IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 304 OF 2024

Nirmal Bang Securities Pvt. Ltd. **.....PETITIONER**

: VERSUS :

Shashi Mehra HUF **....RESPONDENT**

Mr. Nikhil Sakhardande, Senior Advocate with Ms. Shubra Swami, Mr. Samyak Pati, Ms. Valentine Mascarenhas and Ms. Janani Sitaraman i/b M/s. RHP Partners for the Petitioner.

Mr. Deepak Dhane with Mr. Viraj Bhate and Ms. Jidnyasa Kamble i/b M/s. Corporate Pleaders for the Respondent.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON: 14 JANUARY 2026

JUDG. PRON. ON : 03 FEBRUARY 2026

JUDGMENT :

1) This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)** challenging the Award of the Appellate Arbitral Tribunal of National Stock Exchange dismissing the Appeal preferred by the Petitioner and confirming the Award of the Arbitral Tribunal dated 14 October 2022. The Arbitral Tribunal, while dismissing the application preferred by the Petitioner, had allowed the application preferred by the

Respondent and has directed refund of full brokerage amount by the Petitioner to the Respondent by modifying the order passed by the Investor Grievance Redressal Committee **(IGRC)** which had capped the refund of brokerage to only 75%.

FACTS

2) Petitioner is an incorporated entity and a stock broker with membership of National Stock Exchange of India Ltd **(NSE)** and Bombay Stock Exchange. Respondent is a Hindu Undivided Family **(HUF)** with Mr. Shashi Mehra, a practicing Chartered Accountant, being its *Karta*. Respondent had initially opened a demat account with the Petitioner in 2007, which had become inactive over sustained period of time. In April 2019, Respondent reactivated the account with the Petitioner. It appears that the reactivation of Respondent's account was at the behest of one Mateen Attar **(Mateen)**. Respondent claims that Mateen introduced himself as Authorised Person **(AP)** of the Petitioner and was accompanied by Mr. Bhaskar Shrivastava and Mr. Shishir Tiwari. It is Respondent's case that Mateen introduced himself as having expertise and experience of handling assets of Rs.200 crores of high net worth investors at Petitioner's HNI Desk.

3) Respondent signed the requisite forms for reactivation of his Trading Account, which had shares worth approximately Rs.1.40 crores. The shares were transferred in the new Demat Account with the Petitioner. It appears that Respondent handed over login ID and password of his trading account to Mateen, who commenced trading in the account of the Respondent in Equity/Capital Market **(CM)**, Futures and Options **(F&O)** and Currency Derivative segments **(CDS)**. According to the Petitioner, the first date of trading generated debit balance of Rs.4 crores in Respondent's ledger accounts

and Compliance Officer of the Petitioner made a telephonic call to the Respondent and sought confirmation of the trades. It appears that Respondent confirmed the trades. The Respondent was also warned not to share his user ID and password with any third party. The trading in the Respondent's Account commenced on 25 April 2019 and continued upto 21 June 2019. It is Petitioner's case that Respondent duly received SMS notifications on his registered mobile number, as well as electronic contract notes, ledger, margin statements and other documents on his registered email address in addition to independent intimations from the Exchange and the Depository regarding the trades effected in his account. It appears that Respondent did not object to the trades in question contemporaneously. The volume of trades effected by Mateen in the account of the Respondent was enormous, which is clear from the following table:

Name of Segment	Quantity (Lots/Scrips) (Nos)	Trading days	Trade Values / worth (Rs. In crore)
Equity	23*	26	30.44 (6.82)
F&O	2,85,985	27	95.60
Currency Derivatives	1,18,618	12	931.82

4) It later transpired that Mateen was not the AP of the Petitioner. However, during currency of transactions, Mateen's father Mr. Rafeeqahmed Imamsab Attar was registered as AP of the Petitioner on 3 May 2019. However, Mateen himself was never registered as Petitioner's AP. The trades effected in the CM Segment, CDS Segment and F&O Segment in short gap between 25 April 2019 to 21 June 2019 resulted in losses in CDS Segment of Rs.94 lakhs, in F & O Segment of Rs. 93.82 lakhs, and in Equity (Cash) Segment of Rs.18.15 lakhs. Additionally, high volume of trades generated brokerage liability of

Rs.66,66,598/- and GST of Rs.11,99,988/- (total Rs.78,66,586/-). To recover the amounts due from the Respondent, Petitioner liquidated the shares of the Respondent in the Demat Account worth about Rs.1,38,33,050/-.

5) Respondent transferred his Trading Account to another broker-Tradebulls Securities Pvt. Ltd. (**Tradebulls**) and transferred the shares in the account with the new broker on 28 June 2019 and closed his account with the Petitioner. Thereafter, by email dated 19 November 2019 and, in several correspondences, thereafter, Respondent started raising objections to the trades and sought details of various charges and brokerage. In the year 2020, Respondent raised allegations against Mateen and visited the office of the Petitioner on 9 February 2021, when he was told that Mateen was never the AP of the Petitioner and that his father Rafeeqahmed was registered as AP. In the above background, Respondent filed Complaint with the IGRC of NSE on 12 April 2021 alleging execution of unauthorized trades by Mateen and charging of excessive brokerage by the Petitioner. Respondent prayed for restitution of the shares sold by the Petitioner for meeting the debit balance or in the alternative sought recovery of amount equivalent to the value of his holdings, as well as compensation. Alongwith his complaint, Respondent produced *inter alia* chat messages with Mateen over WhatsApp. Petitioner resisted Respondent's complaint by filing a detailed response. Respondent filed his surrejoinder. Based on queries raised by IGRC during the course of hearing, parties filed further pleadings. IGRC proceeded to pass order dated 14 January 2022 holding Petitioner as well Respondent responsible for the losses suffered by the Respondent. IGRC held that since the trades were effected in informal and unauthorised portfolio management with covert support from Petitioner to Mateen, who acted as a front for official AP, Petitioner cannot be permitted to retain the entire brokerage earned from such unauthorized/illegal trades.

