

महाराष्ट्र शासन
GOVERNMENT OF MAHARASHTRA
ई-सुरक्षित बैंक व कोषागार पावती
e-SECURED BANK & TREASURY RECEIPT (e-SBTR)

Bank/Branch: IBKL - 6910820/BANDRA KURLA COMPLEX, MUMBAI 21642142430757
Pmt Txn id : 740931027 Stationery No: 21642142430757
Pmt DtTime : 19-APR-2024@21:54:58 Print DtTime : 24-APR-2024 17:59:23
ChallanIdNo: 69103332024042050309 GRAS GRN : MH000893257202425S
District : 7101-MUMBAI Office Name : IGR182-BOM1 MUMBAI CITY
GRN Date : 19-Apr-2024@21:54:59

StDuty Schm: 0030045501-75/STAMP DUTY
StDuty Amt : R 500/- (Rs Five Zero Zero only)

RgnFee Schm: 0030063301-70/Registration Fees
RgnFee Amt : R 0/- (Rs Zero only)

Article : 5(h) (A) (iii)--Agreement relating to specific performance
Prop Mvblty: N.A. Consideration: R 1/-
Prop Descr : NA

Duty Payer: PAN-AAACK3436F,KOTAK SECURITIES LIMITED

Other Party: PAN-AHUPK5681N,ARVIND KAMATH

Bank official1 Name & Signature

Bank official2 Name & Signature

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e-SBTR IS VALID UPTO SIX MONTHS FROM THE DATE OF PAYMENT.

**IN THE MATTER OF APPELLATE ARBITRATION UNDER THE RULES,
BYE-LAWS, AND REGULATIONS OF THE NATIONAL STOCK
EXCHANGE OF INDIA LIMITED**

Before the Appellate Tribunal comprising of

Justice Pushpa V. Ganediwala	(Presiding Arbitrator)
Mr. Surendra Narhar Ranade(District Judge-Retd.)	(Co-Arbitrator)
Mr. Jasbir Saluja	(Co-Arbitrator)

IN

Appeal A.M. No: NSEWRO/0013734/22-23/ISC/IGRP/ARB/APPL

BETWEEN

KOTAK SECURITIES LIMITED

8th Floor Kotak Infinity Building
N General Ak Vaidya Marg, Opp. Film city,
Malad East Infinity Park, Off Western
Express Highway, Mumbai-400097

Appellant
(Trading Member)

And

Arvind Trivikram Kamath

B/3 Adarsh, Near Suvarna Hosp. Bus stop,
Kastur Park, Borivali West,
Mumbai, Maharashtra- 400092

Respondent
(Constituent)

Appearances: -

For Appellant: - Mr. Prem Satikuvar (Manager Legal) as authorized representative of the Appellant company.

For Respondent: - Mr. Arvind Trivikram Kamath present along with Advocate Mr. Vandit M. Joshi.

1. THE APPEAL

The Appellant viz., M/s. Kotak Securities Limited (Trading Member, Original Respondent) has filed Appeal dated 30th January, 2024 with the Exchange on 30th January, 2024. The Appellant has filed the said appeal against the Award dated November 16, 2023 and modified Award dated 1st January, 2024 (hereinafter referred to as "impugned Award") passed by the Sole Arbitrator Mr. Kersi Jamshed Limathwalla (hereinafter referred to as "Ld. Lower Arbitral Tribunal ") allowing the claim of Arvind Trivikram Kamath, Constituent of the Appellant Trading Member, the original Applicant and Respondent in present Appeal. The Arbitration Department of NSE, WRO, Mumbai by its letter dated 19/02/2024 referred the said Appeal Matter to the Appellate Panel of Arbitrators (for short "Appellate Arbitral Tribunal") comprising of Justice Pushpa V. Ganediwala, Mr. Surendra Ranade and Mr. Jasbir Saluja for adjudication and delivery of an appellate award under the Buy-laws, Rules and Regulations of the Exchange. The Appellate Arbitral Tribunal (AAT) held its initial and final hearing on 27th March, 2024. After concluding hearing, the matter was reserved for Award.

