating:

*"I /We would like to instruct the DP to accept all the pledge instructions in my / our account without any other further instruction from my / our end (If not marked, the default option would be 'No')."*

In response, the Applicant selected "No," indicating her intention to confirm each pledge request. This proved that the Applicant ensured no securities were pledged without her knowledge. Had she been unaware of the trades, she would have stopped accepting the OTP. This mandate was provided by the Applicant during the KYC process in June, 2020.

22. The Respondent stated that the pre-trade confirmation can be in any other mode, in exceptional circumstances as per SEBI Circular dated

March 22,2018. The Respondent cited the observations from the recent Appellate Arbitration Award dated 04/07/2024 by the Panel of Arbitrators in the Appeal Arbitration Matter between Anand Rathi Share & Stock Brokers Limited and Prince Naresh Saxena wherein the requirement of having any pre-trade confirmation is not taken into consideration based on facts and circumstances of the case:

*"579 This Appellate Tribunal also observes that both the parties have repeatedly mentioned in their pleadings and have also quoted to justify their respective versions of interpretation of SEBI Circular No. 54/2018 dated 22<sup>nd</sup> March 2018 on Prevention of Unauthorized Trading by Stock Brokers. The Circular Point No. III is reproduced hereunder:*

*Quote:*

*III. "To further strengthen regulatory provisions against unauthorized trades and also to harmonise the requirements across markets, it has now been decided that all brokers shall execute trades of clients only after keeping evidence of the client placing such order, which could be, inter alia, in the form of:*

- a. Physical record written & signed by client,*
- b. Telephone recording,*
- c. Email from authorized email id,*
- d. Log for internet transactions,*
- e. Record of messages through mobile phones,*
- f. Any other legally verifiable record.*

*When a dispute arises, the broker shall produce the aforesaid records for the disputed trades. However, for exceptional cases such **as technical failure, etc.** where broker fails to produce order placing evidences, the broker shall justify with reasons for the same and depending upon merit of the same, other appropriate evidences like*

*post trade confirmation by client, receipt/payment of funds/ securities by client in respect of disputed trade, etc. shall also be considered."*

***Unquote***

*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"*

23. The Respondent asserted that the total claim of INR 70,26,708/74 is baseless, as the Applicant has not provided any documentary evidence to support the claim. The Respondent insisted on the Applicant submitting the necessary supporting documents to substantiate her claim. According to regulation 5.9 (a) of NSE Capital and NSE FNO, the Applicant is required to provide a SOC, statement of accounts, and other relevant facts, which the Applicant has failed to do.
24. The Respondent contended that the claim of INR 44,36,810/- for loss in the FNO segment lacks documentary evidence from the Applicant. She has failed to substantiate her claim and urged her to provide the necessary calculations and documentation to prove the alleged loss.
25. The Respondent stated that the Applicant has not provided a valid basis for her claim of INR 25,01,513/- related to the rise in the value of shares. The claim is deemed notional and unsupported by any documentary evidence.
26. The Applicant has failed to submit documents substantiating her claim of INR 1,04,014/75 for the loss on non-receipt of dividends and INR 38,936/- for interest on FNO margin. Consequently, these claims remain unproven.

27. The Respondent pointed out that the Applicant has not provided supporting documents to substantiate her claim of INR 13,936/- for interest on delayed payments (incomplete details provided) and INR 2,99,977/99 for credit balance in the ledger as of 31/03/2023.
28. The Respondent noted that the Applicant initiated arbitration on 07/06/2024, and filed the arbitration application on 12/07/2024, after a delay of one month. According to clause 28.c of SEBI's Master Circular dated December 28, 2023, when arbitration is initiated after one month but within six months of conciliation failure, the fees payable will be double the non-refundable fees. The Applicant has not adhered to the time frame and has not paid the required fees.
29. The Respondent prayed that:
- a. The claim filed by the Applicant be dismissed.
  - b. Costs, including incidental expenses, be awarded in favour of the Respondent.
  - c. The Respondent's claim of Rs. 18,50,000/- filed on 28/06/24, be considered and the Applicant be directed accordingly.