Accordingly, IGRC allowed the claim of the Respondent to the extent of 75% of the brokerage earned by the Petitioner. This is how the IGRC allowed the claim of the Respondent in the sum of Rs.58,99,940/-.

6) Both Petitioner as well as the Respondent got aggrieved by IGRC's order. Petitioner filed Arbitration Application before the Three Member Arbitral Tribunal of NSE challenging IGRC's order dated 14 January 2022. Respondent also challenged the order of IGRC by filing joint statement of defence and counterclaim on 13 June 2022 to the extent of rejection of claim for reinstatement of shares in his account and non-refund of 25% brokerage. The Arbitral Tribunal, after hearing both the sides, proceeded to pass Award dated 14 October 2022 dismissing Petitioner's challenge while partly allowing Respondent's challenge. The Arbitral Tribunal held that the Respondent was entitled to refund of 100% brokerage earned by the Petitioner and has accordingly directed the Petitioner to pay to the Respondent Rs.78,66,586/- alongwith interest @ 10% p.a. from the date of the order of IGRC.

7) Petitioner filed Appeal before the Appellate Arbitral Tribunal constituted under the Rules, Regulations and Bye-laws of NSE. Respondent also challenged the Arbitral Award to the extent of non-reinstatement of shares. The Appellate Arbitral Tribunal has made Award dated 15 March 2023 confirming the Award and dismissing the Appeal preferred by the Petitioner. Accordingly, the Petitioner has filed the present petition under Section 34 of the Arbitration Act challenging the Award of the Appellate Arbitral Tribunal dated 15 March 2023, as well as Award of the lower Appellate Tribunal dated 14 October 2022 and order passed by the IGRC dated 14 January 2022. By order dated 9 June 2023, this Court has stayed the Award of the Appellate Arbitral Tribunal dated 15 March 2023 subject to the Petitioner depositing principal

amount of Rs.78,66,586/- lying with Petitioner's Account with NSE. Petitioner has accordingly deposited the principal awarded amount of Rs.78,66,586/- in this Court.

SUBMISSIONS

8) Mr. Sakhardande, the learned Senior Advocate appearing for the Petitioner submits that the IGRC, Lower Arbitral Tribunal and the Appellate Arbitral Tribunal have patently erred in directing refund of brokerage to the Respondent. That the very case of the Respondent against the Petitioner was an afterthought. That fair appreciation of WhatsApp chats produced on record reveals the true nature of the relationship that existed between Respondent and Mateen, who had a private arrangement akin to informal and unauthorised Portfolio Management Services. That Respondent voluntarily agreed to allow Mateen to trade in his account with a view to earn profits from Mateen's purported trading strategy. That it was a mutually beneficial relationship. That Respondent voluntarily and repeatedly handed over his login details to Mateen for carrying out online trades. That WhatsApp chats show that Respondent had lost even access to his own account and had to obtain login details from Mateen. As of May 2019, Respondent was fully aware of the degree of the trades effected and losses occurring in his trading account but still acknowledged them, confirmed them as legitimate transactions without any demur. That debit balance of approximately Rs.1 crore was cleared from the sale of his holdings which was kept as margin. That Respondent initially sought private resolution of his grievances with Mateen and after failing in such attempt, turned around and raised claim against the Petitioner.

9) Mr. Sakhardande would submit that Respondent always had a broad overview of actions of Mateen resulting in trade losses. That he duly

received electronic contract notes, trade intimations etc. from the Petitioner, exchanges and depository. That Respondent confirmed the trades occurring in his account as well as overall ledger/debit balance to the Petitioner via emails as well as orally. That IGRC and both the Arbitral Tribunals have considered the trades to be legitimate and authorized. He relies on judgment of Division Bench of this Court in ***Erach Khavar vs. Nirmal Bang Securities***[1] in support of his contention that trades and consequent losses, once confirmed, cannot be subsequently claimed as unauthorized. He also relies on judgment of this Court in ***Keynote Capitals Ltd. vs. Eco Recycling Ltd.***[2] in support of his contention that when the constituent was aware of the transaction and did not object to the same, the transaction cannot be said to be unauthorized.

10) Mr. Sakhardande would further submit that the trades are effected by trusted persons of the Respondent and relies upon the judgment of this Court in ***Sharekhan Ltd. vs. Monita Kisan Khade***[3]. He also highlights the Respondent's conduct after closure of the account with the Petitioner in continuing association with Mateen in getting the account transferred to another broker - Tradebulls. That Respondent permitted Mateen to trade in his account even after transfer of account to Tradebulls. That this shows that the claim is raised against the Petitioner only after souring of relations between the Respondent and Mateen by way of an afterthought.

11) Mr. Sakhardande would further submit that no liability can be attributable to the Petitioner in respect of the trades executed by Mateen on Respondent's behalf. That unwarranted findings are recorded by IGRC and in the arbitration proceedings. That Petitioner further facilitated Mateen's

1 Arbitration Application No. 12 of 2025 decided on 25 August 2025
2 2018 SCC Online Bom 1269
3 2025 SCC Online Bom 5464

conduct with a view to earn brokerage and contributed to Respondent's losses. That it is erroneous to apply the principle of vicarious liability by treating Mateen as *de facto* AP in ignorance of the vital fact that almost all trades in the Respondent's account were carried out online via web portal by Mateen. That involvement of AP was required for three trading days where both online and offline trades have occurred but on remaining trading days, the trades were carried out online eliminating any role of AP. He would further submit that even if there are any procedural lapses on Petitioner's part, particularly in permitting Mateen to trade prior to registration of his father or sharing brokerage with the AP even prior to registration, would at the highest constitute lapse in compliance of regulatory measures. That in any case, such lapses are not the principle cause of losses caused to the Respondent. That the Arbitral Award already directs NSE to take note of the lapses as observed for taking suitable action. That therefore direction for refund of brokerage was clearly unwarranted. He relies upon judgment of this Court in ***Ulhas Dandekar vs. Sushil Financial Services Pvt. Ltd.***[4] in support of the contention that regulatory violations do not *ipso facto* affect authorized nature of trades. Mr. Sakhardande would conclude contending that the awards and the orders of the IGRC suffer from non-application of mind and are patently illegal being passed in ignorance of vital and material evidence on record and are perverse as no prudent man would arrive at the conclusions drawn by them. He would accordingly pray for setting aside of the two impugned awards and the order of the IGRC.