2. Background of the case, in brief

The Respondent (original Applicant) filed a complaint with NSE on 25th December 2022 for the restoration of the trading loss in his account. In the GRC meeting held on February 07, 2023 through Webex, the GRC Member on hearing both sides and on perusal of documents by his order dated February 07, 2023 held that Admissible Claim is "Nil". Being aggrieved by the said order of GRC the complainant/Respondent (Original Applicant) had filed an arbitration reference dated 1st June 2023 with the Exchange preferring a claim of Rs. 6,40,390.21/- along with interest thereon at the rate of 18% p.a. from 2nd December 2022 towards debit balance in the trading account of the Respondent (Original Applicant) due to squared off the positions at an average of Rs. 2330.0179, causing the claimant a loss of Rs. 6,48,357.73 excluding additional charges. The Exchange referred the matter to Sole Arbitrator (i.e., Ld. Lower Arbitral Tribunal for short "LAT"), who adjudicated the matter after holding initial and final hearing on 18th September 2023. The LAT after examining the pleadings of both the parties in dispute, material on record and taking other relevant factors in to consideration came to the conclusion and passed the Award stating that the claim of the Applicant (i.e., the Respondent in the present appeal) deserves to be allowed observing that had the Respondent acted responsibly, timely and decisively those losses would have been totally avoided. It is also observed by the LAT that The Respondent (T M) instead of squaring off the position of the Applicant (Claimant) after more than two months on 9/2/2023 could have squared off the position on first day on 2.12.2022 as assured by Customer Care that the Risk Team would do so, knowing that it was due to malfunction at the end of Respondent (T M) and thus, the claim preferred by the Applicant was allowed. The LAT accordingly, passed the Award dated 16th November, 2023 (hereinafter referred to as "impugned Award").

The said impugned Award passed by LAT has been challenged by the Appellant under this Appeal. The grievance of the Appellant is given in Memorandum of Appeal dated 30th January, 2024 filed with the Exchange. The Appellant has sought the impugned Award to be set aside on various ground as detailed in the Appeal Memo. The main grounds, on which the present appeal is filed, are briefly given in the following paragraphs: -

2. Grounds of Appeal against the impugned Award

- a) The Appellant contended that the impugned Award is unreasonable, arbitrary and made without having due regard to the bonafide intend of the Appellant as well as facts of the present matter.
- b) It is stated that the impugned award cannot be sustained either in law or facts since the same has been passed based on erroneous facts and without proper appreciation of the facts and circumstances of the present matter.
- c) The impugned Award is contrary to the well settled principles of equity, justice and good conscious.
- d) The LAT failed to appreciate all submissions made by the Appellant in the statement of claim as well as written submissions and the impugned Award is passed without recording any sound reason or rendering any sound findings.

- e) The Appellant referring to para 6 of the impugned Award stated that the Appellant's Customer Care officer contacted the Appellant and stated that the loss on account of squaring off the alleged duplicate transaction would not be on the Respondent and confirmed that the said losses would be observed by the trading member. The Respondent ought to have squared off the excessive position as soon as he learnt about the glitch and the fact that there was an issue with trading application and alleged duplicate orders were executed.
- f) The LAT failed to appreciate that the Respondent was in fact was specifically informed on 7th December 2022 that he must square off the transaction and until such square off and freeing up margin, he would not be able to execute further trade. Out of his own volition and for reasons best known to him to the Respondent, he insisted that this should be a Risk Management team square off and he would not square off the position. It is alleged that the Respondent himself only decided to keep the position open for more than two months and therefore incurred a loss and consequently, the entire loss cannot be saddled upon the Appellant.
- g) The LAT failed to appreciate that at the foot of the account, it was in fact the Respondent who owned the Appellant a sum of Rs. 1,34,329.78/- and since the Respondent had voluntarily chosen to continue with the position, the losses or profit on account of such positions must fall at the foot of the Respondent and cannot be attributed to the Appellant. The Appellant as a service gesture had offered to cover the losses, which have occurred on account of the alleged duplicate orders and therefore once the Respondent refused to accept the same and continue to hold the position, those losses cannot be saddled upon the Appellant.
- h) The LAT failed to appreciate that the Appellant can at the best be made to pay for any losses which have occurred due to technical glitch on 1st December 2022. The LAT erred in holding that the Respondent cannot be faulted for situation even though admittedly it was the Respondent who insisted that he would not square off the position and the RMS of the Appellant should do so. Refusal to square off the position would essentially mean that the Respondent wanted to continue with the trade and had the trade generated profit, he would have happily retained the same.
- i) The LAT failed to appreciate that the Appellant has acted in a responsible and timely fashion and constantly communicated to the respondent the position in his account and debit balances due to trades.
- j) The LAT failed to appreciate the terms of the contract whereby insofar as technical glitch is concern, it is explicitly provided that the client cannot have any claim against the Appellant in case of glitch in the internet-based trading system. The impugned Award therefore is based completely contrary to the contract between the parties and on this ground alone the impugned Award is liable to be set aside.
- k) It is started that the claim of the Appellant for Rs. 1,34,329.78/- being balance due at the foot of the account be granted to the Appellant from the Respondent.

