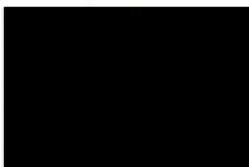


पश्चिम बंगाल WEST BENGAL

AV 088484

This stamp paper is an integral part of the arbitral award for the matter NSE-SB-2024-07-878363\_ [REDACTED] vs [REDACTED]



98702

Sold to [REDACTED]  
Address [REDACTED]  
Value LSN [REDACTED]  
13 FEB 2025  
L.S.V. High Court  
Abhijit Sarker  
High Court AS

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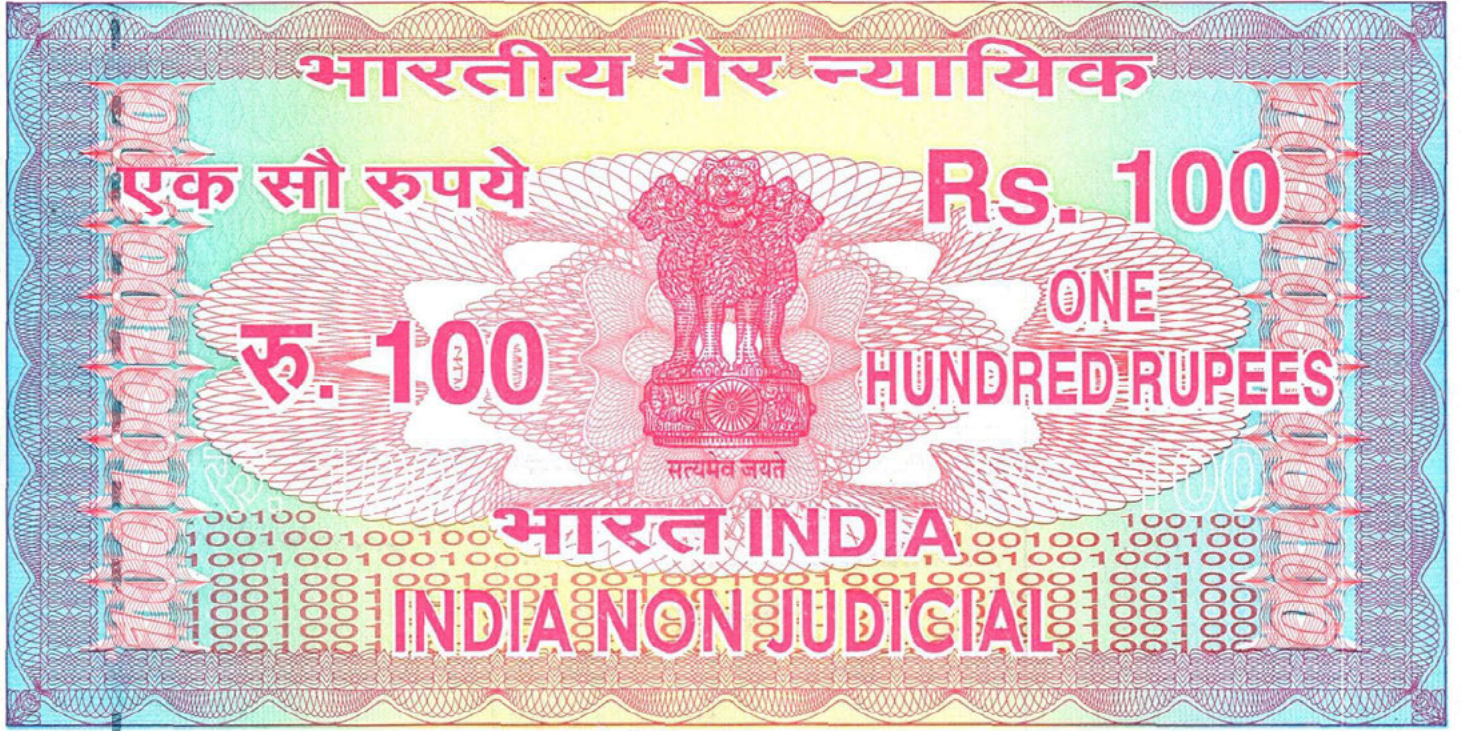
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This stamp paper is an integral part of the arbitral award for the matter NSE-SB-2024-07-878363 [REDACTED]

[REDACTED] vs [REDACTED]

[REDACTED]