12) Mr. Dhane, the learned counsel appearing for the Respondent would oppose the petition submitting that the two Arbitral Tribunals and IGRC, each comprising of three members have concurrently ruled in favour of

4 2025 SCC Online Bom 715

the Respondent. That the petition is filed as if it is an appeal in disguise and the Petitioner is expecting this Court to reappreciate the material on record and arrive at a conclusion different than the one recorded by the Arbitral Tribunal. That the IGRC and the two Arbitral Tribunals have scrutinized the entire records of the case and have thereafter recorded a finding that there was a close association between Mateen and the Petitioner before registration of Mateen's father as AP. That there is sufficient evidence on record to indicate involvement of the Petitioner in the entire *modus operandi* by Mateen. That IGRC and the two Arbitral Tribunals have arrived at a finding that Mateen and Petitioner have colluded in generation of high volume of brokerage. That the case involves fraudulent transactions aimed solely at generation of high volume of brokerage and that therefore, the Petitioner clearly had an interest in the transactions. That the fact that the brokerage was shared with Mateen without any contractual relationship by the Petitioner speaks volume of Petitioner's involvement in the acts of Mateen. He would submit that the IGRC and the two Arbitral Tribunals have not awarded claim of the Respondent in exchange of refund of securities though entitled in law and have restricted the claim of the Respondent only to the huge brokerage unauthorisedly earned by the Petitioner.

13) Mr. Dhane would further submit that Respondent is a senior citizen having hearing disability. That the Compliance Officer of the Petitioner, whose role was to prevent unauthorized transactions, played active role in aiding Mateen in effecting huge transactions in Respondent's Account knowing fully well the minuscule financial capacity of the Respondent. That Petitioner's Compliance Officer has acted hands-in-gloves with Mateen. That the Compliance Officer and other employees of the Petitioner deliberately gave vague information during telephonic confirmations. That such telephone calls

were aimed solely at creating an evidence and record, and not at warning the Respondent of consequences arising out of the trades. That undue advantage was taken of hearing disability of the Respondent. That the case also involves blatantly unauthorized trades as the trades are effected in CDS Segment even though Respondent had not opted for the same. He invites my attention to some of the contract notes to demonstrate that the address of Mateen was reflected on those contract notes though neither he or his father were registered as AP at the relevant time.

14) Mr. Dhane would submit that the findings recorded by the IGRC and the Arbitral Tribunals are findings of facts, which ought not to be interfered with under Section 34 of the Arbitration Act. That the direction for reversal/refund of brokerage is supported with logical reasoning and the brokerage amount awarded is an undisputed amount. That the IGRC and the Arbitral Tribunals have not indulged in guesswork. That mere absence of specific prayer for refund of brokerage cannot be a ground for interfering in the impugned Awards considering the fact that about 78% of loss of value in the account was towards brokerage and related charges. That therefore granting refund of brokerage is nothing but a logical conclusion by the Arbitral Tribunals in order to balance equities between the parties.

15) Mr. Dhane further submits that Awards specifically recorded lapses/irregularities committed by the Petitioner and he highlights 28 such lapses/irregularities. That it is apparent from the record that the Petitioner was actively involved in the illegal activities of Mateen. That mere access to Mateen of Respondent's login credentials does not absolve the Petitioner from liabilities created out of close connection between Petitioner and Mateen. That the First Award considers IBT guidelines for holding that mere sharing of login

credentials cannot be a reason for holding Respondent liable for losses as the same would amount to allowing Mateen and Petitioner to retain ill-gotten brokerage earned in violation of Code of Conduct prescribed by SEBI/Exchanges. That Petitioner is a beneficiary of illegal activities of Mateen, who is not directed to share any loss incurred by the Respondent owing to market factors. By returning the brokerage, Petitioner would not lose anything, but the Awards have ensured that it does not gain anything also. He would submit that the judgments of this Court in ***Ulhas Dandekar***, ***Erach Khavar***, ***Peerless Securities Ltd Vs. Vostok (Forest) Forest Securities Pvt. Ltd*** [5] and ***Sharekhan Ltd*** are distinguishable. He would rely upon the order passed by this Court in ***Kotak Securities Ltd. Versus. Bipin Heerachand Jain***[6] in which this Court has upheld the directions of the Arbitral Tribunal for refund of brokerage. He relies upon judgment of the apex Court in ***Batliboi Environmental Engineers Limited vs. Hindustan Petroleum Corporation Limited***[7] in support of his contention that this Court cannot sit as an appellate court over the Award and that decisions of Arbitral Tribunal act on equity, which are just and fair and cannot be overturned under Section 34 of the Arbitration Act. He submits that the judgment in ***Batliboi*** has been followed by the Delhi High Court in ***Power Grid Corporation of India vs. Ranjit Singh and Company LLP*** [8]. He would pray for dismissal of the petition.

REASONS & ANALYSIS

16) This is yet another case which involves posing of blind faith in a trusted person whose actions have resulted in losses in the stock market for the investor. The investor in the present case is the Respondent-HUF whose *Karta*

5 Arbitration Petition No. 157 of 2021 decided on 14 October 2025
6 Arbitration Petition No. 26 of 2024 decided on 25 November 2025
7 (2024) 2 SCC 375
8 OMP(Commercial) 134 of 2023 decided on 7 August 2024

is a senior citizen and a practicing Chartered Accountant. The Respondent was apparently a dormant investor, who had opened trading account and demat account with the Petitioner in the year 2007 and beyond maintaining shares in the account, had not operated the account for a considerable period of time, which was marked inactive by the Petitioner.

