



INDIA NON JUDICIAL

Government of Karnataka

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Certificate No. : IN-KA70395478447062W
Certificate Issued Date : 28-Mar-2024 01:30 PM
Account Reference : SHCIL (FI)/ ka-shcil/ MALLESHWARAM1/ KA-GN
Unique Doc. Reference : SUBIN-KAKA-SHCIL01122014679134W
Purchased by : VADAPALLI MOHAN
Description of Document : Article 4 Affidavit
Property Description : ARBITRATION AWARD
Consideration Price (Rs.) : 0
(Zero)
First Party : VADAPALLI MOHAN
Second Party : ICICI SECURITIES LTD
Stamp Duty Paid By : VADAPALLI MOHAN
Stamp Duty Amount(Rs.) : 100
(One Hundred only)

सत्यमेव जयते

Authorised Signatory
For Stock Holding Corporation of India Ltd



Please write or type below this line

In the matter of Appeal Arbitration Under the Rules, Byelaws & Regulations of the
National Stock Exchange of India Ltd (NSEIL)

Before the Appellate Arbitral Tribunal / Panel consisting of

A V Muralidharan
Arbitrator

J Krishnamoorthy
Presiding Arbitrator

Gautam Sarkar
Arbitrator

Appeal Arbitration Matter No: NSEBEN/0005931/23-24/ISC/IGRP/ARB/APPL

Between

Appellant (Constituent)	Respondent (Trading Member)
Mr. Vadapalli Mohan	M/s ICICI Securities Ltd

Armed

J. Krishnamoorthy

Gf

Page 1 of 8

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No.21 Raghavappa Garden, Near ITC
Colony, Jeevanahalli, Bangalore,
Bangalore. Karnataka - 560005.
PAN No – AFCPM8690P

Shree Sawan knowledge park, gr.floor, plot
no. - d507,t.t.c.industrial area, MIDC,
Turbhe, near Juinagar railway station ,
Navi Mumbai , Maharashtra - 400705
PAN No - AAACI0996E

Appearances:

For Appellant : The Appellant and his advocate Mr. Gunashekar.

For Respondent: Mr. Ganesh Khadka. Chief Manager.

AWARD

1. The National Stock Exchange of India Limited (NSEIL) Bangalore vide their letter Reference no: NSEBEN/0005931/23-24/20/ISC/IGRP/ARB/APPL dated 01.02.2024 has appointed the above-mentioned empanelled Arbitrators to constitute this Appellate Arbitral Tribunal in this Arbitration Appeal Matter.
2. This Appeal is directed against the Arbitral Award dated November 29,2023 passed by the learned sole Arbitrator dismissing the claim amount of Rs. 18,07,000/- (Rupees Eighteen Lakhs Seven Thousand Only) made by the Applicant (Appellant in this matter) as against the Respondent.

Brief Facts of the Case

1. The Appellant had opened a Demat account (2000) and trading account (2004) with the Respondent's Bangalore Office after execution of documents and agreement for investment purpose. He had been trading on his own since January 2004.
2. The Appellant was allegedly contacted by the Respondent's assigned advisor viz. Mr. Nitin Nagdev towards the end of 2020 to aid and advise him in matters of purchase/sale of securities. As claimed by the Appellant, he sustained a loss of about Rs. 18,07,000/-/- due to alleged wrongful advice given by the said advisor.
3. The said advisor allegedly advised the Appellant to hold securities purchased under Margin Funding i.e. MTF) despite apparently falling market. The Appellant claims that the aggregate loss incurred from those trades was Rs. 18.07 lakh. He also claims that, upon bringing this to the notice of the advisor, he had reportedly agreed to reimburse the loss which was not done.
4. That, having not received any favourable response either from the advisor or the higher authorities despite writing emails or making phone calls to them, the Appellant filed complaint No. NSEBEN/0005931/23-24/ISC/IGRP before the Grievance Redressal Cell (GRC) against the Respondent for claiming alleged loss of Rs.18,07,000/-. After hearing both sides, the GRC vide its order dated August 18, 2023, has directed the parties to initiate further level of action by closing the matter at GRC level. Aggrieved by the GRC order, the Appellant preferred to go for Arbitration before the learned Sole Arbitrator vide matter No. NSEBEN/0005931/23-24/ISC/IGRP/ARB. After hearing both sides, the Sole Arbitrator passed order dated November 29, 2023, rejecting the claim of the Appellant. Aggrieved by the said Arbitration Award, the Appellant has filed this Appeal matter against the Arbitration Award dated November 29, 2023, passed by the learned Sole arbitrator.