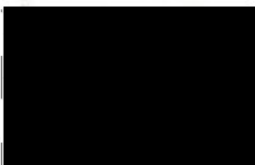


পশ্চিমবঙ্গ পশ্চিম বঙ্গাল WEST BENGAL

AV 088483

BEFORE THE SOLE ARBITRATOR [REDACTED] PRESIDENT  
AMIKA ARBITRATION AND MEDIATION COUNCIL APPOINTED  
UNDER THE BYE-LAWS, RULES AND REGULATIONS OF NATIONAL  
STOCK EXCHANGE OF INDIA LIMITED

IN THE MATTER OF ARBITRATION  
No: NSE-SB-2024-07-878363  
BY THE CENTRE FOR ONLINE RESOLUTION OF DISPUTES (CORD)

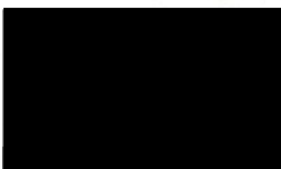


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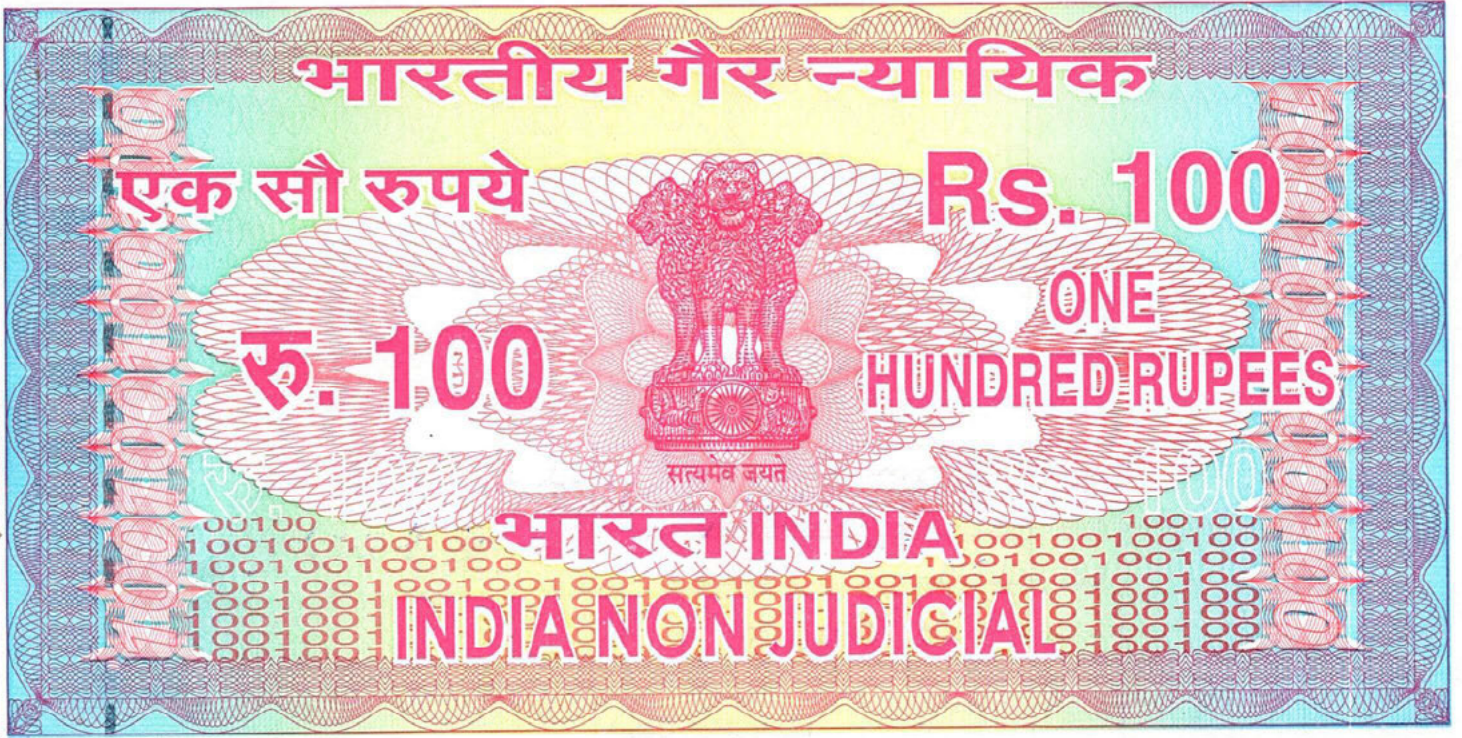
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13 FEB 2025  
L.S.V., High Court  
Abhijit Sarkar  
High Court, U.S.