- 1) The Appellant prayed to set aside the Award dated 16th November 2023 read with the modified Award dated 1st January, 2024 and direct the Respondent to pay a sum of Rs. 1,34,329.78/- being Counter Claim of the Appellant.

4. Respondent's reply to Appellant's Appeal Memo / defence statement

The Respondent (i.e., original Applicant) has filed reply / statement of defence dated 16/02/2024 against the Appellant's Memorandum of Appeal dated 30th January, 2024 which is given in brief as follows: -

- i) The Respondent denies each and every averment, allegation and statement made in the appeal and further states that none of the contents therein shall be admitted for want of specific denial. The aforesaid appeal is frivolous, without any merit and deserves to be dismissed with costs. The appeal is filed solely with intention to delay the proceedings and to harass the Respondent.
- ii) It is stated that the impugned Award suffers from no infirmity or error and deserves to be upheld by this Appellate Tribunal. The Respondent refers and relies on the contents of Statement of Claim and Rejoinder of the Claimant as filed before Ld. Sole Arbitrator and the contents may be deemed to be included in the present reply.
- iii) As regards para no.1 of the Appeal Memo the Respondent stated that the contents therein are matter of record.
- iv) With reference to para no. 2 of the Respondent denies the contents of it in toto. The Respondent states that the Customer Care of the Appellant had assured him that the position would be squared off by the Risk Team of the Appellant however the Appellant, on 07/12/2022, went back on their assurance and asked the respondent to square off the said position. Additionally, the Appellant even refused to give any assurance of taking the liability for the said losses. The Respondent states that it is unjust to have the Respondent bear losses for no fault of his own. The Appellant can not be allowed to take shelter under the guise of a "technical glitch" and renounce all responsibility therefrom.
- v) As regards para no. 3, the Respondent states that it is matter of record.
- vi) As regards para no. 4, the Respondent states that he does not require to respond the same.
- vii) With reference to para n. 5, the Respondent relies on the contents of para no 5(b) of his reply to appeal memo.
- viii) With reference to para no. 6(A) to 6(D) the respondent states that the impugned Award is good in Law and was passed with proper appreciation of facts and circumstances.
- ix) With reference to para no. 6(E) and 6(F), the Respondent denies the same and states that the Appellant assured the Respondent that the Risk Team would square off the position and later went back on the said assurance. The Appellant further refused to any assurances in

respect of absorbing losses incurred if the Respondent squared off the position himself.

- x) With reference to para.no. 6(G) and 6(H), the Respondent denies the contents there in and reiterates the contents of para no. 5(g) of his reply to Appeal Memo and states that the Respondent did not owe any sum to the Appellant.
- xi) With reference to para no. 6(I) the Respondent denies the contents of it and states that the Ld. LAT has rightly passed the order in favour of the Respondent.
- xii) With reference to para no 6(J) the Respondent denies the same and states that the loss occurred due to inaction on the part of the Appellant to resolve the issue after assurance given by its Customer Care.
- xiii) The Respondent therefore submitted that the Appeal deserves to be dismissed with costs.