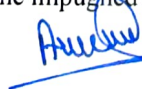
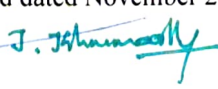





The Case of the Appellant (Constituent)

In brief, the main contentions of the Appellant and grounds of appeal submitted before this Appellate Arbitral Tribunal are:

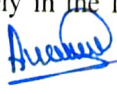
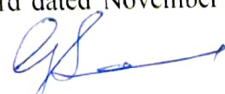
1. That the Appellant retired in July 2020 and during November 2020 one Mr. Nitin Nagdev introduced himself as the Appellant's advisor from the Respondent. He reportedly told the Appellant that he would give advice on the securities to buy and sell promising a return of 20-25% on the investments. The Appellant alleges that during trading the said advisor had pushed the Appellant to trade in MTF (Margin Trading Fund) with agreed terms and conditions.
2. He further submits that the Respondent had induced him to pledge his holdings for more trading and earning more returns. The Appellant alleges that from September 2021, the advisor misled him into buying and holding securities which resulted in loss to the tune of Rs. 18,07,622.37/- (based on security wise buy value-sale value).
3. That, despite apparent falling market scenario, the Respondent/advisor allegedly advised the Appellant to hold the securities for longer period of more than a year. Later, based on discussion between the Appellant and the advisor, the securities were sold by the Appellant. The Appellant submits that the advisor had assured him to refund the loss.
4. That, the Appellant approached the Respondent's higher ups through emails/phone calls for redressal of his complaint. On not getting any satisfactory reply to his emails sent to the higher authorities including the Respondent's CEO, the Appellant filed a complaint with SEBI vide complaint dated June 24, 2023.
5. The grounds of appeal as stated by the Appellant are briefly summarised below:
 - a. That the impugned Arbitration Award is arbitrary, illegal, and opposed to natural justice.
 - b. That the learned Sole Arbitrator failed to note that the terms and conditions accepted by the Appellant under Equity 'terms and conditions' contradict the fact that in the instant case the advisor induced the Appellant to go for MTF trading by pledge of shares etc.
 - c. That the learned Sole Arbitrator has ignored that the Respondent has not mentioned anywhere in the terms and conditions to check the authenticity of its employees telecon advice with the Investment Reports on the website.
 - d. That the Respondent has not complied with SEBI guidelines on investor protection like Risk profiling of client not done, the advisor not being a registered investment advisor, role and due diligence by advisor not followed, maintenance of records by the advisors, code of conduct for brokers and sub-brokers not followed etc.
 - e. That the Arbitral Tribunal has erred in observing that the loss incurred is due to false promises and wrong advice given by the advisor. That the learned Sole Arbitrator has failed to note and rejected the claim due to non-submission of details of loss incurred by the Appellant. That free service does not mean that the Respondent can give wrong advice and mislead the clients to incur financial loss.
 - f. That the impugned order is opposed to facts, circumstances of the case and evidence available on record. Therefore, the relief in the matter is valued at Rs.18,07,000/-. It is prayed that the impugned award dated November 29, 2023, be set aside.