Number 400001

This stamp paper is an integral part of the arbitral award for the matter NSE-  
SB-2024-07-878363\_ [REDACTED] vs [REDACTED]



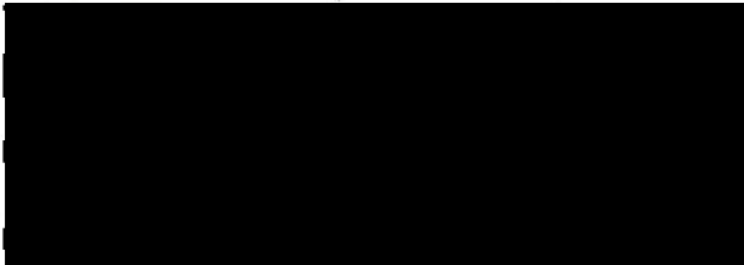




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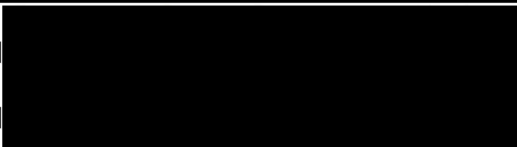
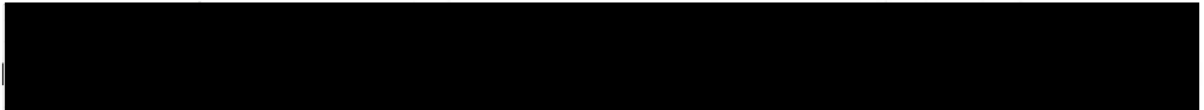
AV 088482

IN THE MATTER OF:

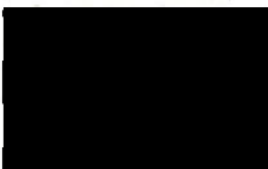


.....Applicant

VERSUS



..... Respondent



78699

Sold to Homology Technology Pvt Ltd  
Address Karnataka  
Value 100  
13 FEB 2025  
L.S.V. High Court  
Adm. Sarker  
High Court, A.S.

Bangalore 560005



### Hearings via Zoom Call organized by CORD

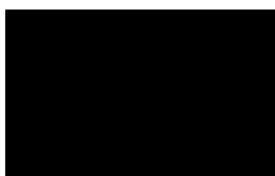
Date of Hearing	Applicant's Representative	Respondent Representative
Thursday, 23 January 2025	██████████ (Authorized representative of the Legal heir of ██████████)	██████████
Thursday, 30 January 2025	██████████	██████████

### AWARD

#### PART-I: The Dispute

1. This is a dispute between ██████████ represented by ██████████ hereinafter referred to as the **Applicant**, and ██████████ a Company duly registered under the Companies Act, 1956, engaged in stock broking hereinafter referred to as the **Respondent** regarding loss caused to the applicant by the respondent by selling and squaring off the applicants money without his express permission to do so. The applicant now demands that the respondent should make good the losses to him arose out of the transactions made by the respondent without the express permission by the applicant.
2. The dispute first went for conciliation in accordance with the rules of SEBI/NSE in the month of August 2024, more particularly on 22<sup>nd</sup> August 2024 before the honorable conciliator ██████████ and the conciliation has failed. Details of the conciliation have not been narrated in this Arbitration Award for the conciliation proceedings are purely between the parties under the expert facilitation by a conciliator, neither the conciliation proceedings influence nor aid an arbitration award.
3. This award is made based on the documents made available, and arguments advanced during the course of hearing on Thursday the 23<sup>rd</sup> January 2025, and on Thursday, 30 January 2025, statement of claim submitted by the applicant, the statement of defense submitted by the respondent, and the additional submissions, made by both the parties during the hearings. No call records have been submitted.

