



தமிழ்நாடு தமில்நாடு TAMILNADU

02 APR 2024

MR. G. VASUDEVAN

Chennai

DB 489270

S. AYATH BASHA  
STAMP VENDOR

L.NO.3 / ஆ3 / 2000

No: 43, SEETHAMMAL ROAD  
TEYNAMPET, CHENNAI - 18

Phone: 9841640694

BEFORE THE ARBITRATION APPELLATE TRIBUNAL  
NATIONAL STOCK EXCHANGE OF INDIA LIMITED

1. In the matter of Arbitration under the Bye-laws, Rules and Regulations of the National Stock Exchange of India Ltd.

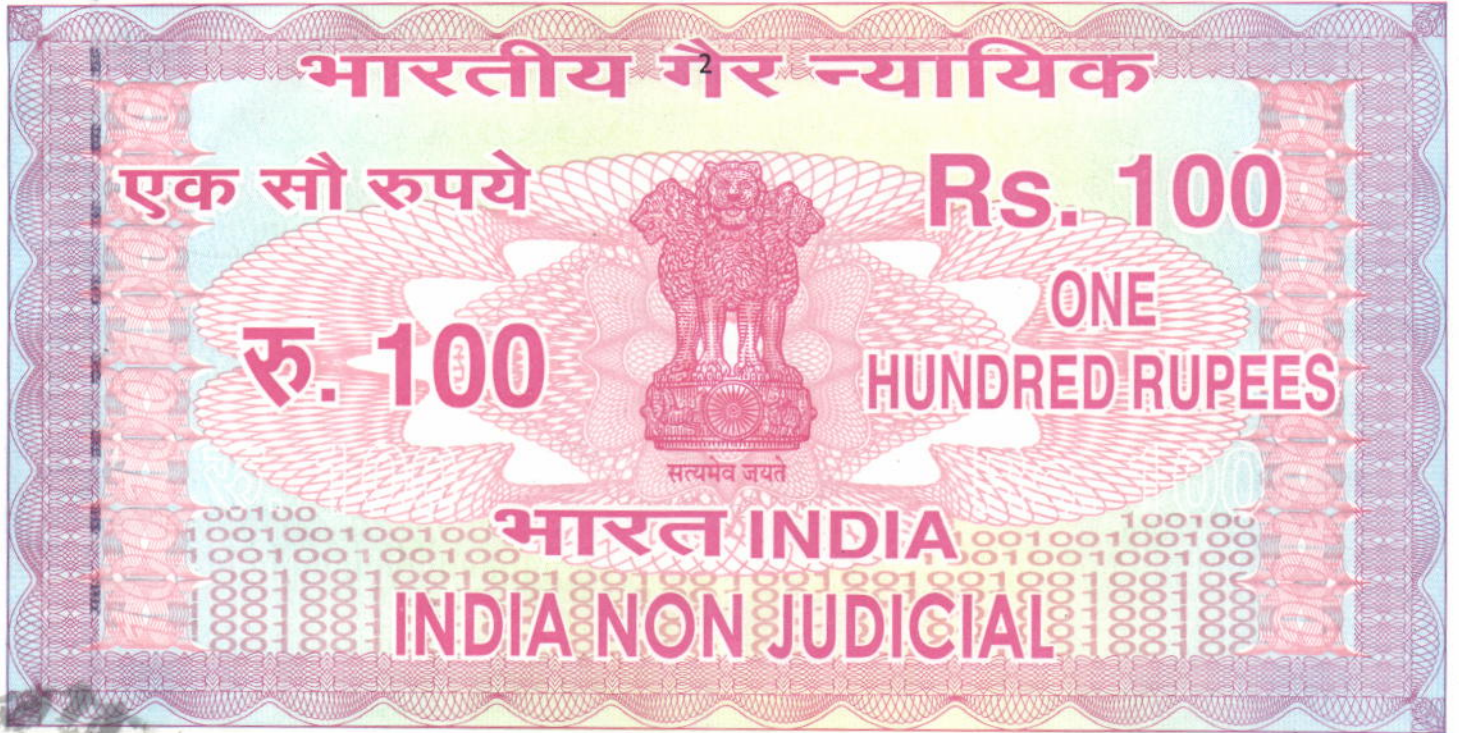
2. Mr.G.Vasudevan Mr.K.Venkatraman Mr.Gopal Subbasetty  
Presiding Arbitrator Arbitrator Arbitrator