5. Appeal hearing held on 27th March,2024

Both the parties viz., the Appellant and the Respondent were present at the initial and final hearing held on 27th March,2024 through video conferencing arranged by the Exchange through its empanelled vendor. The Exchange had obtained necessary undertakings from the parties to conduct the hearing through video conference. The Appellant was represented by Mr. Prem Satikuvar (Manager Legal) as authorized representative of the Appellant Company and the Respondent Mr. Arvind Trivikram Kamath was present in person along with his Advocate Mr. Vandit M. Joshi.

The parties expressed that they would not like to have any further hearing in this appeal matter. Both the parties were given opportunity to explore the possibility of an amicable settlement as provided in section 30 of the Arbitration and conciliation Act 1996, but parties indicated that it would not be possible.

Accordingly, the appeal matter closed for Award.

The parties were treated with equality and each party was given full opportunity to present its/his case as per section 18 of the amended Arbitration and conciliation Act 1996 and also according to principles of natural justice.

6. Findings and Conclusion

We have gone through the materials on record and considered oral arguments advanced by the parties at the hearing. Our observations are as follows: -

- a) The appeal arbitration reference dated 30th January 2024 was filed by the Appellant on the same date challenging the impugned Award dated 16th November 2023 and modified Award dated 1st January, 2024. The Respondent has not raised any objection on this account. The appeal application is therefore not barred by limitation.

- b) We have carefully examined the impugned Award and submissions made by the Appellant and the respondent on the issues stated by the Appellant in his Appeal memo and the reply by the Respondent there against.
- c) The admitted facts in the present matter are that the Respondent Constituent is a regular investor on stock exchange and the Appellant is a Trading Member of the stock exchange. The Respondent opened his account with the Appellant on 18th November 2022 and has been regularly trading online through the Appellant. The respondent did three intraday trades online on 1st December 2022 from 9.15,55 onwards. All the trades were confirmed. However, the trades done by him at 10.40.32 am and 10.45.04 am on the same day indicated they were 'pending'. The Respondent attempted to contact Customer care of the Appellant but the phones were not answered. The Respondent then sent an email at 11.47 am which was also not replied. The Respondent subsequently received a SMS from the Appellant between 1.20 and 1.40 pm that the 'pending' trades were 'rejected'. The Respondent was left with no alternative but to place fresh orders at 1.40.30 pm in order to square off his position which was confirmed. After market hours at 4.49 pm the respondent received SMS from the Appellant that the trades which were earlier "rejected" had been "Confirmed". The Respondent has written several emails and phone calls to the Appellant between 1.12.2022 and 23.12 2022 as multiple trades got recorded in his account. On 02.12.2022 the Respondent's margin was adjusted as the trades which were originally rejected got subsequently executed resulting in multiple trades. When Appellant's personnel Mr. Navin at Customer Care when contacted by the Respondent assured that the Risk Team would square off the open trades and release the margin (as per transcript of call record). The Respondent was also assured that the fallout of squaring off transaction would not be on Respondent and confirmed that the Respondent had made a profit on earlier transaction of Rs. 19,000/-.

Thereafter there was no response from the Appellant. The transactions as assured by the Customer care were not squared off nor the margin released and the Respondent could not execute any trades. On 07.12.2022 the Respondent again contacted Customer Care and the another personal Ms. Meghana told the Respondent that the Respondent himself should square off his trade contrary to the assurance given by the Customer Care earlier. The Respondent refused to do so as that would then amount to loss compared to the rate prevailing on 02.12.2022. The Respondent therefore was informed that she would speak to her seniors and get back.

The Respondent filed complaint with NSE on 25.12.2022 due to non-responsive attitude of the Appellant. The argument and counter arguments continued before NSE each blaming each other and not wanting to take responsibility and bear the losses. The matter was heard by the IGRP, which did not admit the claim of the Respondent as per order dated 7th February, 2023. At the IGRP hearing the Appellant offered Rs. 2,00,000/- to the Respondent as a service gesture in full and final settlement, but the said offer was rejected by the Respondent. The Appellant finally squared off the position of the Respondent on 09.02.2023 causing a loss of Rs. 6,48,337.73/- in the trading account of the Respondent.