#### PART – II: The Statement of Claim by the Applicant.



4. That the applicant has not made any elaborate statement of claim explaining the losses incurred due to the actions taken by the respondent in the absence of any written or oral instructions to the respondent. Neither the statement of claim strictly follows the standard format of statement of claims explained in Section 23 of the Arbitration and Conciliation Act, 1996 that is to be submitted to the tribunal.
5. That all that the applicant has submitted to this tribunal is: "ON 02/04/24 AROUND 10 AM WE GOT A CALL FROM [REDACTED] AND [REDACTED] (SUB BROKER OF [REDACTED]) REGARDING THE OTP. WE INFORMED THEM REGARDING THE SUDDEN DEATH OF [REDACTED] ON 02/04/24 WHICH HAPPENED AROUND 01:30 A.M. AFTER THAT WE HAVEN'T RECEIVED ANY RESPONSE FROM [REDACTED] REGARDING THE SELLING OF SHARES OR SETTLEMENT OF ACCOUNT . AFTER A MONTH WHEN WERE GOING THROUGH DOCUMENTS AND BANK STATMENT RELATED TO [REDACTED] [REDACTED] [REDACTED] [REDACTED] WE CAME TO KNOW ABOUTH THE TRANSACTION THAT HAPPEND ON 02 APRIL. AND IT WAS VERY SHOCKING FOR US. AFTER REQUESTING TO [REDACTED] MULTIPLE TIMES TO MAKE US UNDERSTAND THE TRANSACTION WHICH HAPPENED ON 02/04/24. BUT HIS RESPONSE WAS MEDIOCRE. ONCE WE RECEIVED DOCUMENTS FROM [REDACTED] THEN WE CAME TO KNOW ABOUT THE ADJUSTMENT OF ACCOUNT BY SELLING OF SHARES WHICH WERE KEPT AS MARGIN. THOUGH THE SETTLEMENT AMOUNTS WAS LESS AS COMPARED TO SHARE WHICH WERE KEPT AS MARGIN. STILL THEY HAVE SOLD EXCESS SHARE. THESE SHARES WERE KEPT BY [REDACTED] FOR LONG TERM PERSEPECTIVE FOR THEIR SON AND DAUGHTER MARRIAGE"
6. That the in addition to the above statement the applicant has submitted an excel generated calculation statements as under claiming an amount of Rs. 13, 35,255 (Thirteen lakh, thirty five thousand, two hundred fifty five rupees), as losses incurred as on 30<sup>th</sup> September 2024, and Rs. 7, 46,345(Seven lakh forty six thousand three hundred forty five rupees) as losses as on 27<sup>th</sup> January 2025.

**I. AS ON 30 SEPTEMBER 2024 THE CLAIM AMOUNT IS Rs. 1335255**

DETAIL DESCRIPTION OF SHARES WHICH WERE KEPT AS MARGIN

SR NO	SHARE NAME	QUANTITY	SELLING RATE AS ON 2ND APRIL	AMOUNT
1	HINDUSTAN UNILEVER	1000	2275.64	2275639
2	INFOSYS	1600	1481.94	2371106
				4646745
ACTUAL SHARE AMOUNT WHICH WERE KEPT IN MARGIN				4646745
SETTELMENT AMOUNT				1769770
EXCESS SHARE SOLD AMOUNT				2876975

HAD THESE EXCESS SHARES NOT BEEN SOLD WHICH WERE KEPT FOR LONG TERM

SR.NO	SHARE NAME	QUANTITY	SELLING RATE AS ON 30 SEP ,2024	AMOUNT
1	HINDUSTAN UNILEVER	1000	2974	2974000
2	INFOSYS	1600	1880	3008000
				5982000
SHARES VALUES AS OM 30/09/24				5982000



SHARES VALUES AS OM 02/04/24	4646745
CLAIM AMOUNT	1335255

II. AS ON 27 JANAUARY 2025 THE CLAIM AMOUNT IS Rs 746345  
DETAIL DESCRIPTION OF SHARES WHICH WERE KEPT AS MARGIN

SR NO	SHARE NAME	QUANTITY	SELLING RATE AS ON 2 APR 2024	AMOUNT
1	HINDUSTAN UNILEVER	1000	2275.64	2275639
2	INFOSYS	1600	1481.94	2371106
				4646745
ACTUAL SHARE AMOUNT WHICH WERE KEPT IN MARGIN				4646745
SETTELMENT AMOUNT				1769770
EXCESS SHARE SOLD AMOUNT				2876975

HAD THESE EXCESS SHARES NOT BEEN SOLD WHICH WERE KEPT FOR LONG TERM

SR NO	SHARE NAME	QUANTITY	SELLING RATE AS ON 27 January ,2025	AMOUNT
1	HINDUSTAN UNILEVER	1000	2392.85	2392850
2	INFOSYS	1600	1875.15	3000240
				5393090
SHARES VALUES AS OM 27/01/2025				5393090
SHARES VALUES AS OM 02/04/2024				4646745
CLAIM AMOUNT				746345