**Observations of the AT, analysis of the documents brought on records and the logical conclusions drawn**

1. The Applicant is a 65 years' old housewife, a high school dropout, with declared annual income below INR 1,00,000/- with no prior experience of trading in securities. She opened a new share trading a/c with the Respondent TM in June 2020 after completing the KYC formalities. Her Unique Client Code (UCC) [REDACTED] is mapped to Ms. [REDACTED] an Authorized Person (AP) of the Respondent TM. The Applicant claimed to be a 'long term investor,' opted for trading in

the cash segment, MF & SLBS, by online mode. Later she opted for the offline mode. Within 2 weeks, she opted for trading in the FNO Segment as also the currency segment. Two weeks later, she sought to operate in the Commodity Derivatives, but probably due to technical reasons; her request was rejected. From 15/06/2020 to June, 2023, she executed numerous transactions in the Cash Segment but none in the FNO Segment, the Commodities. She claimed in the SOC that she never pledged any securities for margin purpose. She also contended that the Respondent never provided the call recordings to verify the mandatory pre-trade confirmations.

2. The Applicant's AR (Mrs. [REDACTED]) stated that prior to June, 2020 she had a trading a/c with JM Financial Services for more than 3 years through M/s. [REDACTED] owned by Mr. [REDACTED] the Dealer as also the husband of Ms. [REDACTED] the AP.
3. The Applicant has given the AR a POA to trade on her behalf. Further, she has registered her own mobile No. [REDACTED] as the RMN for receiving SMS alerts and communication from TM, Exchange, the Depository, etc. AR's personal Email Id - [REDACTED] was the Registered Email Id for UCC [REDACTED]
4. It is pertinent to mention here that Applicant has at the time of enrolment as constituent with the TM through its AP has signed all the mandatory documents prescribed by SEBI & Stock Exchanges such as Rights & Obligation of Stock brokers & Clients, Risk Disclosure Documents, Policies & Procedures, Tariff Sheet & Guidance Note - Do's & Don'ts etc. **The Applicant has also agreed to abide by the voluntary terms and conditions prescribed by TM.**
5. On 08/07/2024, the Applicant requested NSE to furnish the details of the trade confirmations during the 'disputed period' and the monthly statements sent to the investor for the period April, 2023 to October,

2023. Reportedly, till date, NSE has not responded to her for the reasons best known to them. NSE needs to explain the lapse, a violation of the relevant SEBI Guideline.

6. SEBI, through its Circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated 22/03/2018 (effective 01/04/2018), mandated that the brokers must execute client trades **only after maintaining evidence of the client placing such orders**. This evidence may include Physical records written and signed by the client, Telephone recordings, Emails from authorized email IDs, Logs of internet transactions, Records of messages via mobile phones, or any other legally verifiable record. In the event of a dispute, the broker must produce these records for the disputed trades. If a broker fails to provide evidence due to technical reasons, they must demonstrate that the trades were not unauthorized using other relevant evidence, such as post-trade confirmation by the client or records of funds or securities received/paid by the client in relation to the disputed trades.
7. The circular further specifies that when brokers receive order instructions via telephone, they are required to use a telephone recording system to record these instructions and maintain the recordings as part of their official records.
8. SEBI mandated that effective 01/04/2018, the brokers must execute client trades **only after maintaining evidence of the client placing such orders**. Such a telephonic recording system was not available with the AP (Code - [REDACTED] in June, 2020 when the UCC [REDACTED] became operational. The Respondent clarifies that a voice logger was installed at the office of the AP 18 months later, on 18/12/2021, **the site was not ready then!** The technical issues with the landline and telephone system caused the system to malfunction. The calls started getting recorded as late as 13/06/2024 **but AP did**

**not opt for the Caller Id facility, which is quite ridiculous!** What does the Inspection Department of NSE do?

9. A printout of the email dated 26/07/24 from the Respondent's Technology Solution Provider confirming this issue is enclosed as Annexure – N. The Applicant questioned the Respondent why the call recordings for Mobile No. [REDACTED] were not provided by them which was the RMN of the Respondent's AP with NSE? No response till date from the Respondent. **The Respondent is conspicuously silent on it!** The Respondent clarified that a voice logger was installed at the office of the AP (Code - [REDACTED]) way back on 18/12/2021, **the site was not ready then!** The technical issues with the landline and telephone system caused the system to malfunction. The calls started getting recorded **as late as 13/06/2024 but AP did not opt for the Caller Id facility.** Ultimately, a new system was installed by the AP on 25/07/24, calls were recorded with the Caller ID and were synchronised on the server. A printout of the email dated 26/07/24 from the Respondent's Technology Solution Provider confirming this issue is enclosed as Annexure – N. Now the basic question arises, how the Respondent recorded the calls for the period Oct. 16 to 30, 2023 when no such system was in place at the office of the AP? The Respondent has told a blatant lie & misled the AT.