PR

- d) The above mentioned admitted facts have been considered by the Ld. LAT and while allowing the claim of the Respondent has observed in para no. 30 of impugned Award that "Had the Respondent acted responsibly, timely and decisively these losses would have been totally avoided. The Respondent instead of squaring off the position of the Applicant after more than two months on 09.02.2023 could have squared off the position on the first day on 02.12,2022 as assured by Customer Care that the risk Team would do so, knowing that it was due to malfunctioning at their end." Further the Ld. LAT in para no. 32 of the impugned Award has further observed that "In conclusion it can be stated that though the dispute arose due to technical outrage, the situation could have been salvaged with responsibly and timely action by the Respondent which the Respondent failed to do, In the circumstances the Respondent should bear entire loss arising out of situation."
- e) We have gone through the pleadings and other material made available to us and we find that findings and conclusion drawn by the Ld. LAT in the given facts and circumstances of the matter appears to be very correct. The facts reveal that the Respondent was constantly following up from day one to get the matter resolved. The initial response from Customer Care of the Appellant on 2.12.2022 was that the Risk Team would square off the position, release the margin and defreeze the account. As this did not happen after follow up on 7.12.2022 the Respondent was told that he should square off his position himself if he wanted the margin to be released and account defreezed. The Respondent did not agree to do so because that would result to Respondent booking losses for no fault of his and the Appellant going back on the assurance given earlier that the Risk Team would square off the position and the Appellant would absorb the loss. All these facts go to show that the Appellant did not act responsibly, timely and decisively and therefore the Respondent suffered loss in his account for his no fault. Therefore, the Appellant is under an obligation to make the loss good caused to the Respondent. The Ld. LAT has reached to a right conclusion and in our considered view no interference is required in the impugned Award passed by Ld. LAT. Therefore, we confirm the same and pass the following order.



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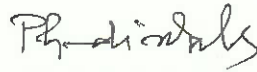
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A W A R D

1. The Appeal is dismissed.
2. There would be no orders as to the costs.
3. The Award is signed and issued in three originals, one for each of the parties and one for the record of the National Stock Exchange of India Limited (NSEIL).

Place: Mumbai

Dated: 29th day of April 2024



Justice Pushpa V. Ganediwala
(Presiding Arbitrator)



Surendra Narhar Ranade
(Co-Arbitrator)



Mr. Jasbir Saluja
(Co-Arbitrator)

महाराष्ट्र शासन
GOVERNMENT OF MAHARASHTRA
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Pst Txn id : 733434371 Stationery No: 21608636577563
Pst DtTime : 25-OCT-2023@19:58:25 Print DtTime : 10-NOV-2023 19:16:02
ChallanIdNo: 69103332023102552125 GRAS GRN : MH010038373202324S
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GRN Date : 25-Oct-2023@20:30:43

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Article : 5(h) (A) (iii) --Agreement relating to specific performance
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Prop Descr : NA

Duty Payer: PAN-AHUPK5681N, ARVIND KAMATH

Other Party: PAN-AAACK3436F, KOTAK SECURITIES LIMITED

Bank official1 Name & Signature



Bank official2 Name & Signature

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e-SBTR IS VALID UPTO SIX MONTHS FROM THE DATE OF PAYMENT.

**In the Matter of Arbitration under the Rules, Regulations and Byelaws
of the National Stock Exchange of India Limited**

Before the Sole Arbitrator – Mr. Kersi Jamshed Limathwalla

Arbitration Matter No. NSEWRO/0013734/22-23/ISC/IGRP/ARB

BETWEEN

**Arvind Trivikram Kamath
B/3 Adarsh,
Near Suvarna Hosp. Bus Stop,
Kastur Park, Borivali West,
Mumbai, Maharashtra - 400092.**

**...Applicant
(Constituent)**

AND

**Kotak Securities Ltd.
8th Floor Kotak Infinity Building
N General Ak Vaidya Marg, Opp Film City,
Malad East Infinity Park,
Off Western Express Highway,
Mumbai - 400097**

**...Respondent
(Trading Member)**

1. This Arbitration Matter has been assigned to be adjudicated by a Sole Arbitrator under the Rules, Regulations and Byelaws of the National Stock Exchange of India Ltd. (NSE). The hearing was held by NSE on 18th September 2023 at 12 noon on the virtual platform of Microsoft Teams Meeting after obtaining consent of both the parties.

