

BEFORE THE ARBITRAL TRIBUNAL [REDACTED],

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

Matter No: NSE-SB-2024-05-922413

BETWEEN

[REDACTED] Address:

[REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

Complainant/Applicant

And

[REDACTED]

Address: [REDACTED]

[REDACTED]

[REDACTED]

Respondent

For Claimant:

1. [REDACTED]
2. [REDACTED] - Authorised Representative

For Respondent:

1. [REDACTED]
2. [REDACTED]

[REDACTED]

[REDACTED]

AWARD
(24-12-2024)

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_IAD1/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 (“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 arbitrator panel has been appointed as Arbitral Tribunal on the 18th October 2024 by CORD, in the present matter.

CONTENTIONS RAISED BY THE CLAIMANT

- 1) The present Claimant/Applicant [REDACTED] came to the Arbitral Tribunal with a submission that he was approached by [REDACTED], a representative of [REDACTED] [REDACTED] somewhere in October, 2023 to open Private Client Group (PCG) investment and trading account. According to the Claimant he was told that in PCG account an investor has to invest minimum sum of Rs.25,00,000/- and [REDACTED] will provide a relationship manager and an advisor to advise and update on investment ideas and to take care of investment. According to the Applicant after going through the presentation made by [REDACTED] [REDACTED] he was convinced and was also persuade for account opening. [REDACTED] opened his account through his mobile and backend office. Within next 2-3 days the Claimant's account were activated. Then thereafter [REDACTED] approached him and assisted in downloading their mobile app and activation of Client Code [REDACTED]. According to the Applicant he was asked downloading [REDACTED] app in [REDACTED] setting up account and its password, process of fund addition, and thereafter he assisted the Claimant in setting up CDSL EASE account process to [REDACTED] [REDACTED]

transfer Claimant's holding from [REDACTED] to [REDACTED] and also talked him to transfer his shareholding from [REDACTED] to [REDACTED]. Thereafter, he was told that [REDACTED] will be his relationship manager, called the Claimant through landline no. [REDACTED] and introduced one [REDACTED] and informed the Claimant that said [REDACTED] would be Claimant's trade advisor and he would be assisting the Claimant in trading.

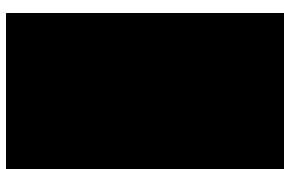
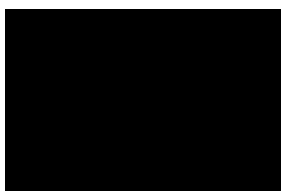
2) [REDACTED] informed the Claimant that [REDACTED] would create trade in currency and [REDACTED] would sell currency premium and then thereafter the Claimant would not be required to do anything and at the end of the month the Claimant would get 3 to 4% profit on his investment. In view of this the Claimant started trading. According to the Claimant he had no idea or knowledge of the said currency trade nor risk so involved in it and therefore he was totally dependent on [REDACTED] and the commitments made by [REDACTED]

3) According to the Claimant on 6th March, 2024 he was informed about the following trades:

OPTCUR USDINR 26APR24 82.50PE- 7,00,000 .0650

OPTCUR USDINR 29MAY24 83.75CE- 7,00,000 .09

The Claimant after receiving the information Okayed for the above trade. On 3rd April, 2024 at about 9.15 AM he started getting



continuous message of margin short fall, the Claimant tried to call

Team on the recorded line but nobody answered.

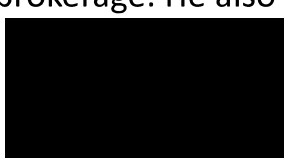
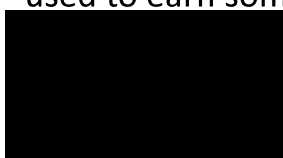
- 4) At about 10.18 AM the Claimant saw in the trade book of trade mobile app that his 50% position of the following trades were squared off by Team without his consent and confirmation.

OPTCUR USDINR 29MAY24 82.75PE- 3,50,000 19

OPTCUR USDINR 29MAY24 83.75CE- 7,00,000 .09

Being surprised after learning that Team had squared off OPTCUR USDINR 29MAY24 82.75PE instead of OPTCUR USDINR 26APR24 82.50PE. According to the Claimant he never made any request to change his trade from OPTCUR USDINR 26APR24 82.50PE to OPTCUR USDINR 29MAY24 82.75PE nor anybody from Team advised or took any confirmation from him to do so.