**The AT has viewed it seriously.**

10. The Respondent has failed to provide any pre-trade call recordings for the placement of trade orders by the Applicant during the disputed period. However, the Trading Member (TM) submitted six days' worth of pre-trade call recordings for trades executed between 16/10/2023, and 30/10/2023, which the Applicant has not contested. All the trades executed between 01/04/2023, and 13/10/2023, were allegedly unauthorized and were consequently disputed. Shockingly, the

Applicant continued trading with the Respondent through the same AP until the end of Nov. 2023.

11. The Applicant requested NSE on 20/04/2024 to verify whether the call recording provided by the Respondent originated from a designated line. NSE's response on 19/06/2024 confirmed that the Respondent's registered mobile number [REDACTED] was operated by Pranav Shah, while no landline was registered. The call recording provided does not pertain to the registered number, raising questions about the terminal's operator. Relevant correspondence is enclosed as Enclosure VIII.
12. Annexure E (Pages 69–116) of the SOD contains an SMS log, but the SMS pertaining to the disputed period start only on Page 102, referencing trade confirmations that were never sent to the RMN. Pages 102–116 show repetitive SMSs with identical timestamps, seemingly to inflate the submission. Moreover, the log fails to comply with Section 65B of the Evidence Act (Section 63 of the Bharatiya Sakshya Adhiniyam, 2023), lacking the required certification for authenticity.
13. The email logs provided by the Respondent relate only to end-of-day contract notes. Evidence of real-time trade confirmations or notifications have not been submitted, despite verbal directions by the AT during the Hearing.
14. The AP in this case is [REDACTED] but all the trades in securities in UCC [REDACTED] [from June, 2020 till November, 2023] were executed by [REDACTED] the Dealer of AP as also her husband, who attended both the Arbitration hearings whereas [REDACTED] did not. Given the volume and nature of complexity of the trades, it is impossible for one person to execute them manually. The role of



both the individuals and the compliance of the AP's office should be scrutinized thoroughly.

15. The Applicant compared the Client Masters of 17/06/2020 and 25/10/2024, finding that POA details, which were blank in 2020, appeared in 2024 without any explanation.

16. **The SOC has many discrepancies, inconsistencies. Just to illustrate a few: -**

a) The Applicant had cumulatively deposited, an aggregate amount of INR **76,00,710/- to the credit of UCC [REDACTED]**. The SOC as also the SOD both put this figure wrongly as INR 66,00,710/- [a difference of INR 10 lakhs, which is quite substantial].

b) From July 2020, the Applicant commenced trading in the commodity derivatives' segment. She executed 64 trades in this segment from 17/07/2020 to 12/12/2023 for an aggregate value of INR 70 lakhs. This nails her factually incorrect statement in the SOC [c.f. Annexure D to the SOD], repeated during the Hearing:

*"... From 15/06/2020 to June, 2023, the Applicant executed numerous transactions in the Cash Segment **but none in the FNO Segment, the Commodities segment.**"*

Given the volatile nature of the commodity market, this further underscores the Applicant's familiarity with high-risk trading.

c) Another discrepancy - From July 2020 till Nov. 2023, the Applicant received **a pay-out** of ₹8,38,478/85, as reflected in the Ledger Statement (Annex-D to the SOD). It is incorrect. In all there were 3 pay outs which aggregate to ₹8,38,478/85.

d) Another major discrepancy in the SOC—**The Applicant has claimed that she never pledged any securities for margin purpose.** The SOD nails this blatant lie as given overleaf -

*The SOD asserted that the Applicant made requests for pledging shares via OTP authentication, received OTPs from the Depository for confirmation. The pledge requests were processed only after OTP authentication, indicating the Applicant's authorization. It is noteworthy that the Applicant pledged 15 scrips valued at ₹42,15,957.80 on 24/05/2023, 14 scrips valued at ₹40,58,036.60 on 08/06/2023, and 10 scrips valued at ₹22,25,326.40 on 08/09/2023, demonstrating her awareness of the activity in her trading account.*