*G. Vasudevan*

*K. Venkatraman*

*Gopal Subbasetty*





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(3) Arbitration Matter No. NSECRO/0015177/22-23/ISC/IGRP/  
ARB/APPL

BETWEEN

M/s Kotak Securities Limited

8<sup>th</sup> Floor, Kotak Infinity Building

21. Infinity Park, Off Western Express Highway

General AK Vaidya Marg, Malad (East) Mumbai 400097

Maharashtra

.....Appellant/Trading Member

-Vs-

Mr. Soundrarajan Mani

*S. V. Vaidya*

*[Signature]*

*[Signature]*

1/65, Theradi Street Thuraipakkam  
Chennai 600096

TamilNadu

PAN No AQYPM9313N

..... Respondent/Constituent

**(4) Appearances**

- (1) The arbitration hearing was conducted through video conferencing. The respondent, Soundarajan Mani represented himself, and the appellant Kotak Securities Limited, was represented through its authorized representative Prem Satikuwar, in the hearing held on 05-02-2024 at 03:00 pm and the matter was heard at length.
- (2) This is an appeal arising out of an award dated 9<sup>th</sup> October 2023 passed by the learned Sole Arbitrator Mr. N. Ganesh in Arbitration Matter (A.M.) No: NSECRO/0015177/22-23/ ISC/ IGRP/ARB between M/s Kotak Securities Ltd, the Appellant therein , and Mr. Soundrarajan Mani therein. The Award was passed in favour of the Respondent, dismissing the Arbitration Application against the GRC Order and allowing a claim of Rs.2,59,514.

**(5) Statement Of The Case Of The Claimant/Respondent**

The case of the respondent is as follows:-


*S. Vamshi*

*[Signature]*

*Ganesh*



- i. The respondent is an online trader transacting through the mobile application of the trading member/appellant, viz "Kotak Neo App". From 9 Jan 2013 onwards, the Respondent had created certain open trades in Bank Nifty Options through the Mobile Application of the Appellant His clam was that, he was unable to square of the trades during 11 and 12 January 2023 at a desired price, due to outage of the Mobile Application software, at some specific timings. He claimed to have incurred losses due to the above system outage and raised a complaint to the Appellant and also to NSE.
- ii. From the documents provided, it is observed that, on 11/01/2023 at 11:16 hrs., vide email, the Respondent had flagged the issue of system outage, immediately after experiencing the same and difficulties in getting through Customer Care service of the Appellant. A second mail was sent on 12/01/2023 at 15.37 hrs. by the Respondent again, reiterating the system failure on 12 as well, along with a claim for loss deemed to have been suffered by the Respondent.
- iii. The Appellant had responded for both the mails only on 14/01/2023 at 14.37 hrs. conceding that there was a service interruption in their Mobile Application.



- iv. The Respondent had further claimed that the Customer Care Services of the Appellant, were not available for immediate redressal of issues. During the hearing also, the Respondent had complained about the poor Customer Care Service of the Appellant.
- v. The Appellant through their submissions trying to emphasize that, the Respondent did not square of the open position during the time when system worked, without providing any reason for the frequent failures of their Mobile application
- vi. The Appellants submission gives an impression that the clients should do transaction as and when the software service is available and not at the convenience of the client. Their submissions are silent about the remedies towards loss of opportunities to a client during their system failures.
- vii. The crux of the grievance of the respondent was that on 11th and 12th January, 2023, there were serious issues in the Mobile Application (Kotak Neo App) of the Appellant , consequent to which the respondent was deprived of the opportunity of averaging the positions taken by him earlier, leading to heavy losses. According to the respondent, the issues faced in the App



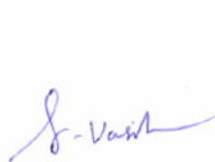
were so serious that the screen went blank and nothing could be transacted then.

- viii. On 11th Jan., 2023, the respondent had sent a mail to the Appellant, as under:

"Facing more system issues from yesterday particularly trading hours. Unable to buy any new positions and also no response from trading app and also today morning has same issue. I am trying to connect customer care from yesterday, spent more than one hour, line is keep on waiting due to more call flows. Due to that issue, am unable to average my position at right price. If any loss happens, you need to refund the amt and facing very poor service. So pls urgently do the needful."