- 5) According to the Claimant his account was debited by INR 76,99,737 on account of losses of the said trades.
- 6) According to the Claimant Team changed his explained position without his consent and confirmation and, therefore, it was a case of unauthorized trade. He also says that the Respondent misappropriated and mis-utilized his account for their brokerage benefit. According to him his account and its fund were inappropriately and without his consent and confirmation were used to earn some brokerage. He also stated that the Respondent's



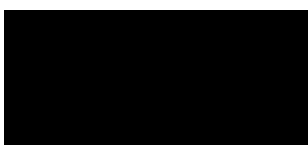
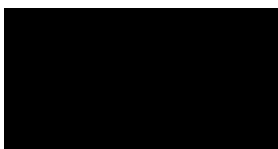
team never informed him about the changes, nor they have taken any Pre trade – post trade confirmation from him. He made allegation of fraud, cheating and misappropriation.

- 7) Accordingly and in view of the facts submitted by him and the submissions so made he claimed a sum of Rs.76,99,737 from the Respondent with an interest of 18% per annum from 3rd April, 2024 till payments are made to him.
- 8) During arguments, we enquired from [REDACTED] that if according to the Applicant he is entitled for a sum of Rs.26,26,885/- then how could he make a claim for sum of Rs.76,99,7737. In response to our query [REDACTED] stated that the Claimant would be entitled to the amount so deposited by him and not the inflated claim.
- 9) A notice was issued to the Respondent to file their Statement of defence and Counter claim. According to the Respondent nobody approached to the Claimant for opening the account. They submitted that the Claimant/Applicant of his own came to them and asked them to open account. They also submitted that on reviewing the case details of the Claimant account for March 6th, 2024 it was found that no trade was executed for OPTCUR USDINR 26APR24 82.50PE contract of the said date. Instead, the trades were executed for OPTCUR USDINR 26APR24 83.75CE and OPTCUR USDINR 29MAY24 83.75CE. The contract notes dated March 6th, 2024 were annexed with their reply as Annexure-E & F to prove said trade

[REDACTED] [REDACTED]

confirmation. According to them, as no trade was executed for the OPTCUR USDINR 26APR24 82.50PE on March 6th 24 it would be clear that the position would not be visible on 3rd April 24 for the OPTCUR USDINR 26APR24 82.50PE contract. According to them the said contract was already closed on March 27, 2024 and the client received a profit of Rs.7604 in his account. They have also submitted that non-mention of the transaction dated 27th March, 2024, by the Claimant speaks against the interest of the Claimant.

- 10) According to them, in view of the disputed position a contract-note detailing all trade particulars were duly sent to the Claimant to his registered email address. The Applicant/Claimant never raised any concerns at that time and accepted the trade. According to them a contract note within the context of financial trading and investments, serve as a crucial and legally binding document that formalizes the transaction between a client and a trading member; the contract note carries significant legal weight, acknowledged as a formal agreement between the client and a trading member; the contract note is generated post transaction executed by the trading member and the status of a legally binding instrument.
- 11) It is also stated by them that the Claimant opened his account by opting Internet Based Trading (IBT) facility on 14th, October, 2023. According to the Respondent the Claimant successfully accessed their online trading application for the first time and gained full access to his trading activities and, therefore, at any given time the



Claimant could monitor the trading activities occurring in his account.

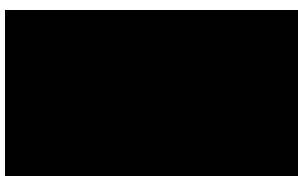
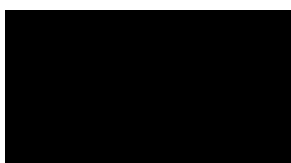
- 12) Placing reliance upon the guidelines issued by SEBI relating to “Rights and Obligations to Stock Brokers, Sub-Brokers and Clients” document, under Clause 13 of the “Transaction & Statement” it is clearly stated that the client shall give any order for buy or sell of a security/derivatives contract in writing or in such form or manner, as may be mutually agreed between the client and the stock broker. The stockbroker shall ensure to place orders and execute the trades of the client, only in the Unique Client Code assigned to that client. In their submission all the trades were placed on behalf of the Claimant and within the Claimant’s knowledge.
- 13) It is also stated by them that on page no.10 of KYC they are protected, and no fault can be found with them. In paragraph 8 they have given a detailed chart in relation to execution of the trades. They also placed reliance upon the non-response from the side of the Claimant by stating that “**ekSu Lohdkj y{k.ke**” meaning thereby that if you keep quiet against some statement it would be deemed to be an acceptance. In paragraph 10 it is stated that from 3rd, April 2024 the Claimant was having the following holdings:

OPTCUR USDINR 29MAY24 82.75PE- 7,00,000

OPTCUR USDINR 29MAY24 83.75CE- 7,00,000

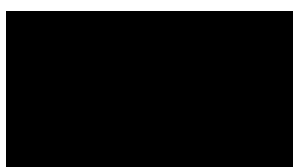


On 3rd, April, 2024 half of the aforementioned positions *i.e.*, OPTCUR USDINR 29MAY24 82.75PE- 3,50,000 and OPTCUR USDINR 29MAY24 83.75CE- 3,50,000 were squared off by Respondent's RMS team due to an MTM shortfall resulting from fluctuations in the dollar and increased volatility in the segment. They also pleaded that noticing the volatility of market the Claimant himself decided to sell the remaining half in above referred both trades in open position on 3rd April, 2024. It is stated that the Claimant instructed to their dealer to square off the half position in the aforesaid contract and, therefore, it is evident that the Claimant had no issue with the trade from the time of purchase on March 27, 2024 until its sale on 3rd April, 2024. It was stated by them that the square off was carried in view of the policy of the Respondent and that everything was so done within the knowledge and with the consent and direction of the Claimant. They have also relied upon Clause 19 of the document prescribed by SEBI under the title "Rights & Obligations". They are also relying upon the Clause no.24 of the said SEBI direction to contend that as a broker bound by the regulatory framework of SEBI, they had scrupulously adhered to the prescribed norms and in exercise of rights & obligation document. It is also stated by them that the ledger balance of the Claimant's account as on 3rd March, 2024 was Rs.26,26,885/-. They also said that after adjusting the said amount they are entitled to recover a sum of Rs.53,39,421.36 and accordingly, in their counter claim they have prayed that the said



sum be awarded in their favour, costs of the proceedings be provided and any other relief which we deem fit be also granted.

- 14) After receiving the Reply from the Respondent, on 12.10.2024 the Claimant had filed his Rejoinder contending *inter-alia* that the allegations made by the Respondent were absolutely false, baseless and contrary to the records. He reiterated that [REDACTED] and Branch Manager [REDACTED] approached to him for account opening. He had, in his Rejoinder, stated that he never directed or asked to the Respondent to clear the accounts and sell particular trades. He also submitted that he never consented for the trade closure. The Respondent never took his consent before closing the said trades and he never consented to create new trade in his account. According to SEBI Circular of 22nd, March, 2018 particular norms are to be observed by a trading member and, therefore, in absence of the positive proof relating to observance of the SEBI Circular dated 22nd, March, 2018 nothing can be derived from the statement of the Respondent. It is stated by him that his claim is genuine, and he is entitled to the amount so claimed by him.
- 15) Before the matter could be taken up for hearing we were informed that the Respondents have also filed a Reply to the Rejoinder. On being asked, the parties submitted that the Arbitral Tribunal can proceed with the matter. The three Arbitrators, accordingly, proceeded with the hearing of the matter.



Arguments of the parties

- 16) The Applicant through [REDACTED] vehemently contended that there was no authorization from him to the Respondent or any of his officers, representatives etc., to square off the trades. According to him, he was never informed that the Respondents were going to enter into new trades, nor he ever consented the Respondent to enter into new trades. According to him, he would be entitled to the claim lodged by him.
- 17) The Respondent through [REDACTED] with the same vehemence stated that from the documents submitted by the Respondent it would be clear that every time a trade was entered into a message was sent to the Claimant and if the Claimant were aggrieved then he should have immediately lodged his protest. She also submitted that after a trade is concluded and the information is sent to the member then his silence on the subject would only mean that he has no objection on the said trade. It is also contended that every trade was entered into under the directions and with the consent of the Claimant. However, after suffering losses Claimant cannot take a somersault and start weeping that a fraud was played.
- 18) We have heard the parties at length, perused the record and discussed the matter amongst ourselves (3 Arbitrators).
- 19) The basic question for consideration is whether the trades were executed with the consent and under the directions of the Claimant? Both the parties are placing reliance upon the directions issued by

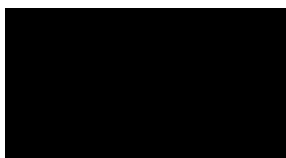
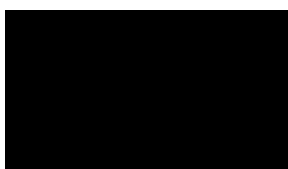
[REDACTED] [REDACTED]

SEBI relating to Rights & Obligations of the Trade Member and the SEBI Circular of 2018. The said SEBI Circular bearing no. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 reads as under: -

“Prevention of Un-authorized trading by Stock Brokers -

- II. SEBI in the past has taken several steps to tackle the issue of “Unauthorized Trades” viz Periodic Running Account Settlement, Post transactions SMS/email by exchanges/ Depositories, Ticker on broker/DP websites etc. It was observed that in spite of measures taken, a considerable proportion of investor complaints is of the nature of “Unauthorized Trades”.
- 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 abovementioned 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.