TRADES WORTH RS. 1057 CRORES EFFECTED IN JUST 57 DAYS IN RESPONDENT'S TRADING ACCOUNT BY MATEEN

17) Respondent came in contact with Mateen in early 2019 through WhatsApp messages, who introduced himself as a manager of Ultra HNI Folios at the Petitioner's Ultra HNI Desk. Mateen impressed upon the Respondent that Petitioner had goldmine strategy investments based on foreign institutional investors pending order theory of blue-chip stocks. After a sustained follow up, Mateen included Respondent in a WhatsApp group and invited the Respondent to watch his performance for two months. At this stage, the bug of making quick money in the stock exchange possibly bit the Respondent who was impressed by the presentation of Mateen. At the instance of Mateen, a dormant and inoperative account of Respondent with the Petitioner was reactivated. It appears that a new Demat Account was opened by transfer of the shares to the new Demat Account. Though Respondent initially took a plea that someone at the office of Petitioner misused the log-in credentials of the account, the IGRC has recorded a categorical finding that Respondent voluntarily handed over his login ID and password of the trading account to Mateen. This is clear from para-6 of IGRC order which reads as under:

> 6. Immediately after reactivation of the complainant's trading account and transfer of his portfolio to the TM's new demat account, some unauthorised person either from office of TM/AP misused log in id and password of the complainant to do trading in the account of the complainant. The complainant categorically

stated that he has not placed any order either off-line or on-line. The complainant also emphasized that he did not share his user id & password.

Thus, the theory of the Respondent that someone at the Petitioner's office had misused the login ID and password is rejected, and it now established that Respondent handed over login ID and password to Mateen for effecting trades in his account. Also, Respondent trusted Mateen so much that he himself lost track of login ID and password and at times requested Mateen to provide the same. This is clear from WhatsApp chat dated 8 May 2019 where the Respondent is seen requesting provision of login ID and password to Mateen. Such was the trust and belief of Respondent in Mateen.

18) Mateen was not the Authorised Person (**AP**) appointed by Petitioner. AP acts as an agent of a Stock Broker. Authorised Persons bring in clients for the stockbroker, who then provide access to the Authorised Person on the trading platform. The Authorised Persons take orders from their clients and may also offer investment guidance to their clients. Authorised Persons help the stock brokers to expand the client reach, especially in tier-2 or 3 towns. This is how Authorised Persons essentially bridge the gap between the stock broker and the investor/client. Authorised Persons thus focus on client acquisition, facilitating trades and offering investment guidance working under the broker's license rather than directly dealing with the stock exchanges.

19) Mateen thus had no contractual relationship with the Petitioner. Though he represented to the Respondent that he was AP of the Petitioner, it has now transpired that Mateen was never the AP of the Respondent. It is only during currency of transactions in the Trading Account of the Respondent that Mateen's father was registered as AP of the Petitioner on 3 May 2019. However,

the transactions in the Respondent's account commenced on 25 April 2019 and continued until 21 June 2019. It appears that shares of 13 bluechip companies from Respondent's previous Demat Account with Motilal Oswal Securities Ltd. were transferred in the new Demat Account with the Petitioner possibly for providing margins for trading in Equity Derivatives Segment.

20) During short period of less than two months from 25 April 2019 to 21 June 2019, Mateen apparently executed trades in large volumes in Equity Derivatives segment, Currency Derivatives segment and F&O segment totaling over Rs.1,000/- crores. The IGRC Order details the trades executed on each date in each of the segment. Though there were high volumes of trades, the losses which resulted to the Respondent out of the said trades were relatively insignificant. The order of the lower Arbitral Tribunal pegs the losses at Rs. 2.06 crores though the total turnover of the transactions was Rs.1057.9 crores. It must be observed here that the Respondent was extremely lucky that though the trades effected were in high volumes, the resultant losses were comparatively lower.

FINDINGS RECORDED BY IGRC AND TWO ARBITRAL TRIBUNALS AGAINST RESPONDENTS

21) IGRC though has granted partial relief in favour of the Respondent, has recorded several findings against him. It would be apposite to reproduce those findings:

> 24. It can be deduced from above that complainant entered unauthorized PMS arrangement with AP for which Mateen was the man dealing on behalf of AP. As stated above, TM is vicariously liable for omissions & commissions of its AP. **It is also clear from the above that complainant has not come to GRC with "clean hands".** The complainant having received ECNs, SMS messages from TM & Exchange, mails from Exchange regarding trades, SMS & periodical reports from

Depository regarding debits & credits in demat account, cannot plead that he is totally unaware of what was happening in his account. He had the facility to check his account by logging in the website of TM and he could have easily found what was happening in his trading account. **For reasons unknown, whether it was his tremendous faith in Mateen or <u>his excessive greed</u>, he did not do so, which led to this state of affairs**.

37. **There is no doubt that complainant himself acted in a grossly negligent fashion.** He permitted Mateen to do whatever Mateen intended to do without bothering to keep a check. He ignored contract notes, trade confirmations received from TM, messages received from Exchange & emails from Exchange, messages from depository at his own peril. He ought not to have given trade confirmations when phone call came from TM without understanding full implications. His signatures on ledger balances without going into details also show that he was not able to comprehend fully what papers he was signing. **Being an educated person, having knowledge of accounts such negligence cannot be condoned.** Not even once he protested to TM about trades being carried out in his account. **Even when shares were being transferred to Trade Bull Demat account, he never protested as to what happened to his original holding & how shares which he never purchased appeared in his demat account especially <u>when he is contending before GRC that he never traded in his account & did not place a single order & that he did not authorize TM to deal in currency & derivative segments. Complainant's own carelessness contributed primarily to the losses suffered by him.</u>**

x x x

42. In the above background, both the complainant and AP/TM (also vicariously) contributed to the loss suffered by the complainant. The complainant is considered responsible for trade losses since he permitted Mateen to trade in his account recklessly without any check and ignored contract notes, trade confirmations received from TM, messages and emails received from Exchange, messages from depository giving details of debit & credit in demat account of the complainant, and confirmed genuineness of trades when confirmation call received from broker, signed ledger balances depicting losses from trades without understanding full import of it. .....

