

**In the matter of Arbitration in Arbitration Ref. No.:
NSE-SB-2024-04-708648**

Between

[REDACTED] (CONSTITUENT)

.....APPLICANT

PAN - [REDACTED]

And

[REDACTED]
(MARKET PARTICIPANT/TRADING MEMBER)

....RESPONDENT

PAN - [REDACTED]

Before the Hon'ble Sole Arbitrator: [REDACTED]

PREFACE:

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-3/P/CIR/2023/195 dated July 31, 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 ("**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 November 30, 2024 by CORD, in the present matter.

AWARD

1. This Arbitration proceeding is taking place pursuant to the Byelaws, Rules & Regulations of National Stock Exchange of India Ltd. (NSE), between [REDACTED], a Constituent and [REDACTED], a Trading member, as per the provisions of Arbitration and Conciliation Act, 1996. The proceedings were conducted on the ODR platform **CORD** as per the procedure laid down by SEBI Circular No. SEBI/HO/OIAE/OIAE_IAD-3/P/CIR/2023/195 dated July 31, 2023. The claim put forth by the Applicant/ Constituent is for a sum of Rs. 84,961.99, that is less than Rs. 1 lakh. Consequently, the award is being passed on the basis of documents only, as provided for in the above-referred circular of SEBI dated July 31, 2023 (para 22).
2. The complaint of the Constituent, [REDACTED] is that the Respondent with whom she has a trading account, debited amounts on account of penalty on 9 occasions such as September 02, 2021, September 20, 2021, September 24, 2021, September 27, 2021, September 30, 2021, October 06, 2021, October 06, 2021, and October 06, 2021, totaling to Rs. 84,961.99. The said penalties, in fact, had been levied by the Exchange for short/non-collection of upfront margins on the Trading member, which in turn had been passed on to the client /constituent. Her stand is that these penalties could not have been passed on to her as per NSE regulations and clarifications. Hence, the claim is for the said Rs. 84,961.99.
3. As the written statement of [REDACTED] NSE's circular no. NSE/INSP/45191 dated July 31, 2020, specifically vide Clause 15, it is clearly observed that a Trading Member cannot pass on the penalty w.r.t short

collection of upfront margin to clients unless it is case of failure on the part of the client, like dishonoring of cheque or non-payment. She further relied on the Circular Ref. No. - NSE /INSP/49929 dated October 12, 2021 which pointed out the practice of some of the members in passing the penalties to the clients and reiterated the instructions contained in the earlier cited circular of July 31, 2020 to not to pass on such penalties. Hence, according to her, the circulars have not been abided with and the penalties debited need to be refunded back.

4. In the statement of defence, the basic thrust of the Respondent's stand was that the Margin Framework put into place was complicated, due to which exact requirement of margin was difficult to predict. Relying on SEBI circular dated July 20, 2020, SEBI/HO/MRD2/DCAP/CIR/P/2020/127, titled "Framework to Enable Verification of Upfront Collection of Margins from Clients in Cash and Derivatives segments" which forms the basis of Margin collection and reporting, it was stated that the requirements were difficult to implement and posed a challenge to collect the entire margin beforehand. As per this the SEBI had directed Exchanges to provide four random snap shots of client wise trading to TMs to work out peak margin obligation as also the END OF THE DAY(EOD) requirement. However, the upfront margin had to be collected before the trade. This directive had practical difficulties because of:

- 1.the volatility and increase in SPAN parameters during the trading sessions
2. Communicating the final margin to the client late in the evening leaves a very small window for collection.

5. It was further stated thereafter that consequent to concerns offered by the stake holder, another circular dated May 10, 2022 to modify the framework was issued (No. SEBI/HO/MRD2/DCAP/CIR/P/2022/60). As per this Peak Margin shall be calculated based on the fixed Beginning of Day (BOD) margin parameters. The BOD margin parameters would include all SPAN margin parameters as well as ELM requirements and shall come into effect with effect from August 01, 2022. However, similar to the peak margin, such methodology was not described for EOD margin, which does not end up

being accurate primarily because of non-availability of latest SPAN files. Finally, if the EOD margin requirement changes post trade due to MTM etc., it is very difficult to collect the margin from their clients due the short time available.

6. So the Respondent's stand seems to be that keeping all these complexities in view, if penalties are levied by the exchanges for default of margin requirements, it is not a Trading Member's fault and therefore, these are passed on to the clients.
7. Finally, without prejudice to the above stand, recourse was taken to NSE circular NSE/INSP/53525 dated Sept 02, 2022 in this very context of TMs passing down the penalties, which besides reiterating the position on passing on the penalty burden, had also said that such penalty levied shall be refunded if the same has been passed on after 11th October 2021. Since the amounts involved in the present dispute pertain to the period prior to 11th October, it was stated that it has accordingly not been refunded.
8. The matter has been given due consideration and in my view, the applicant has a strong case. A penalty is levied on a person for having committed some infringement of law or regulation. I could not find the Trading Member having proved anywhere that the Constituent/client has committed any such infringement. To have the margin in place, the NSE clearly casts the duty on a Trading Member. In the statement of defence, there is not any mention of a situation when the margin was asked for and the client, that is, the applicant, refused. A client cannot know the amount of margin required. That has to be conveyed and thereafter collected by a Trading Member who is a link between Exchange and the client. We have nothing on record to show that on the dates mentioned, the Respondent computed certain margin obligations, asked for these amounts towards margin and on being asked to deposit the Constituent failed or refused to provide. If one were to look closely, the underlying basis for the aforesaid NSE's circular of 31.07.2020.

9. The difficulties and challenges faced in the Framework of margin, put forth in detail, is between the Trading Member, the Exchange and SEBI. Trading members are supposed to be experts in their field to handle the trading processes and a mistake committed by it cannot be cause for penalising its client. Such circumstances can be cited as mitigating circumstances if these were penalty proceedings against the trading member. But obviously not reasonable reasons for passing on the obligation or justifying a penalty to the client.

10. So far the reference to NSE communication dated Sept. 02,2022 is concerned, it does not change the basic matrix. The circular concerns the expected behavior post 12.10.2020, the date when NSE issued its circular. But does not and cannot debar any of the stakeholder to not raise issue about the matter in the period prior to that. It is a point of law as to whether a penalty can be passed on or not to the clients and under what circumstances and takes one to issues of natural justice, contractual obligations and operation of principle of *mens rea* for penalties and remains the same irrespective of a date mentioned in a clarificatory circular. Penalties are not like brokerages. As I have already detailed out earlier for the penalty to be foisted, default needs to be proved which has not been done.

AWARD

In view of the observations,

- (i) The claim of the investor is admitted for a sum of **Rs. 84,962/-** (rounded off) (Rupees eighty-four thousand nine hundred sixty-two only).
- (ii) Cost of this proceeding to be borne by the respective parties in light of applicable SEBI and/or Exchange Circular/s/guidelines.
- (iii) This Award is duly dated and signed.

Place: [REDACTED]

[REDACTED]
Sole Arbitrator