BRIEF BACKGROUND

2. The Applicant Constituent is a regular investor on the stock exchange and the Respondent is a Trading Member of the stock exchanges.
3. The Applicant opened his account with the Respondent on 18th November 2022 and has been regularly trading online through the Respondent.
4. The Applicant did three intraday trades online on 1st December 2022 from 9.15.55 a.m. onwards. All these trades were confirmed. However, the trades done by him at 10.40.32 a.m. and 10.45.04 a.m. on the same day indicated they were 'pending'. The Applicant attempted to contact Customer Care of the Respondent but the phones were not answered. The Applicant then sent an email at 11.47 a.m. which was also not replied. The Applicant subsequently received a SMS from the Respondent between 1.20 and 1.40 p.m. that the 'pending' trades were 'rejected'. The Applicant was left with no alternative but to place fresh orders at 1.40.34 p.m. in order to square off his position which was confirmed.
5. After market hours at 4.49 p.m. the Applicant received a SMS from the Respondent that the trades which were earlier 'rejected' had been 'confirmed'. The Applicant has written several emails and phone calls to the Respondent between 1.12.2022 and 23.12.2022 as multiple trades got recorded in his account.
6. On 2.12.2022 the Applicant's margin was adjusted as the trades which were initially rejected got subsequently executed resulting in multiple



trades. The Respondent's personnel Mr. Navin at Customer Care when contacted by the Applicant assured that the Risk Team would square off the open trades and release his margin (as per transcripts of calls recorded). The Applicant was also assured that the fallout of squaring off the transaction would not be on the Applicant and confirmed that the Applicant had made a profit on earlier transaction of Rs.19,000/-.

7. Thereafter there was a no response from the Respondent. The transactions as assured by Customer Care were not squared off nor the margin released and the Applicant could not execute any trades. On 7.12.2022 the Applicant again contacted Customer Care and another personnel Ms. Meghana told the Applicant that he should himself square off his trade contrary to the assurance given by the Customer Care earlier. The Applicant refused to do so as that would now amount to a loss compared to the rate prevailing on 02.12.2022. The Respondent therefore informed that she would speak to her seniors and get back.
8. The Applicant was forced to file a complaint with NSE on 25.12.2022 due to the ambivalent and non responsive attitude of the Respondent.
9. The Respondent replied that it was due to "unforeseeable nature of the interruption" due to technical reason beyond the control of the Respondent between 10.45 a.m. and 12.53 p.m. on 1.12.2022 which was subsequently resolved, and that the Applicant had agreed to such situations as per terms and conditions confirmed by him when opening the trading account with the Respondent.
10. The Applicant replied that it was not the "internet glitches" that he was referring to but the Kotak Neo platform application which first showed the transaction as "rejected" and subsequently "confirmed" the transaction aftermarket hours. The Applicant further explained that it was the failure of the Respondent's system which allowed double transactions to be executed without adequate margin and in the circumstances the Respondent was responsible.
11. The argument and counter arguments continued before the NSE each blaming the other and not wanting to take responsibility and bear the loss. The matter was heard by the GRC, which did not admit the claim of the Applicant.
12. At the GRC hearing the Respondent offered Rs.2,00,000/- to the Applicant as a service gesture in full and final settlement which included Rs.1,50,000/- loss which the Applicant would have incurred had he closed his position on 07.12.2022 plus Rs.50,000/- towards debit interest.
13. The Applicant rejected the offer on the grounds that when he was told to square off his position on 07.12.2022 there was no confirmation from the Respondent at that time that he would be compensated for the loss. The Customer Care on 02.12.2022 told the Applicant that the Respondent would square off the position which they did not do and had they squared off the position on that day there would not have been any loss.
14. The Respondent finally squared off the position of the Applicant on 09.02.2022 causing a loss of Rs.6,48,337.73 which they want the Applicant to bear.