(emphasis and underlining added)

22) The Lower Arbitral Tribunal has also recorded various findings against the Respondent which are as under:

7. ....
a) The Respondent did not take proper care with an unknown person, Mr. Mateen posing as or impersonating Authorized Person (AP) of the Applicant based on his

visiting card without insisting on identity card or authority letter issued by the Applicant. The Respondent was impressed by the sales talk of Mr. Mateen without checking credentials of him with the Applicant. Being a professional the Respondent seems to have mesmerizing effect after the Mr. Mateen's presentations on investment strategy and earning good profit over phone. WhatsApp and video clippings. Later, Mr. Mateen also met Mr. Shashi Mehra accompanied by Mr. Bhaskar Shrivastava and Mr. Shishir Tiwari.

x x x

c) We have also gone through the WhatsApp communication/ chats in Volume I of COD pages 67 to 211 between the Respondent and Mr. Mateen and noticed therefrom that **there was closeness (or bonhomie) and friendliness between the two**. Further, the Respondent gave the list of his blue chip company shares held in the demat account 'With MOFSL to Mr. Mateen on 05/04/2019. Mr. Mateen arranged all the account activation and account transfer forms for the Respondent and passed them to the Applicant. Mr. Mateen was handed over DIS dated 23/04/2019 by the Respondent for transfer of 13 companies' shares on 24 / 04/2019 in order to facilitate trading in the Respondent's account.

15. **The Respondent has grossly neglected to act promptly and timely. The Respondent fully trusted Mr. Mateen and allowed to misuse its login credentials and password and carry out trades not based on any strategy or based on profitability in trades but increase the turnover and thereby earn huge amount of brokerage. The Respondent neglected the post-trade intimations such as ECNs, SMS, ledger statements sent by the Applicant and other communications from and NSDL. Thus, The Respondent has to take primary responsibility for the losses in the trades carried out in the account due to its carelessness and negligence**.

(emphasis and underlining added)

23) It is thus established that the Respondent himself was extremely negligent when transactions of large magnitude were executed in his trading account by Mateen. All the three fora have also recorded concurrent findings of fact that the Respondent trusted Mateen and allowed him to operate his account. The transactions therefore are not held to be unauthorised and all the three fora have refused to allow claim of the Respondent for restoration of shares sold by the Petitioner to recover the losses generated through the transactions.

DIRECTION FOR REFUND OF BROKERAGE

24) Though IGRC and the two Tribunals have held Respondent responsible for effecting the trades and have denied him the prayer for restoration of his shares sold by Petitioner for recovery of losses in the trades, the brokerage is directed to be refunded. IGRC has recorded following reasons for directing refund of brokerage:

> 42. At the same time, since the trades were done under informal and unauthorized portfolio management with covert support from TM to Mateen as a front for Mateen's father, the official AP, they cannot be pennitted to retain the entire brokerage earned from such trades undertaken in violation of SEBI Regulations, solely to maximize the brokerage earned under the garb of portfolio management. Accordingly, the GRC, in facts and circumstances of the case, has allowed claim of complainant to the extent of 75% of brokerage earned plus GST charged on it.

25) Though IGRC directed refund of only 75% brokerage, the lower Arbitral Tribunal enhanced the same to 100% brokerage by recording following findings:

> 17 While we generally concur with other observations of GRC in its said order, the sharing of the brokerage earned on trades on NSE at 75% of Rs. 78,66,586/-at paragraph 42 appears to be arbitrary, without any rationale or strong reasons. It is also not in line with the judgment of Hon'ble Bombay High Court in the arbitration case of Anand Rathi Share and Stock Brokers Ltd vs Abhaykumar Subhaschand Jain (Arbitration Petition No. 58 of 2009). As the brokerage is considered main reason for the reckless trades, the taxes such as GST thereon are incidental and inseparable. Looking to the injustice done to the Respondent, a senior citizen, we are of the view that entire Brokerage of Rs. 66,66,598 /- together with GST of Rs, 11,99,988/- aggregating Rs. 78,66,586/- to be conceded to the Respondent.

26) The Appellate Arbitral Tribunal has upheld the award of lower Appellate Tribunal. The issue for consideration is whether the stock broker can be directed to refund the brokerage in respect of the transactions which are held to be not unauthorised.

JUDGMENTS ON INVESTOR SEEKING TO DISOWN RESULTANT LOSSES FROM TRADES

27) By now, there is sufficient case law on the issue of investors seeking to disown the resultant loses from the trades which are found to have been authorised by them. The issue of an investor seeking to disown the losses arising out of transactions effected by his trusted person fell for consideration before the Division Bench of this Court in the case involving the Petitioner in ***Erach Khavar*** (supra). In the case before the Division Bench, the Appellant therein had accused the stock broker of carrying out unauthorised transactions in absence of authorisations and trade confirmations by the Appellant. The stock broker accused the investor of entering into illicit/unlawful arrangement with one Mr. Farukh Meshman, who used to issue instructions for purchase and sale of shares and there was an arrangement between the duo for sharing of the profits. The IGRC held both, investor and stock broker responsible and awarded 50% of amount of sold shares. The Lower Arbitral Tribunal upheld the order of IGRC who reduced the awarded amount. In majority award delivered by the Appellate Arbitral Tribunal, it was held that the Appellant had never authorised the broker to do transactions in F&O segment and restored the originally awarded sum by IGRC. In Section 34 petition, the Single Judge of this Court set aside the majority award of the Appellate Arbitral Tribunal. In Appeal, the Division Bench held that the Appellant therein had confirmed all the trades after they were transacted and that the Appellant had full knowledge of each transaction and consented for the same. The Division Bench also took note of the fact that the transaction happened for over 3 months of which the Appellant had fair idea. The Division Bench also noted the fact that the Appellant confirmed the final ledger account and accepted the balance without raising any demur. The Division Bench also noted the fact that the Appellant raised objections to the transactions for the first time after 10 long

months. The order of the Single Judge was sought to be challenged by the Appellant relying on NSE Trading Regulations providing for maintaining recorded telephonic conversations for pre-trade authorisations. The Division Bench however held that NSE Trading Regulations, at the best, could be a ground for penalising the stock broker but could not be a reason for wriggling out of consequences of trades. The Division Bench drew distinction between the concept of absence of pre-trade authorisation and blatantly unauthorised trades. The Division Bench held in paras-15 to19 as under:

> 15) After having gone through the findings recorded by the learned Single Judge while allowing the Appeal preferred by the Respondent, we are of the view that no case is made out for interference in exercise of jurisdiction under Section 37 of the Act. As observed above, the short controversy between the parties is about authorisation by the Appellant for carrying out the trades in question. There is no dispute to the position that the Appellant confirmed all the trades after they were transacted. He thus not only had full knowledge of each transaction but consented for the same. The case does not involve transactions being effected in one or two days. The transactions have occurred for about three long months during 1 July 2015 to 24 September 2015. It is unbelievable that a person who notices and confirms several effected transactions for about three months would be oblivious of profits or losses resulting out of such transactions. If there was any absence of authorisation by the Appellant, he would have protested against the effected transaction immediately after the transactions begun on 1 July 2015. However, Appellant admittedly did not protest against even a single transaction for three long months. Such conduct would clearly go against the Appellant and has rightly been taken into consideration by the learned Single Judge.
>
> 16) To make the case of the Appellant worse, he has confirmed the final Ledger Account by signing the same on 5 October 2015 and accepted the balance of Rs.37,829.69/- on 27 January 2017 without raising any demur. He raised objections to the transactions for the first time after 10 long months which again is a unnatural conduct which cannot be ignored and has rightly been taken into consideration by the learned Single Judge as a factor against the Appellant.
>
> 17) Faced with the difficulty where the Appellant admittedly confirmed all transactions after they were effected, he cited the pretext of absence of pre-transactions authorisation for the purpose of wriggling out of the losses caused due to the transactions. Appellant has relied upon National Stock Exchange (Futures and Options Segment) Trading Regulations, particularly Regulation No.3.4.1 providing that the trading member shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement

of an order on the NEAT System. The Regulation further provides that whenever order instructions are received through telephone, members shall mandatorily use telephone recording system to record the instructions. Taking benefit of Regulation No.3.4.1, the Appellant contends that transactions in question could not have been effected in absence of pre-trade authorisation. However, in Nirmal Bang Securities Ltd. Division Bench of Calcutta High Court has held that pre-trade confirmation was mandatory only pursuant to the SEBI Circular dated 26 September 2017. The SLP against the said judgment is dismissed by the Supreme Court on 17 November 2020. Additionally, in Keynotes Capital Ltd. (supra) this Court has held that if constituent was aware of transactions and did not object to the same, the transactions cannot be treated as unauthorised. This Court emphasized the need to raise the objection within reasonable time. Further, Division Bench of this Court in Maheshbhai Hiralal Champneira (supra) has held that objection to the transactions must be raised within couple of days.

18) Appellant has attempted to distinguish the judgment in *Nirmal Bang Securities Pvt. Ltd.* by contending that the same is delivered after the Arbitral Award and Appellate Award. However, the judgment merely states the law which existed even at the time of making of the Award. The law thus appears to be fairly well settled that if transaction is not objected to within reasonable time, the Constituent cannot later wriggle out of the transaction. In the present case, far from objecting to the transactions, the Appellant actually confirmed the same from time to time and signed the final Ledger Account without any demur. While we do not propose to delve deeper into the allegation of alleged illegal arrangement made by the Appellant with Mr. Farukh Meshman for sharing of profits of trades, it does appear believable that Mr. Farukh Meshman was giving instructions for the transactions in question and hence Appellant was not raising any objection for the same even after acquiring knowledge of such transactions. The appellant had apparently accepted the losses which is a reason why he signed the final Ledger account and accepted the balance amount without raising any objection. He appears to have latter grown wiser, possibly on account of an advice and sought to take benefit of NSC Regulations requiring pre-trade authorisations.

19) In our view, violation of NSE Regulations requiring pretrade authorisations can at the highest be a ground for penalising of a stock-broker. The same however cannot be a reason for wriggling out of consequences of a trade, particularly when the trade transaction is confirmed by the constituent. Absence of pre-trade authorisation cannot be permitted to be used as a handle by a person speculating in shares for the purpose of wriggling out of losses resulting out of trade transactions which are confirmed by him. There is a difference between concept of absence of pre-trade authorisation and blatantly unauthorised trade. The present case does not involve the vice of blatantly unauthorised trades. Reliance by the Appellant on order of this Court in *Amit Bharadwaj* and judgment in *Bonanza Commodities Brokers Pvt. Ltd.* is therefore inapposite.

28) In my view, there are few similarities in the fact situation involved in ***Erach Khavar*** and the present case. In ***Erach Khavar*** also, the Appellant therein had trusted a third person for effecting trades in his account. In the present case, the third person is Mateen. Even if Mateen was not the AP of the Petitioner, it has been well established that Petitioner trusted Mateen and was expecting Mateen to generate profits for him and allowed Mateen to operate his account. Yet another similarity in the two cases is in respect of the confirmations given by the investor to the transactions, both over telephone as well as by signing the contract notes, ledgers etc. The third and the most striking similarity is non-raising of any objection for a considerable period of time despite having full knowledge of every transaction. As in the case of ***Erach Khavar***, the Respondent herein also did not raise any objection immediately after the transactions were discontinued by 21 June 2019. Instead, he shifted his trading account to Tradebulls through Mateen. This aspect is being discussed in greater details in the latter part of the judgment. The first objection raised by the Respondent was on 19 November 2019 i.e. four months after the transactions in his account had ended. In my view, the ratio of the judgment in ***Erach Khavar*** clearly applies to the present case. The transactions effected in the account of the Respondent are not blatantly unauthorised trades. They are held to be authorised trades by all the three fora. In that view of the matter, Respondent cannot hold Petitioner responsible for losses arising out of such trades.