- ix. Again on 12 Jan., 2023, he had sent another mail to the Appellant, reading thus:

"Pls urgently note that, i couldn't average at 140 rs yesterday due to system issue. If system worked properly yesterday, i could have safely closed my position with profit. After that, the price not reached the level and today morning also have system issue and couldn't place orders and missed the better price. System issue not acceptable and due to the system issue couldn't average at right price and couldn't exist safely. Finally booked my loss as 4,32,523 INR (bank nifty 42100 CE-12th jan expiry) afternoon. So pls urgently refund my amt on priority due to the system issue."





- x. The APPELLANT furnished certain replies for the above, through email on 13th January, 2023 and 14 January, 2023 respectively.
- xi. Not being satisfied with the replies furnished by the APPELLANT, the respondent alleged that the loss of Rs. 4,32,523 in the Bank Nifty42100 CE-12th Jan expiry) was due to the service deficiency issues attributable to the APPELLANT and claimed the same from the APPELLANT.

**(6) Statement of the Defense by the appellant: -**

The appellant through its authorized representative submitted that they are adopting the defense statement filed before the redressal committee before the Hon'ble Tribunal.

“We request the members to note the below facts and oblige:

1. As per appellant's observation, they didn't find complete outage on 11th or 12th January, 2023, platform was working fine at majority of the trading hours except intermittent slowness. reported on 11 Jan 23 between 9.21 AM to 9.44 AM. Any Incident which was reportable under relevant regulation was already reported to NSE along with RCA & measures taken by KSL (APPELLANT).



2. The APPELLANT denied that there was any outage on 12th January, 2023, in his initial response, as well as in their reply to the clarification sought for by the GRC.
3. The client/respondent created initial position on 9th Jan, however, he never attempted a sell square off (market) at any point of time until 12th Jan-2.57 PM. He was rather averaging his position through multiple trades on subsequent days, & placing sell limits (beyond day high prices) for the contract on 10th & 11th Jan 23. Hence, the argument that platform was not available on above given days does not stands true
4. Prior to the closing of the position on the option expiry date 12th January, 2023, the sell order was placed at a limit price, which was unrealistic and there being no matching prices, went unexecuted and got carried forward. The respondent made no attempt to modify the limit price in tune with the prevailing prices in the market. The squaring off was done at the eleventh hour, leading to the impugned losses.
5. As per the relevant clause (para 13) in the Master Client Agreement (MCA), even admitting that there was a technical glitch, the APPELLANT cannot be held responsible for the same.





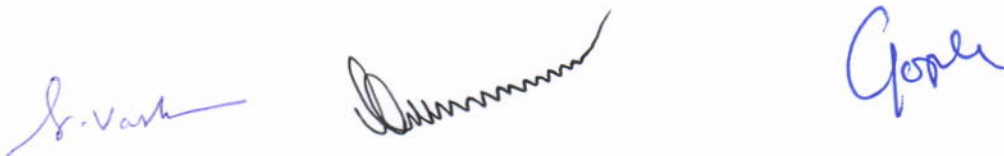
6. Hence prayed for the dismissal of the claim.

7. The GRC was pleased to hold that there was deficiency of service and the respondent has also contributed to the negligence and held that the amount of Rs. 4,32,523 cannot be attributable to the trading member alone, but considering the serious deficiency in service, 60% for the aforesaid loss, that is Rs. for 2,59,514, the appellant is liable. Aggrieved by that, the appellant filed an arbitration application and the sole arbitrator by an award dated 9<sup>th</sup> October 2023 was pleased to confirm the same. Aggrieved by that the appellant has preferred the above appeal.

#### **7. Hearing Details:-**

The arbitration hearing was conducted through video conferencing. The respondent, Soundrarajan Mani represented himself, and the appellant Kotak Securities Limited, was represented through its authorized representative Prem Satikuwar, in the hearing held on 05-02-2024 at 03:00 pm and the matter was heard at length elaborately.

#### **8. Findings And Conclusions:-**

Three handwritten signatures in blue ink are positioned horizontally below the 'Findings And Conclusions' section. The first signature on the left is 'S. Vash', the middle one is a stylized signature, and the one on the right is 'Gopal'.