**e) Trading Turnover of UCC [REDACTED] since June 20 till 26/09/2024**

<b>Sr. No.</b>	<b>Segment</b>	<b>Buy value (INR)</b>	<b>Sale Value (INR)</b>
1	Future Gold	29,06,91,100	28,87,43,000
2	Silver	6,32,00,630	6,30,52,485
3	Gold	1,40,84,000	5,79,90,900
4	Copper	1,17,60,250	1,17,61,875
5	Future Silver	70,02,480	69,63,590
6	Copper & Natural Gas - <b>combined</b>	43,09,500	43,38,375
7	Nickel	17,04,300	17,05,350
8	Natural Gas	6,96,750	6,89,125
	<b>Sub Total</b>	<b>39,34,49,010</b>	<b>(43,52,44,700)</b>

A 65 years old School dropout and a Senior Citizen woman has these colossal Commodities trades in her UCC [REDACTED] and a professionally qualified, a senior corporate executive, AR with 6 years' plus extensive experience in Securities Trading choses 'to close her eyes' so long as the majority of those deals were beneficial to her. The Applicant raised a 'hue and cry' only when such deals started incurring heavy losses. Then only she remembered the SEBI, NSEIL Guidelines

issued from time to time. **She has certainly misled the AT. It is clearly an abuse of the Arbitration process!**

- f) "It is a well-established principle of law that any party seeking justice before a Court or Tribunal must do so with clean hands. In the present case, neither the Applicant nor the Respondent has adhered to this principle. Instead, they have abused the arbitration process and misled this Arbitral Tribunal. The Hon'ble Supreme Court, in *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430, held that '*a litigant who approaches the Court with unclean hands is not entitled to any relief*' and emphasized that courts should not condone conduct that undermines the administration of justice." **The Applicant did not have 'clean hands' when she invoked Arbitration in this matter. Same is the case with the Respondent TM.**
- 6) Further, as per Annexure – 6 of SEBI Circular dated 22/08/2011, the client must 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 could have raised the dispute at the appropriate time. Further, the Applicant has disputed all the trades in FNO as also the Commodities Segment executed during 01/04/2023 to 13/10/2023.
- 7) It is the responsibility of the Applicant to check the contract notes and bring the discrepancies, if any to the notice of the Respondent TM within a reasonable time of issuance of the contract notes. Further, it is her responsibility to regularly check the mailbox.
- 8) From the above, it is clear that Applicant would have come to know about her account at the earliest and could have verified her account, if she so desired. The Applicant also knew that she is required to bring any discrepancies in her account to the knowledge of the TM within a

reasonable time. Therefore, inordinate delay in complaining about unauthorised trades is totally unjustified.

- 9) It is the applicant's contention that she has not authenticated the OTP for pledging of her shares. The SEBI Circular dated 25/02/2020 – Annex. A, stipulates the operational mechanism for margin pledges, mandating OTP confirmation from the client for any pledge or repledge process. The Applicant has acknowledged receiving SMS logs from CDSL, which contained 320 messages, including updates on pledge creation, release, credit, debit, and signature changes. Additionally, the Applicant submitted an email dated 10/07/2024, from [REDACTED] confirming that margin pledge transactions were executed in her account only after OTP verification. CDSL also provided a comprehensive record of pledged transactions conducted

in the Applicant's account following OTP authentication. CDSL has relied on SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2022/153 dated 11/11/2022, for the pledge process. Hence, the Applicant's contention that she has not pledged her securities, does not hold good. However, the applicant had sought clarification and requested CDSL to verify the mobile number for which OTP authentication/verification has been done. The applicant apprehends some sort of fraud with the process.

- 10) If the Applicant failed to review or act promptly on these communications from the TM, Exchange, and the Depository and did not raise any concerns about unauthorized trades for such an extended period (26 weeks), **she did so at her own peril**. The first complaint regarding unauthorized trades in her account was lodged with the TM on November 22, 2023, despite significant & allegedly unauthorised trading activity in her account from 01/4/23 to 13/10/23. This indicates that the Applicant did not monitor her

account or take timely action to prevent unauthorized trades. In such circumstances, the Applicant must bear accountability for not addressing the issue earlier.