29) Another judgment strenuously relied upon by the Petitioner is in ***Sharekhan Ltd*** (supra). In that case, the losses to the investor arose out of actions of AP of the stockbroker. The issue before this Court was whether failure to maintain pre-trade and post-trade confirmations in accordance with SEBI Circular would be the ground for awarding damages representing a part of

losses suffered by the investor. Relying on judgment of Single Judge of this Court in ***Ulhas Dandekar*** (supra) and judgment of Division Bench in ***Erach Khavar***, this Court held that violation of SEBI Circular may entail regulatory consequences and cannot be a ground for awarding damages representing losses suffered by the investor in the trades. This Court held in para-31 as under:

> 31) I am in respectful agreement with and rather bound by the ratio of the judgment in *Ulhas Dandekar , Erach Khavar and Pearless Securities Ltd* , wherein it is held that mere non-observance of regulatory directives cannot be a pretext available for an investor to hold stockbroker responsible for losses resulting out of the trades. Failure to adhere to the regulatory directives by SEBI or NSE may entail necessary disciplinary measures against the Stock Broker. However, the same would not necessarily create a liability on the stockbroker to compensate the client/investor in respect of the losses suffered in the trade transactions. In a case like the present one, where clients have authorized or have let another person to effect trades on their behalf, relied on her skills and took the risks in the volatility of the stock market, cannot later turn around and disown the trade transactions by taking a specious plea that the stockbroker did not maintain written/recorded pre-trade confirmations. The maintenance of written/recorded trade confirmations would have some significance in a case where it is proved that the client/investor had actually not given any instruction for effecting a particular trade and somebody in the office of stockbroker has unauthorisedly effected a trade. In that case, the client/investor cannot be held responsible for losses arising out of such blatantly unauthorised trades and the stockbroker would be made responsible for consequences arising out of such trades. However, in a case where client/investor specifically admits that he/she authorised another person to effect trades on his/her behalf, the trades effected by that person cannot be disowned by the client/investor. In case before the Division Bench in Erach Khavar also, the appellant therein had authorised another person to effect trades in his account and the appellant has received all the contract notes and text messages. He later sought to wriggle out of consequences of such trades by disowning the same by relying on NSE Regulation 3.4.1. In the present case also, Respondent specifically admitted that they had trusted Siddhi and had allowed her to effect trades on their behalf. This is not a case where Siddhi is an unknown person to Respondents, who has effected trades in their accounts in a blatantly unauthorised manner. In my view therefore Respondents cannot take shelter behind regulatory directives of SEBI Circular dated 22 March 2018 and hold Petitioner responsible for recovering the losses suffered by them.

30) Thus, the law is fairly well settled that once the trades are found to be authorised by the investor, the resultant loss cannot be claimed by citing some regulatory failure on the part of the stockbroker.

FINDINGS THAT TRADES ARE EFFECTED WITH OBJECTIVE OF 'BROKERAGE GENERATION'

31) However, in the present case, the IGRC and the two Arbitral Tribunals have not awarded in favour of the investor any amount of loss suffered by him. What is awarded is the brokerage arising out of the transactions. This is done by holding that the main objective behind effecting such large volume of transactions was to generate humongous brokerage for being earned by them by the Petitioner and Mateen. This is clear from the following findings of IRGC:

> 27. Astronomically high quantities/lots were trades in CM segment, CDS, and F&O segments in just 28 days, 12 days, and 27 days respectively. This led to a brokerage earnings to the TM of Rs. 66.67 lakhs in just 28 trading days, as under as under:
>
> | **Segment** | **Brokerage (Rs.)** |
> |---|---|
> | CM | 6,40,415 |
> | F&O | 32,31,246 |
> | Currency Derivatives | 27,94,837 |
> | **Total** | **66,66,598** |
>
> 28. It is apparent from closer examination of trades that there was no investment strategy underlying the reckless trades which led to an average brokerage of approximately Rs. 2.38 lakhs per day of trade aside from an average trading loss of approximately 1.60 lakhs per day. It is inconceivable that a long-term investor would suddenly break into such reckless trading. When the some of the phone call recordings were heard it emerged that the complainant generally agreed about the activity in his account but was totally unaware of the destruction of his capital.

x x x

33. Thus, on basis of analysis of LP. addresses [carried out by GRC through Apps ipapai.co & keycdn.com/geo which give details of city, Region, postal code, country & latitude/longitude- (coordinates of place), time zone & details of service provider etc. which are available on google] preponderance of probabilities points out that above referred speculative trades which are huge by any standard, were undertaken by AP I Mateen, solely with a view to earning huge brokerage. Analysis of trades do reveal recklessness & no prudent person shall undertake such trades, if the intention was to make profits. These trades have been carried out solely to earn substantial brokerage and lack any business logic /strategy. The amount of brokerage earned of Rs.67 lacs plus taxes, for trades for 28 days, in the account of a conservative long-term investor, who is also a senior citizen, unambiguously show what type of trades were undertaken. Perusal of I.P. addresses indicates that the trades were not undertaken from addresses which belong to the complainant.

32) The lower Arbitral Tribunal has also held that the objective of Mateen was to generate brokerage. It is held in para-10 of the order of the Lower Arbitral Tribunal as under:

10. It is a fact that the trading was done in the Respondent's account in just 28-32 trading days in a reckless manner without any strategy or even for earning profits. The intention appears to be to quickly earn brokerage by doing high turnover through trades and doing churning of the Respondent's portfolio. In the process, according to the Respondent, heavy losses have been incurred in its trading account of the order of Rs.2.06 crores on total turnover of Rs.1057.9 crores. The Applicant earned total brokerage aggregating Rs.66,84,447 in both BSE and NSE trading.