The Appellant reiterated the statement of defense and made the submissions that the order of the GRC and the sole arbitrator are without jurisdiction and contended that both the orders are erroneous and liable to be interfered with and prayed for to set aside the order.

The respondent reiterated the statement of claim and also supported the award of the GRC and the sole arbitrator which is a well-considered one and there is no error in the awards of the authorities mentioned above and prayed for dismissal of the above appeal.

We have considered the submissions made by either parties and perused the records including the annexures and also the defense filed before the Redressal committee.

The fact remains that there was outage due to serious issues on 11<sup>th</sup> January 2023 from 09:21 am to 09:54 am, which also necessitated the appellant to report the issue to the National Stock Exchange and the appellant has also admitted that during this period that the lowest price was Rs. 121 per unit and the highest price was Rs. 348 per unit. Similarly on the next day also the complainant had faced serious issues for more than 15 minutes during the initial trading hours and immediately was brought to the knowledge of the appellant through phone calls and emails on 11<sup>th</sup> and 12<sup>th</sup> January 2023. However, the trading member



furnished replies on 13<sup>th</sup> and 14<sup>th</sup> January 2023 respectively and both the replies were practically of no consequence for two reasons, namely:

- They were furnished after the expiry of the option period, that is 12<sup>th</sup> January 2023.
- Further when a serious issue like the technical glitch is being raised by the investor, it is imperative that the trading member responds immediately. But the response was not forthcoming.

Therefore, we have no hesitation in concluding that it amounts to serious deficiency in service on the part of the appellant.

The appellant justified the delay on the ground that interruption in service "The member doesn't warrant that the service will be uninterrupted or error free. The service is provided in an "as in" and "as available basis without warranties of any kind, either express or implied. including, without limitation the client agrees that the member shall not be held responsible for delays in transmission of orders due to breakdown of the

system or failure of communication facilities..."

Policies and procedures given in their website. In particular,

**Excerpts from rights & obligations document - Page no:4, point no:10**



"The Client shall not have any claim against the Exchange or the stock broker on account of any suspension, interruption, non-availability or malfunctioning of the stock broker's IBT System or Service or the Exchange's service or systems or non- execution of his orders due to any link/system failure at the Client/stock brokers/Exchange end for any reason beyond the control of the stock broker/Exchanges."

**Excerpt from the SEBI website in the impugned issue:**

"The Client shall not have any claim against the Exchange or the stock broker on account of any suspension, interruption, non-availability or malfunctioning of the stock broker's IBT System or Service or the Exchange's service or systems or non- execution of his orders due to any link/system failure at the Client/stock brokers/Exchange end for any reason beyond the control of the stock broker/Exchanges."

We have considered the submission of the appellant that the regulation will not come to the aid of the trading member in the present situation since the regulation comes to the rescue only if the reason is beyond the control of the stock broker. In the present case, admittedly there is a deficiency in the services of the appellant and hence the appellant cannot be absolved of its liability towards the respondent.



For the foregoing reasons, we are unable to accept the contention of the appellant especially that when the trading member has not provided suitable power backup to maintain its servers.

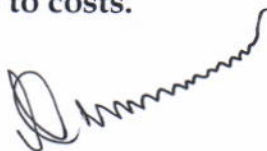
Hence, we are not persuaded in taking a different view of the Sole Arbitrator and of the GRC member.

Therefore, the claim of the respondent is justified seeking for refund of the amount claimed. But however, the respondent is also to be blamed partly.

Therefore, we have no hesitation in concluding that the award fixed by the GRC Member and the sole arbitrator for the amount quantifying Rs. 2,59,514 is just, fair and reasonable.

**AWARD:-**

In view of the findings above, we are in concurrence with the award passed by the sole arbitrator and dismiss the appeal. However, there will be no order as to costs.



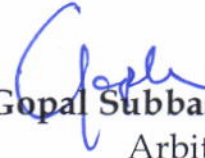
This award is made and signed by me on this the 02<sup>nd</sup> April 2024.



**Mr.G.Vasudevan**  
Presiding Arbitrator



**Mr.K.Venkatraman**  
Arbitrator



**Mr.Gopal Subbasetty**  
Arbitrator

Place: Chennai

Date: 02.04.2024

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