- 11) The AT is of the view that the Applicant's assertion that all the trades executed in her account were without her permission or knowledge **cannot be accepted considering the facts and circumstances of the case.** The AT has noted that the Applicant's AR is a qualified professional, with 6 years' plus experience in trading in securities who understands the intricacies of market operations. She was authorized to execute trades in the Applicant's UCC [REDACTED]. **AT apprehends that she was in collusion with the AP, [REDACTED],** through her husband, [REDACTED], the owner of the investment firm [REDACTED], to operate the UCC-[REDACTED]. When the investment decisions went awry, resulting in substantial losses in FNO trades, AR appears to have sought remedial measures. While she has claimed that she was traveling abroad during the disputed period and was occupied with caring for her mother during her hospitalization, the submitted travel timeline and caregiving responsibilities do not account for the entirety of the disputed period. Thus, the claim that all transactions were unauthorized is totally unfounded.
- 12) **Annexure N** (Page 282 to the SOD) includes an email dated 26/07/2024 stating the client logger was installed by the AP as late as 18/12/2021. However, SEBI's 22/03/2018 circular mandated designated telephone lines for trade execution, which were not in place. This demonstrates the Respondent's non-compliance with SEBI regulations.
- 13) **Annexure K** to the SOD contains call recordings of conversations between the AR and an employee of the AP **using an unregistered number** [REDACTED]. These recordings, made without informing

the other party, **lack pre- or post-trade confirmations for 16/10/2023 and cannot be relied upon.**

14) It is evident from e-logs submitted by the Respondent that they forwarded ECNs, ledger statements, margin statements, etc. to the Applicant on regular basis as per SEBI directives. It is also evident from SMS logs that trade confirmations were also sent to the Applicant by the TM. Apart from it, Exchanges also send SMS & emails giving details of trade which took place at the Exchange platform in the account of an investor at the end of the day. Likewise, Depository also informs the investor about credits & debits in its demat account by way of SMS/emails at the time of credits/debit of shares. Depositories also send periodical statements about holdings.

15) The Respondent's claims in the SOD lack credibility and appear suspicious viz. Annexure G is cited as evidence for events in August 2022, but the document's date, as recorded at the bottom is

27/08/2020. The assertion in Paragraph III, Page 9, that the Applicant requested activation of the FNO Segment, is incorrect, as the cited email quoted and the bank statement pertain to 2020, not to 2022. Additionally, the bank statements sent to the AP for the limited purpose of the reconciliation of accounts. Correspondence dated 24/08/2020 and 25/08/2020, enclosed as Enclosure VI, further disproves the Respondent's claims. The Respondent must explain how unsigned documents became signed. There is no evidence of any email from the Respondent to the Applicant either approving or rejecting an alleged FNO Segment activation request from August 2022.

16) The Respondent claimed having created the pledge on 24/05/2023, yet huge volume of trades aggregating ₹330.87 Crores in FNO and ₹3.92 Crores in Cash segments were executed between 01/04/2023 and 24/05/2023 without sufficient margin. This trading pattern,

aimed at generating brokerage of approximately ₹27 lakhs, is humanly impossible to execute manually.

- 17) The Applicant has admitted that she had access of trading platform – 'Blink' but she did not pay any heed on such market reports and messages received by the Applicant on her RMN and the Registered Email Id. The AT has summarily rejected her argument on this point.
- 18) The AT apprehends that she has shared the LOGIN Id and the Password with Mr. Pranav Shah to operate both the accounts of Applicant and her individual account, to 'mutual advantage.' In the greed to generate maximum brokerage, AP appears to have executed huge volume of trades during the 26 weeks' period taking undue advantage of the Applicant's ignorance.
- 19) On 01/04/2023 AR personally met AP [REDACTED] & [REDACTED], her Dealer and Husband and **instructed verbally not to trade in the UCC [REDACTED] in any segment then onwards.** Despite specific query by the AT, she failed to reply why such important instruction was not given in writing, with 'CC' to the Respondent? **It substantiates the apprehension of the AT that the AR was 'acting in collusion' with [REDACTED], Dealer of the AP and her husband.**
- 20) The Applicant remained silent spectator throughout the disputed trade period. Inaction/negligence on the part of the Applicant in bringing allegation of unauthorised trades indicates that Applicant has also acquiesced in the alleged unauthorised trading by the AP.
- 21) The AP's husband sworn in an affidavit dated 31/12/2024 claiming that the Applicant frequently called, messaged, or personally visited the office to execute trades, which the Applicant has denied. It does not even mention the UCC [REDACTED], **the disputed period, etc.** As a result, the exact mode of trading remains unverified. It is quite confusing and reveals nothing. **It was a deliberate attempt by the**