15. The Applicant's prayer is to restore his position as per closing balance on 02.12.2022 which is Rs.6,23,097.26 and profit made by him on 01.12.2022 amounting to Rs.17,292.95. The Applicant has also claimed interest at 18% p.a. from 02.12.2022 till the date of realisation on Rs.6,40,390.21 and for reversal of all charges made to his account by the Respondent after 01.12.2022 including interest. The Applicant has also prayed for reimbursement of Arbitration fees and litigation cost incurred by him.
16. The Respondent has vehemently denied any shortcomings at their end except for the interruption in their Trading Application between 10.45 a.m. and 12.53 p.m. on 01.12.2022 which the Respondent initially stated was completely resolved at 1.20 p.m. but has subsequently corrected as 1.15 p.m.
17. The Respondent has further argued that the Applicant is fully aware that such unpredictable outages can take place on technology based trading system and the Applicant had accepted when he opened the account that he shall not have any claim against the Respondent on account of any suspension, interruption, non availability or malfunctioning of the Respondent's Internet Based Trading System or non execution of order due to system failure at the Respondent's end for any reason beyond their control.
18. The Respondent has alleged that the Applicant has not approached the Tribunal with clean hands and has attempted to extort money from the Respondent. Moreover, the claim is an afterthought and misconceived as it was the intention of the Applicant to go long on his position based on the order he had placed. The account was frozen as the Applicant did not have adequate margin and failed to either square off his position or provide additional margin in spite of repeated reminders through email and SMS.
19. The Respondent relies on the order of the GRC which has not admitted the claim of the Applicant after considering the argument and counter arguments of the Applicant and Respondent.
20. The Respondent has prayed that the claim of the Applicant be dismissed in totality with the compensatory cost and the Applicant be directed to pay the Respondent the outstanding of Rs.1,34,329.78 as on 24.08.2022 with exemplary cost of Arbitration to the Respondent.

HEARING

21. At the hearing both the parties were heard at length. The Applicant drew the attention of the Tribunal that the Respondent had not furnished the Order History log from the CICL (Computer to Computer Link) System of the disputed trades due to the malfunctioning of the Kotak Neo Application on 01.12.2022 though referred to in the SOC. The Respondent requested for time up to 25.08.2022 to furnish the same if technically possible. The Respondent replied on 26.09.2022 that they were in the process of identifying the requirement and needed more time for the same.
22. At the hearing the Respondent also requested for time upto 25.09.2022 to receive instructions from the management as the Applicant who was agreeable to settle the claim for Rs.6,23,097.26 being the balance in his



account on 02.12.2022 and forgo the profit of Rs.17,292.95 he had claimed earlier.

23.The Respondent replied on 26.09.2023 that they were agreeable to settle the matter for Rs.2,00,000/- in full and final settlement of all concerns of the Applicant. Since there was no agreement on the settlement amount between the parties the matter was closed for Award.

FINDINGS, REASONING AND CONCLUSION

24.There is no dispute on the facts of the case that there was a disruption in the internet trading platform of the Respondent between 10.42 a.m. and 12.53 p.m. and at 1.15 pm the system was streamlined over various sectors. During this span of time the Applicant had placed some orders which showed that they were "Pending". The malfunctioning was sorted out at 1.15 p.m. after which the Applicant got a reply that the 'Pending' trades were 'Rejected'. Based on these remarks the Applicant made fresh trades to square off his position which was confirmed and the earlier trades continued to show 'Rejected' till the close of the market.

25.The Respondent has asked the Applicant to show proof that the earlier trade were rejected, to which the Applicant has replied that the Order History in the CICL System of the Respondent would reveal this factual position. The Applicant has asked for the Order History in the SOC which the Respondent has not furnished. At the hearing the Applicant again asked for the same and the Respondent agreed to file within a week which the Respondent did not do and requested for more time which the Tribunal did not allow as it realised that the Respondent had no intention of filing the same having been asked to do so repeatedly.