The Case of the Respondent (Trading Member):

The Respondent's counter arguments and submissions are summed up as below:

1. That the Respondent is a SEBI registered stockbroker providing online TRADING platform to its clients/constituents. The Respondent is a member of the NSEIL having SEBI registration no. INZ000183631. It is a SEBI registered Research Analyst vide registration no. INH000000990 & investment advisor with SEBI vide registration no. INA000000094.
2. That, the Appellant, while submitting his statement of claim, has only disclosed the scrips which incurred losses and has ignored those scrips which made profits. Further, the Appellant has not provided any documents to prove his claim. Mr. Nitin Nagdev, the Relationship Manager (RM) had merely given research recommendations on stocks to the client on a purely voluntary basis without any monetary consideration. It was the sole discretion of the Appellant to take final decisions on purchase/sale of stocks. The Appellant continued to trade on the advice of the RM even after the disputed dates till November 2023. Moreover, the Appellant has not been able to provide all the details viz. date of purchase of scrips, quantity, rates, value of sale for the claim amount of Rs.18,07,000/- and how he has arrived at the claim.
3. The Appellant's allegations that he had purchased shares under Margin Trading Fund (MTF) at the insistence of the RM and that RM had promised the Appellant of assured returns of 20-25% are totally denied as baseless without any proof.
4. That, the Respondent has on its website 'ICICI Direct Research Disclaimer' has displayed various disclaimers which inter alia states that investments in security market are subject to market risk and that the Respondent accepts no liability for any loss of any kind out of any action taken in reliance thereof. Further, the disclaimer to ICICI Direct Research Terms and conditions state, among others, that the SEBI registration does not provide any assurance of returns to investors.
5. That the Appellant has accepted the mandatory document of Rights and Obligations which states inter alia that the client shall always be responsible for his own action/inaction. The availability of information on the internet/website does not constitute a recommendation to buy or sell any of the Investment products. Any investment decisions will be based solely on the client's own evaluation of financial circumstances and investment objectives.
6. That the Appellant is educated enough to understand the risks involved and that, at the end of the day, it depends on the market scenario and/or other multiple factors which can affect the market equilibrium. The Appellant's contention that he was a regular trader is also not correct as he wanted quick returns through sale instead of holding the shares.
7. That, the Appellant is fully aware of the trading platform and till date has been using it and taking advice of the RM. He has filed the complaint only to make good the losses suffered earlier. The final call to trade/not to trade rests with the constituents.
8. That the grounds of appeal are not based on evidence. It is evident from the extracts of the agreement that the Respondent has the right to advertise its services such as MTF etc and also recommend research-based updates. It does not promise or guarantee any assured, risk-free minimum return to the customers. There is also no agreement for advisory services. This has been captured appropriately in the learned Sole Arbitrator's Award dated November 29, 2023. The

 J. Khanna 

Respondent has followed the norms set by the SEBI and has taken all such steps to make the clients aware of disclaimer on the web site. The Appellant has signed and accepted all the terms and conditions as per the established procedure.

9. It is prayed that the Appeal be dismissed apart from any other relief applicable to the Respondent.

Personal Hearing

1. The hearing was held @ 03.00 pm on March 15, 2024, through Video Conferencing.
2. This Appellate Tribunal heard the submissions made elaborately by both sides. After hearing both sides this Appellate Tribunal, gave the parties time up to March 20, 2024, for exploring the possibility of reaching settlement between them, if any, failing which the Award will be passed thereafter on merit. The parties accepted the same and agreed that there is no need for any further hearing.
3. The parties could not reach any settlement between them within the stipulated time given and the same was conveyed to this Appellate Tribunal through the NSE at Bangalore on 21.03.2024. This Appellate Tribunal carefully examined the Appellant's additional written submissions dated 20.03.2024 submitted through email as attachment. Those additional submissions are all mostly repetition/reiteration of what has already been stated by the Appellant in his written and oral submissions. Hence, this Appellate Tribunal decided to reject the claim made by the Appellant for one more hearing through his email dated 21.03.2024. As already narrated this dispute was reserved on 15.03.2024 for passing award.