**AP to mis lead the AT.** The Respondent did not regret this serious lapse of his AP.

22) The Respondent has: -

- a. failed to provide any pre-trade call recordings for the placement of trade orders by the Applicant during the disputed period. However, the Trading Member (TM) submitted six days' worth of pre-trade call recordings for trades executed between 16/10/2023, and 30/10/2023, which the Applicant has not contested. All the trades executed between 01/04/2023, and 13/10/2023, were allegedly unauthorized and were consequently disputed. Shockingly, the Applicant continued trading with the Respondent through the same AP until the end of Nov. 2023.
- b. violated the SEBI guidelines and due claim regarding maintaining records for trades.
- c. failed to submit pledge request form to the Tribunal which is required while initiating the process of pledge of securities by the clients/customers.

23) The Applicant requested NSE on 20/04/2024 to verify whether the call recording provided by the Respondent originated from a designated line. NSE's response on 19/06/2024 confirmed that the Respondent's registered mobile number [REDACTED] was operated by [REDACTED] while no landline was registered. The call recording provided does not pertain to the registered number, raising questions about the terminal's operator. Relevant correspondence is enclosed as Enclosure VIII.

24) The Respondent claimed having installed a voice logger at the office of the AP (Code - [REDACTED]). However, it was reported that due to landline and telephone issues, the system was non-functional. During the hearing, the TM stated that technical difficulties prevented the



retrieval of pre-trade call recordings for the Applicant's account for the disputed period spanning 26 weeks. Notably, while the Respondent was able to provide recordings for six days in October 2023 [post the disputed period], they failed to retrieve data for the preceding 26 weeks' continuous trading, raising suspicion. This inconsistency suggests that the AP, represented by [REDACTED], may have personally operated the Applicant's account during this period, with apparent acquiescence by the AR ([REDACTED]). The circumstances clearly point out plausible collusion between the parties. The sheer volume of trades in the FNO segment (buy and sell transactions)—is indicative of the collusion. Total volume of trades executed in the account during the disputed period amounted to **more than Rs.332 crores** -both Buy (Rs.166.11 crores) and Sell (Rs.165.95 crores) transactions in the FNO segment alone resulting in a trade loss of INR 16 lakhs.

- 25) **The standard agreement between the Applicant and the TM as stipulated by the NSE expressly prohibits operating a Portfolio Management Service (PMS).** The TM was obligated to execute only the orders duly placed by the Applicant and was not authorized to trade

in the Applicant's account on its own initiative. **Such actions violate SEBI's Code of Conduct for stockbrokers, which mandates integrity and due diligence.** Engaging in unauthorized PMS is unacceptable and renders the TM/AP liable for the losses incurred by the Applicant.

- 26) Thus, the AT has concluded that neither party has approached it with clean hands.

- 27) The AT has observed that the Respondent TM has earned an brokerage of INR 26 lakhs in this matter which the TM did not deserve fully [c.f. para No. 8, page no 8 of the Conciliator's Report dated

30/05/24]. As a measure of fairness, the AT wishes to grant equitable relief to the Applicant; the Respondent TM is directed to refund 75% of the brokerage earned under UCC [REDACTED] during the 'disputed period' [amounting to INR 19.50 lakhs], to the Applicant.

.....

### **The Final Arbitral Award**

- a) The Arbitration Claim dated 12/07/2024 is dismissed as it has not been substantiated by the Applicant.
- b) As a measure of justice, the Arbitral Tribunal has granted an equitable relief to the Applicant. The Respondent TM is directed to refund 75% of the brokerage earned under UCC [REDACTED] during the 'disputed period' [amounting to INR 19.50 lakhs] to the Applicant **within 30 days**. Failing which, the defaulted amount shall attract simple penal interest @12.50% p.a. for the actual period of default.
- c) No order as to the reimbursement of the costs and legal expenses.
- d) This Arbitral Award has been issued in triplicate, i.e. with three originals - One each for the Parties to Arbitration, the third one to be retained by CORD, for its records.

[REDACTED]

Presiding Arbitrator

[REDACTED]

Co-Arbitrator

[REDACTED]

[REDACTED]

Co-Arbitrator

[REDACTED]

[REDACTED]

11 February 2025

[REDACTED]