26.The Respondent has alleged that the Applicant wanted to go long on this trade and the claim is an afterthought and that the Applicant has not approached the Tribunal with clean hands with an intention to extort money. Such allegation are totally unjustified, when the facts are so clear that the Applicant has been tacitly following up with the Respondent from the very first day which is evident from multiple emails and transcripts of call which the Respondent has not disputed.

27.The Respondent further takes shelter under technical outage and that the Applicant has accepted as per the agreed terms and conditions when opening the account. The Applicant has agreed that it is not the internet trading system that he is faulting but the Kotak Neo Application malfunction which first showed that the trades were 'Rejected' and subsequently after market hours got 'Confirmed'.

28.Be that as it may the Applicant was constantly following up from day one to get the matter resolved. The initial response from the Customer Care of the Respondent on 2.12.2022 was that the Risk Team would square off the position, release the margin and defreeze the account. As this did not happen after followed up on 7.12.2022 the Applicant was told that he should square off his position himself if he wanted the margin to be released and account defreezed. The Applicant did not agree to do so because that would result to the Applicant booking losses for no fault of his and the Respondent going back on the assurance given earlier that the Risk Team would square off the position. The Respondent induced the Applicant to



square off the position and that they would consider the matter but did not confirm that the Respondent would absorb the loss.

29. It is appalling that a situation like this has arisen wherein heavy losses have been booked and the earlier credit balance of the Applicant amounting to Rs.6,23,097.26 wiped off and profit of Rs.17,292.95 made on that day with a counter claim from the Respondent for an amount of Rs.1,34,329.78. This is to nobody's advantage and the Applicant cannot be faulted for this situation.
30. Had the Respondent acted responsibly, timely and decisively these losses would have been totally avoided. The Respondent instead of squaring off the position of the Applicant after more than two months on 9.2.2023 could have squared off the position on the first day on 2.12.2022 as assured by Customer Care that the Risk Team would do so, knowing that it was due to malfunctioning at their end.
31. The Respondent has faulted the Applicant that he has selectively picked up from the communications between them, but has failed to counter their shortcomings. From the sequence of interaction, one realises that the personnel of the Respondent were not empowered to take decisive action and redress the grievances of their clients. There were standard replies that they would extend all possible assistance to mitigate inconvenience on 'Best Service Basis' without any follow up.
32. In conclusion it can be stated that though the dispute arose due to technical outage, the situation could have been salvaged with responsible and timely action by the Respondent which the Respondent failed to do. In the circumstances the Respondent should bear the entire loss arising out of the situation.
33. At the hearing the Applicant agreed to forgo the profit made by him on 01.12.2022 amounting to Rs.17,292.95, hence the Respondent shall only pay to the Applicant Rs.6,23,097.26 which is the balance that stood to the credit of his account on 02.12.2022 and the Respondent will not have any claim against the Applicant for charges of Rs.1,34,329.78 debited to his account.

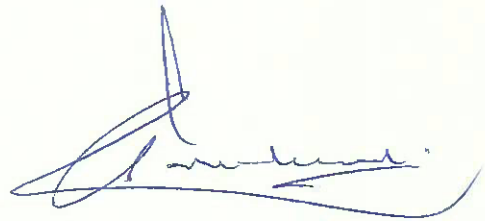


AWARD

- a. The Respondent shall restore the account of the Applicant as per the closing balance on 02.12.2022 amounting to Rs.6,23,097.26 and pay the same to the Applicant within 30 days of the date of this Award failing which interest shall be paid on the same at 8% per annum from the date of the Award. The Claim of the Applicant is accepted to that extent.
- b. The Counter Claim of the Respondent amounting to Rs.1,34,329.78 is rejected.
- c. No order as to costs.
- d. The Award is made in three originals duly stamped, one each for the Applicant, Respondent and the records of NSE.

Place: Mumbai

Date: 16th day of November, 2023



**Mr. Kersi Jamshed Limathwalla
Sole Arbitrator**