7. That the applicant further argues that if at all the respondent had to settle the account for want of margin shortfall of Rs. 17,69, 770 why had the respondent sold excess shares amounting to Rs. 46,46,745 as on 02 April 2024.
8. That the applicant explains that the shares of Hindustan Unilever, and Infosys were kept by [REDACTED] for long term perspective for their son and daughter marriage, and the respondent should have not sold them without the express permission of the applicant for whatever the reason.
9. That arguing on the nationality of the claim, the applicant states that when an investment is made for a long term gain, and the respondent had abruptly sold them for no reason without express permission of the applicant, that the applicant can calculate losses either on the date of conciliation (Rs. 11, 00,000), or on arbitration application (Rs. 13,35,255) or on the date of hearing (Rs.7,46,345) and not notionally on the expected date of marriage of son and daughter of [REDACTED] He repeats that had he calculated taking the notional date of marriages of the son and daughter of Late Shri [REDACTED] it could have been a notional calculation. Thus, states that his calculations were not notional.

10. That the applicant sums up that the respondent had not taken any prior permission or approval from the legal heirs of the deceased and sold the securities at the respondent's own will and pleasure.

### **PART-III: Respondent's arguments**

11. That the instant claim lying before this Ld. Arbitral Tribunal is not only lacking clarity, but has been arrived at on the basis of notional loss or opportunity loss. The investor grievance mechanism specifically excludes claims for notational loss or opportunity loss incurred by any constituent. That the claim of the Applicant's legal heir is nothing but a claim for notional loss is clearly evident from the fact that at the conciliation meeting dated 20<sup>th</sup> August, 2024 the claim amount was Rs 11,00,000 which has been enhanced to Rs 13,35,255 in the instant arbitration application. The claim of the Applicant's legal heir was notional in nature has also been observed by the Ld. Conciliator.
12. That the positions which were held by the Applicant were squared off /closed out by the Respondent as a risk mitigating measure on 2<sup>nd</sup> April, 2024. The clauses of the SEBI prescribed 'Rights and obligations of stock brokers, sub brokers and clients as prescribed by SEBI and Stock Exchange' empower the Respondent to close out /square off the open positions held by any deceased constituent. Thus the squaring off /closing out of the open positions held by the Applicant on 2<sup>nd</sup> April, 2024 done by the Respondent was within the four corners of law.
13. That the Applicant's authorized representative has already approached the Investor Services Cell (hereinafter referred to as "ISC") of National Stock Exchange Of India Limited (hereinafter referred to as "NSEIL"). The matter was placed before conciliation panel on 20<sup>th</sup> August, 2024 with no result in favor of the Applicant's legal heir.
14. The trades dated 2<sup>nd</sup> April, 2024 in the account of the Applicant were occasioned as a risk mitigating measure. The existing open positions in derivatives contracts were closed out on the said date on coming to know about the death of the Applicant. Had the positions been kept open and the price of those contracts would have moved adversely, the loss in the Applicant's account would only have increased. The open positions were closed out/squared off in the best interest of both the Applicant and the



Respondent and in order to reduce the risks which are inherent in those open derivative positions. This right to close out /square off the open positions held by any constituent in case of his /her death has been conferred on this Company by the clauses of the SEBI prescribed RIGHTS AND OBLIGATIONS OF STOCK BROKERS, SUB BROKERS AND CLIENTS AS PRESCRIBED BY SEBI AND STOCK EXCHANGE. The relevant clause of the said document is reproduced herein below.

#### LIQUIDATION AND CLOSE OUT OF POSITION

***20. In the event of death or insolvency of the client or his/its otherwise becoming incapable of receiving and paying for or delivering or transferring securities which the client has ordered to be bought or sold, stock broker may close out the transaction of the client and claim losses, if any, against the estate of the client . The client or his nominees, successors, heirs and assignee shall be entitled to any surplus which may result there from. The client shall note that transfer of funds /securities in favour of a Nominee shall be valid discharge by the stock broker against the legal heir."***

15. The sale proceeds arising from the liquidation of stocks has been partially adjusted with the resultant debit balance arising from the square off of open positions in derivatives and the remaining credit balance was transferred to the mapped bank account of the deceased client. No new positions were created on 2<sup>nd</sup> April, 2024 or at any point of time thereafter. The claim of Rs 13, 35,255 is estimated on the basis of cost of opportunity lost and is notional in nature which is not permitted under investor grievance redressal mechanism. Had the price of the securities/shares gone down, the Respondent would certainly not have claimed any benefit from the Applicant for squaring off at a higher price.