- IV. Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records.
- V. The Brokers are required to maintain the records specified at Part III above for a minimum period for which the arbitration accepts investors' complaints as notified from time to time currently three years. However, in cases where dispute has been raised, such records shall be kept till final resolution of the dispute.
- VI. If SEBI desires that specific records be preserved then such records shall be kept till further intimation by SEBI.
- VII. The earlier circulars on the same subject mentioned in Para 1 of this Master Circular stand rescinded.
- VIII. This master circular shall continue to be effective from 1st April 2018.
- IX. The Stock Exchanges are directed to:
 - a. Being the provisions of this circular to the notice of the Stock Brokers and also disseminate the same on their websites.
 - b. Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above directions in coordination with one another to achieve uniformity in approach.
 - c. Communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.

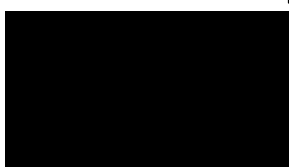


- X. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interest of investors in securities and to promote the development of and to regulate the securities market.”
- 20) The said Circular in Clause III clearly states that to further strengthen regulatory provisions against un-authorized 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 Physical records written & signed by client, Telephone recording, Email from authorized email id, Log for internet transactions, Record of messages through mobile phones, and any other legally verifiable record. From the said clause it would clearly appear that the trade member is required that all brokers shall execute trade of client after only keeping evidences of the client placing such order, which could be inter alia, in the form of (a) Physical records 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.
- 21) Clause III further says that when a dispute arises the broker shall produce the above referred 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 evidence like post trade confirmation by client in respect of disputed trade etc. shall be considered.

- 22) When 2018 Circular clearly says that the broker shall produce the above-mentioned records for the disputed trades then it is a duty cast upon the trader/broker to produce records as directed/observed and mandated by SEBI. It is only in exceptional cases such as technical failure etc. where broker fails to produce order placing evidence, he shall be justified in producing other evidence like post trade confirmation.
- 23) The basic requirement is to produce the documents as referred to in Clause III. However, the exception shall always follow the rules and the exception cannot override the rules. Before taking shelter under the Umbrella of the exception a trader/broker would be required to prove that because of a technical failure or exceptions like that he would be unable to produce orders placing evidence, therefore, he be allowed to produce other appropriate evidence like post trade confirmation etc.
- 24) In the present case the trader has simply produced certain details relating to the execution of the trades with a submission that every trade was executed with the consent and the knowledge of the Claimant. We fail to understand that how could the knowledge or the consent of the Claimant supersede the SEBI's requirement. Even for the sake of repetition we would again say that the rule requires



production of certain documents and in case of exceptional circumstances the exception would come into play. We repeatedly requested [REDACTED] to show us recordings etc., she clearly stated before us that the said trade details etc. only have been filed, but (a) Physical records 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 had not been produced by the Respondent. Her contention that as post trade confirmations were sent to the Claimant and as he did not object to the same, we must accept the Respondent's contention that everything was within the knowledge of the client. This argument of [REDACTED] cannot cut any ice in favour of the Respondent. She is trying to put the cart before the horse. In our opinion the horse is the rule and the cart is the exception. If the details as required by SEBI are not furnished then any trade entered into by the trading member/broker will have to be decided as unauthorized trade. After going through the bulky record submitted by the Respondent, we are unable to find the compliance of Clause III of 2018 circular because neither the documents have been filed nor any exceptional circumstances have been brought on record to bring into force the exception.

[REDACTED] [REDACTED]

- 25) We are unable to accept the defence raised by the Respondent and under the circumstances we deem it fit to accept the claim of the Claimant, reject the defence of the Respondent and also reject their counterclaim. In written or oral submission, the respondent has not given an exact calculation of the counterclaim filed by them. In written or oral submission, the Respondent has not given detailed arguments nor pressed for the same. The counterclaim filed by Respondent is arisen out of the transactions, the authenticity of which has been found to be in favour of the applicant and according to Applicant claim is partly approved and awarded, the counterclaim filed by Respondent is not maintainable and therefore stands rejected. The counterclaim is apparently an afterthought not only it wasn't raised in the very beginning of the dispute, but during the course of the arguments, it was brought up by the arbitrators, when the respondent had closed their arguments, not that it had any merit in it and hence hasn't been accepted.
- 26) Accordingly, we hereby direct that the Respondent shall pay a sum of Rs.26,26,885/- to the Claimant within a period of one month from declaration of this Award. They shall also pay interest @9% per annum from 3rd March, 2024. If the said amount along with the interest is not paid within one month from the date of declaration of this Award then the Respondent shall pay interest @15% on the said amount of Rs.26,26,885/- until final payment is made. No orders towards the cost. No orders towards the cost. .