The points for consideration:

On a perusal of the entire records and arguments placed by both the sides before this Appellate Arbitral Tribunal, the issues to be decided are: -

- a) Whether the impugned Award dated November 29, 2023, passed by the learned Sole Arbitrator is liable to be set aside?
- b) Whether the Appellant is entitled to recover a sum of Rs.18,07,000/- from the Respondent?

Findings for Points (a) & (b):

1. The Appellant is an Investor (constituent). The Respondent is the Trading Member registered with National Stock Exchange of India Limited and Securities and Exchange Board of India Limited. Parties are referred to as Appellant and Respondent as arrayed in this appeal.
2. The Appellant had opened his trading account with the Respondent in or about January 2004 for investment/trade purpose after signing and executing all necessary documents/agreements with the Respondent. As admitted by the Appellant, he conducted trading activities by himself by accessing the online trading facilities/platform provided by the Respondent in their capacity as an intermediary broker since 2004. In their advisory capacity, the Respondent provided free/voluntary updates on the stock market trends based on the inputs received from their Analysis & Research wing with all their terms and conditions/disclaimers displayed on their web site.
3. As admitted by both sides the disclaimer exhibited by the Respondent in their website cautioning the investors like the Appellant is as follows: -

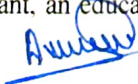
"Investments in securities market are subject to market risks, read all the related documents carefully before investing. The contents herein above shall not be considered as an invitation or persuasion to trade or invest. I-Sec and affiliates accept no liabilities for any loss or damage of any kind arising out of any actions taken in reliance thereon."

4. As admitted by both sides the relevant portion of the terms and conditions accepted and signed by the Appellant is as follows: -

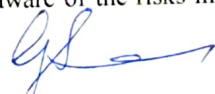
"The Client shall at all times be responsible and liable for his own actions/inaction. The Client may be able to access investment research reports through the Internet from the Website, including computerised online services or other media. The availability of such information does not constitute a recommendation to buy or sell any of the Investment products. Any investment decisions will be based solely on the Client's own evaluation of financial circumstances and investment objectives."

Hence, it can be taken that any advice given by the Respondent and their representative cannot be construed as an inducement or persuasion since the Investors like the Appellant are entitled to reject their advice.

5. The Appellant, as stated by him, had no complaints about trades and dealings with the Respondent till the end of November 2020. As per the submissions made and records available, one Mr. Nitin Nagdev of the Respondent Company was assigned as the Relationship Manager for the Appellant to advise him on the market trends related to stocks/market based on the inputs received from their Market & Research team from time to time. The Appellant's main complaint against the Respondent is that he was pushed and persuaded by the RM/Advisor into buying /selling of stocks under Margin Trading Fund (MTF) with alleged promise of higher returns of 20-25%. The Appellant has submitted that from September 2021 the advisor misled him into buying securities and holding them for longer periods which resulted in aggregate loss to the tune of approximately Rs. 18,07,000/- during the period from September 2021 to August 2022. The Respondent has denied all the allegations/complaints made by the Appellant by submitting that the Appellant has been a trader since 2004 and is aware of the terms and conditions of Equity trade especially under MTF and that he is trying to make a case where none exists. He has filed the complaint only to make good the losses he incurred due to his own action/inaction is the further contention of the Respondent.
6. As admitted by the Appellant during the hearing before this Tribunal, he is a B. Com graduate, and he was employed in a company. As admitted by him he conducted Trading activities since the year 2004 with the assistance of the platform provided by the Respondent. As admitted by him during the hearing all the trades conducted by him are all authorised trades. In other words, the Appellant has admitted that all the trades executed by him are all authorised trades. The Respondent has provided evidence of detailed Disclaimer/ Disclosure clauses of agreement wherein it is clearly written/displayed on their web site that the Respondent does not promise any assured return on any investment product nor it is liable for any trade loss suffered by the client who have utilised research/recommendations by their Research team/Advisor/RM and the final call to buy/sell/hold a scrip rest with the client/Appellant. In the said circumstances it cannot be taken that the Appellant was provided with illegal advice by the representative of the Respondent since the Appellant, an educated and worldly-wise person is aware of the risks involved in the