16. In the premise and in the facts and circumstances as stated herein-above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:-

- a) Dismiss the claim and contentions raised by the Applicant's legal heir as false & baseless ,
- b) Award exemplary costs for instituting a patently false case against the Applicant's legal heir and in favor of the Respondent, and for this, the respondent shall every pray.

#### **Part-IV- The point**

This application for arbitration was filed after initial conciliation proceedings, and the conciliation proceedings were provided by the respondent. Taking protection from section 75 of the Arbitration and Conciliation, Act, 1996, no comments are offered by this tribunal on the statements by either by the applicant or by the respondent on the conciliation proceedings of its outcomes. Commenting on the conciliation proceeding is thus outside the authority of this tribunal. With this, I will directly come to the point.

17. Now the point is:

- (a) Whether the respondent is acting on his own without any consent from the applicant and investing money of the applicant at his own will and making losses to the applicant?
- (b) Whether any relief can be awarded to the applicant for the losses he had notionally calculated on the long-term securities sold by the respondent? If so what relief?

18. Before answering the above questions, let me deal with various point that have been observed during the hearings and before the hearings beginning from submission of the statement of claim by the applicant in a proper format.

19. It is true that the applicant was not able to make a proper written statement of claim but during the oral hearings he has been able to express his concerns very clearly and vocally. He is not a professional to write a statement of claim in a format normally submitted to judicial and quasi-judicial authorities. Inability to make a written statement of claim should not be a barrier to hear and give attention to a claim. Therefore, the applicant was heard fully, and his version is documented and also the counter arguments have been recorded. Thus, the award is relied upon the written claim and oral arguments of the applicant.

20. Now comes the applicant's calculations of losses incurred by him due to the acts of the respondent. It is true that the respondent has acted on his own on the death of [REDACTED], and sold the long term securities of Hindustan Uniliver and Infosys. He should have limited the sale of securities to the extent of Rs. 17, 69,770. However, he has sold to the extent of Rs. 46, 46,745. That is Rs. 28, 76,975 over the requirement of Rs.17, 69,770. That too, with no express permission of the applicant. No valid



explanation excepting referring to a regulation No20 from the SEBI Regulations cited in Paragraph 14 above.

21. Coming to the nationality of the claim of the applicant, there is a login in the claimant's argument that the amount was invested in long term securities for the purpose of marriage of the son and daughter of [REDACTED], and sudden sale of these securities incurred losses notionally. Had they been allowed to be sold for the intended purpose, there could have been profits for the investor. This cannot be accepted fully, in a volatile market situation, when an investment is made for a particular purpose, the investments either yield profits or losses, which cannot be predicted.
22. Furthermore, the applicant has given three notional profit calculations with three different dates. Rs.11, 00,000/- Rs. 13, 35,255, Rs.7, 46,345 for conciliation, with arbitration application, and on the date of arbitration hearing. It can be seen from these that his own notional profit calculation has gone down from Rs13, 35,255 to Rs.7, 46,345. The profit on an investment is the sale price MINUS purchase price on the date of actual sale. No such calculations have been offered by the applicant.
23. Now let me deal with the actions of the respondent. There is no second opinion that the respondent has acted in a hurry and has not informed his actions in advance to the bereaved family of [REDACTED]. He has just invoked the regulation 20 of the SEBI regulations and has not cared to inform the applicant. Neither as he been able to offer any solid explanations for his actions during the hearings or in his statement of defense. He has also failed to explain the actual profit or loss to the applicant. What were the purchase prices of Hindustan Uniliver and Infosys securities? And if was there any loss/profit on such transactions? Thus, the respondent erred in his actions.
24. Now, let me answer the questions. The answer to Question 17. a. above is: Yes. The respondent has acted on his own without proper intimation to the applicant. However, it is not clear if his actions cause any loss to the applicant not being the notional loss. The respondent has been protected by the SEBI regulation No 20 as repeatedly discussed above and therefore, even though he has taken unilateral decisions, he did so in the circumstances where the actual investor was no more in this world.
25. Now, let me answer the question 17. b. The straight answer is NO. It can be inferred



from the arguments made and the information made available to this tribunal that the applicant has not suffered any immediate losses due to the impugned transactions. Actual purchase prices, and losses on such purchases were not provided. The loss is calculated as difference between the current sales price and the prevailing sales price on the dates of the applicant choice. Therefore, in the absence of the calculation of loss/profit on the day of sales, this tribunal strongly feels, that the applicant has not suffered any loss and thus he is not eligible for any relief.

26. With these observations, the application is dismissed.

Place: [REDACTED]

[REDACTED]  
Sole Arbitrator

[REDACTED]