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ARBITRATION AWARD

Arbitration Matter No. NSEKRO/0016669/22-23/ISC/IGRP/ARB

**UNDER THE BYE LAWS, RULES AND REGULATIONS OF NATIONAL STOCK
EXCHANGE OF INDIA LIMITED (NSEIL)**

Between

DEEPIKA AGARWAL (C)
6B/6B, NAKTALA ROAD,
KOLKATA, WEST BENGAL – 700047
PAN – BQZPA5349E

.....APPLICANT

And

MOTILAL OSWAL FINANCIAL SERVICES LIMITED (TM)
2ND FLOOR, PALM SPRING CENTRE,
PALM COURT COMPLEX, NEW LINK ROAD,
NEAR D MART, MALAD (WEST), MUMBAI – 400064

....RESPONDENT

Before the Ld. Sole Arbitrator: Mr. Prodyut Banerjee

APPEARANCES

The Applicant/Constituent appeared herself along with her husband, Mr. Shankar Agarwal and authorised representative, Mr. Arijit Sarkar.

The Respondent/Trading Member was represented by Mr. Raj Pravin Khona, authorized representative by virtue of a Board Resolution.

APPLICANT'S CASE

The Applicant has filed a single page statement of claim containing the following allegations:-

1. Total MIS selling done by the Respondent.
2. Total risk amount hided to a novice client in derivative segment at the time of order confirmation.
3. The Respondent assured that there is a risk of Rs. 8000/- only whereas they charged brokerage of Rs. 1,20,000/-.
4. Pros and Cons or the specifications of trading in derivative segment never told clearly before doing the trading.
5. Technically played by the broker, taken advantage of novice client in derivative segment.
6. If anybody will hear all the call recordings happened between the Applicant and the advisor of the Respondent, everybody will understand that the Applicant has been trapped, misguided and cheated.

On the basis of the aforesaid statement, the Applicant has claimed an amount of Rs. 1,50,000/- without giving any detailed calculation for such claim. The Applicant has annexed various documents in support of her contentions including copies of contract notes, minutes of tripartite meeting of the department of Consumer Affairs, Government of West Bengal and various e-mails. The Applicant has also filed a copy of the written allegation to

Shakespeare Sarani Police Station, Kolkata against the Respondent. At a later stage, with leave of this Tribunal, the Applicant filed a detailed calculation of the claimed amount wherein claimed amount was shown as Rs. 1,70,842.42.

RESPONDENT'S CASE

The Respondent has filed its Statement of Defence along with supporting documents wherein it has denied and disputed the claim of the Applicant. The Respondent has raised a point that in the Statement of Claim, the Applicant has not prayed for any prayer to be allowed or to be passed and as such, the proceeding is liable to be dismissed. The Respondent has stated that the Applicant is an informed investor dealing in stock and securities prior to opening of her account with the Respondent. The Applicant had opened an account with SBICAP Securities Limited and had been dealing in securities market since 2021. The Applicant, at the time of account opening, had opted to receive all the contract notes, bills, various statements and communications of Demat and Trading Account in electronic form in her registered e-mail id deepikasinghania23@gmail.com and as such, all post trade confirmations like digital contract notes, accounts ledger statements, margin reports, transaction statements, bills etc. were regularly sent to the Applicant at her registered email ID. All trade confirmations were provided to the Applicant on a regular basis via SMS to her registered Mobile No. 9339055022. The Applicant also received online log in access with security id and password. The Applicant herself opted to activate currency segment on 30.08.2022 for trading in speculative market by online log in into her account and accordingly, the currency segment was activated on 02.09.2022. The Applicant, with an intention to start the currency trade, transferred her holdings from her Demat account of SBICAP Securities on 01.11.2022 and started her currency trade on 09.11.2022. On 09.11.2022, the Applicant instructed the dealer of the Respondent to pledge her shares by providing OTP and started trading in currency segment. The Respondent traded in currency segment on 9th, 10th and 11th November 2022. All the trades were executed as

per instruction/confirmation/consent of the Applicant. The Applicant raised her claim of Rs. 1,50,000/- and accordingly, filed a complaint before the Grievance Redressal Committee. The Grievance Redressal Committee rejected the claim of the Applicant vide order dated 17.04.2023. The Respondent has submitted that it charged the brokerage as per the agreed terms and the rate was duly informed to the Applicant. Regarding sale of share value of Rs. 50,000/-, the Respondent has stated that it is a square off transaction as per the risk management system for the debit balance in the Applicant's ledger account and that prior to the square off, the Applicant was informed by email as well as SMS. On the basis of the aforesaid submissions, the Respondent has prayed for dismissal of the application with compensatory cost and other prayers.