Trading activities. It is hard to comprehend that any educated and experienced investor with ordinary prudence would have overlooked the disclaimer clauses disclosed by the Respondent and accepted by the Appellant. Hence it is concluded that all the trading activities conducted by the Appellant during the relevant period are all the voluntary trading activities conducted on his own will and desire by the Appellant without any inducement or persuasion from the Respondent.

7. As contended by the Respondent the Appellant has come forward with this dispute by picking only the trades ended in loss during the relevant period. The Appellant has conveniently avoided to mention the trades ended in profit during the relevant period. The perusal of the statement filed as Annexure -IV by the Appellant reveals the above facts. The Annexure - IV is the statement prepared by the Appellant himself. It is an unauthenticated document. For the alleged illegal advise said to have been given by the representative of the Respondent prior to August 2022, the Appellant belatedly lodged complaint before the SEBI in or about June 2023 as admitted by the Appellant in para 19 of the 'Memorandum of Appeal' which was culminated in IGRC proceedings dated 18.08.2023. In the said circumstance it can be taken that the Appellant by raising this dispute belatedly made an attempt to recover the trading loss sustained by him on his own actions from the Respondent.
8. The Appellant has contended that the Respondent failed to produce the call records and therefore an adverse inference is to be taken as against the Respondent. The above contention of the Appellant is unsustainable for the following reasons. The Appellant has not provided any basic materials to substantiate his contentions. Merely because the call records were not provided by the Respondent it cannot be taken that the representative of the Respondent induced the Appellant to conduct some trades in an unlawful manner. As already narrated the inordinate delay in raising this dispute before the appropriate Forum enables this Appellate Tribunal to come to a conclusion that all the trades conducted during the relevant period are all the voluntary and authorised trades conducted by the Appellant himself on his own accord. Hence, the objection raised by the Appellant as above is rejected.
9. The learned Sole Arbitrator passed the impugned Award after taking into considerations all the points raised by the Appellant. The Sole Arbitrator rejected the claim of the Appellant since the allegations levelled as against the Respondent are all highly unsustainable and frivolous. Hence, it is concluded that the impugned award is not an arbitrary Award since it is based on valid reasons. Since, there is no merits in the claim made by the Appellant it is concluded that the Appellant is not entitled to recover a sum of Rs.18,07,000/- from the Respondent. The said claim amount of Rs.18,07,000/- is only a trading loss sustained by the Appellant on his own accord and without any inducement from the representative of the Respondent. For the reasons stated herein before it is concluded that the impugned Award dated November 29, 2023, passed by the learned Sole Arbitrator is not liable to be set aside and thus point (a) is answered. Further it is concluded that the Appellant is not entitled to recover a sum of Rs.18,07,000/- from the Respondent and thus point (b) is answered. In view of the answers given to points (a) & (b) this appeal is liable to be dismissed.

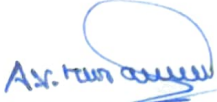






Conclusion:

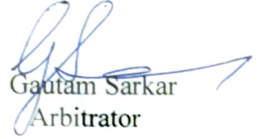
1. In the result, in this appeal dispute an Award is passed dismissing the appeal filed by the Appellant. The impugned award dated 29.11.2023 passed by the learned Sole Arbitrator is confirmed. As above an Award is passed in this appeal.
2. This award has been prepared by this Appellate Tribunal and verified by this Appellate Tribunal to be correct and thereafter the members of this Appellate Tribunal affixed their signatures on this 28th day of March 2024 at Bengaluru.



A V Muralidharan
Arbitrator



J Krishnamoorthy
Presiding Arbitrator



Gautam Sarkar
Arbitrator

Place: Bengaluru

Date: March 28, 2024