HEARING

The matter was heard by this Tribunal on 12.12.2023 through hybrid mode and the Applicant was directed to file a detailed calculation for the alleged loss suffered by her within 15 days from the date of the hearing.

The Respondent was directed to file the voice recordings between the Trading Member and the Client (Applicant herein) for the period from 15.10.2022 to 31.10.2022 along with transcription of the same supported by an Affidavit within 15 days from the date of the hearing.

The Respondent also agreed to call upon Mr. Biswanath Debnath Thakur, an employee of the Respondent to be present in the next hearing either physically or virtually.

The matter was further heard on 21.02.2024 through virtual mode. The Applicant failed to file the detailed calculation for alleged loss suffered by her as per the direction of this Tribunal vide minutes of the hearing dated December 12, 2023. In the interest of justice, the Applicant was given a last opportunity to file the detailed calculation as stated above and also to specify the date of dispute within 3 days from the date of this hearing.



The Respondent prayed for a leave to file additional documents in support of the proof of dispatch of various documents to the Applicant. The Respondent has also sought a leave to file the full set of KYC documents (including annexures). Leave was granted to file the aforesaid documents within 7 days from the date of this hearing.

The Applicant, during the second hearing, disputed the veracity of the voice recordings and transcripts as being incomplete. The Respondent was directed to file an Affidavit from the concerned officer of the Respondent in support of the authenticity and completeness of the voice recordings and the transcript

Leave was also granted to the parties to file written notes of arguments (not exceeding 2 pages) within 7 days from the date of this hearing.

As per the direction in the aforesaid hearings, the Applicant and the Respondent, both filed the requisite documents along with written notes of arguments.

FINDINGS

The only issue in respect of dispute between the Applicant and the Respondent relates to placing and authorization of trade orders in derivative market on 10.11.2023. From the records and documents, it appears that the Applicant herself agreed to enter into derivative market for conducting trade and that she also opted for receipt of electronic documents. Further, she also opted for online log in and doing various activities relating to trading in securities and derivative market. It is surprising to see that quite a large number of transactions happened on the date of dispute. However, the Respondent filed Audio Recordings along with transcript for the aforesaid dates. The Applicant, during the second hearing, raised an allegation of tampering of voice recordings and as such the Respondent filed an additional affidavit by the concerned legal officer thereby verifying the truthfulness of the audio recordings. It is surprising to note that such an allegation was not made in the pleadings by the Applicant or raised in the first hearing but the

same was raised only during the second hearing. In any event, it appears to this Tribunal that this allegation is not tenable.

From the aforesaid voice recordings, it appears that there were a series of discussion by and between the Applicant and the Respondent regarding investment and trading in currency segment. The Applicant never instructed the Respondent to stop and/or cease and desist from trading. On the contrary, in most of the conversation, at the end, she accepted the trading proposal given by the Applicant and as such, the trades cannot be treated to be unauthorised.

However, this Tribunal has observed that there is a significant element of suggestion and influence on the part of the Respondent to allure the Applicant to increase her trade and obviously the same was done by the Respondent to earn brokerage on the aforesaid trades. Such actions on the part of the Respondent is against Clause 4.5.2 of the Exchange (Futures and options) Trading Regulations , 2000 as also against the principles of fair dealing in the derivative market.

It is noteworthy to mention that the Applicant has claimed different amounts at different places in her pleadings and arguments and as such the sanctity of such claim has become doubtful. In any event, the amount of brokerage has been stated to be Rs. 1,20,006/- which has not been disputed by the Respondent.

CONCLUSION

On the basis of the aforesaid findings, it appears that the trades were instructed by the Applicant and that she received all the post trade communications. On the other hand, the Respondent, to certain extent, influenced the Applicant to conduct various trades on the date of dispute and as such, a part of the brokerage received by the Respondent should be returned to the applicant. This Tribunal holds that 50% of the brokerage amount being Rs. 60,003/- should be refunded by the Respondent to the Applicant. However, the Applicant has failed to establish her other claims.

AWARD

- (i) The Respondent is hereby directed to pay an amount of **Rs. 60,003/-** (Rupees sixty thousand three only) to the Applicant within 15 days from the date of this Award failing which, an interest shall be accrued @ 8% per annum from the date of expiry of the said 15 days till the date of actual payment.
- (ii) No order as to cost.
- (iii) Arbitration application is disposed of accordingly in the aforesaid terms.
- (iv) The instant Award is issued in three originals.

Dated: March 15, 2024
Place: Kolkata


PRODYUT BANERJEE
Sole Arbitrator