33) The Lower Arbitral Tribunal has also commented adversely about the manner in which brokerage was shared with and how his father was registered as AP in a hasty manner. It is held in para-14 of the Award as under:

14. We have gone through the material on record and also the GRC order dated 14/01/2022, we feel that the Applicant is liable for all acts of omission and commission of AP and his employees including the liabilities arising therefrom. Further, all trades in the account were carried out by the AP or his son, Mateen under terminal of the AP either Mumbai or other places. The Applicant has admitted having shared the brokerage with AP at the ratio of 70:30 out of trades

done from 25/04/2019 to 21/06/2019. Mr. Mateen is AP's son which the Applicant has not denied. He acted as front man for doing all acts of AP arranging reactivation of dormant account of the Respondent, transferring the shares of 13 blue chip companies held by the Respondent in its demat account with MOFSL to newly activated demat account with the Applicant, thus acting as defacto AP for all purposes for the Respondent and the Respondent has admitted that it did not know the actual/real AP till he met the Applicant's officials in their office on 09/02/2021. We are of the opinion that the Applicant has denied its association or knowledge of Mr. Mateen in whatever capacity he worked with AP during the trading period of the Respondent's account, the Applicant seems to be hiding the truth to save its skin and liability. Further, we also feel that the Applicant has not done proper due diligence before admitting AP apart from allowing him to execute trade on behalf of the Respondent right 25/04/2019 i.e., next day of transfer of 13 companies shares in the Respondent's demat account with the Applicant and also before AP's registration as AP by NSE on 03/05/2019 We, therefore, hold the Applicant equally responsible for the liability/losses arising from the trades in Respondent's account.

34) The Appellate Arbitral Tribunal has also held that the large volume of trades was aimed at earning of brokerage. It is held in para-6(g) as under:

(g) It can be seen from record that the trading was done in the Respondent's account in just 28-32 trading days in a reckless manner without any strategy or even for earning profits. ln the process heavy losses have incurred in the trading account to the tune of Rs. 2.06 crores on total turnover of Rs. 1057.9 crores, The Appellant earned total brokerage of Rs. 66,84,447/- in both BSE and NSE trading.

35) The Appellate Arbitral Tribunal has also recorded findings against the Petitioner for allowing Mateen/AP to bring in clients and to start operation of his terminal well before actual registration of AP. The Appellate Arbitral Tribunal has held in para-6(d) as under :

d) We have scrutinized the reason why the Ld. LAT has ordered to refund the entire brokerage earned by the Appellant to the Respondent when it is held that the trades in the account of the Respondent were legal and valid. The Ld. LAT has ordered to refund the entire brokerage because from the evidence on record it is observed that the Appellant was in a tearing hurry in completing the account activation process through its AP (then not registered) and allowed commencement of equity trade on 25/04/2019 itself immediately on transfer of

shares in the demat account of Respondent on 24/04/2019. In doing so the Applicant has committed procedural lapses/irregularities such as a) Applicant did not wait for registration of AP which was done by NSE on 03/05/2019 whereas, AP transacted/executed trades in the Respondent's account from 25/04/2019, b) as per MG13 statement provided by the Appellant, there was no margin indicated in the statement, though the margin shares were transferred on 24/04/2019, c)the "in-person verification" (IPV) as required before activation of Respondent account was done on1y on 26/04/2019, d) the financial proof i.e., list of valid income proof (viz., ITR Acknowledgement for two financial years) and net worth certificate (latest one or at the end of last financial year) was required before commencement of trade and F&O and currency derivatives segments as received by the Appellant from the Respondent on 02/05/2019 and that too only ITR for AY 2018-19 without net worth position in income declaration form given by the Appellant and e) the due diligence of the AP required to be done before registration, appears to have not done by the Appellant, as AP applied for AP ship/agency to NSE only on 01/05/2019 for registration, which was pending with NSE till 03/05/2019 for registration and there was no evidences how that the due diligence before admitting AP was done by the Appellant. However, the AP was allowed to bring clients and start operating his terminal much earlier in April 2019.

36) Thus, all the three fora have considered the quantum of brokerage generated from the trades in the account of the Respondent as the primary reason for directing refund of brokerage with GST. It is held that the trades were effected with primary objective of earning brokerage. In my view, there is absolutely no basis for recording this finding. Just because brokerage of Rs.66,66,598/- is charged in respect of the transactions, it can't be a ground for presuming that the entire objective behind effecting trades was only to earn brokerage. Apart from the fact that there is sufficient material on record to infer that the Respondent was looking at earning profits out of the trades, and Mateen repeatedly assured him to wait for the market to make an upward movement. It is otherwise difficult to presume that any person can possess such articulate skills to ensure that the investor's account is operated by effecting transactions in such a way that only brokerage is generated without any profit or loss in the account. All the three fora have completely ignored the position that though the amount of brokerage may sound to be slightly high

(Rs. 66,66,598/-), but when compared with total volume of transactions effected in Respondent's account of Rs.1057.9 crores, the same is negligible. When transactions worth more than Rs.1,000 crores are effected, generation of brokerage of Rs. 66 lakhs is not unusual. Therefore, mere high amount of brokerage cannot be a reason for presuming that the transactions were effected only with a view to generate brokerage. In my view, therefore the conclusions reached by all the three fora that Mateen operated Respondent's trading account and effected transactions only with a view to earn brokerage is perverse in the absence of any material in support. The conclusion is also in the nature of a mere surmise. The conclusion is also belied by WhatsApp conversation on record noted by IGRC wherein Respondent has discussed the losses generated out of the transactions and relied on assurances of Mateen that some more patience would earn profits for the Respondent. Respondent is a Chartered Accountant, fully conversant with the nitty-gritties of commerce. Though he may not be a professional stock market player, but he clearly is not a person incapable of understanding the nature of transactions which was occurring in his trading account. May be that his financial status did not match the volume of transactions over Rs. 1000 crores, but it has ultimately come on record that all transactions have taken place with the express consent and confirmation of the Respondent. He has continuously interacted with Mateen and was fully conversant about the consequences arising out of the transactions. It is his bad luck that the transactions resulted in losses, which is in ordinary course of things in a stock market. A person taking plunge in stock market trading must be prepared for all eventualities, including incurring of losses. An investor trusting another person, be that AP or otherwise, and allowing such person to trade on his behalf, cannot hold stock broker responsible even if any regulatory violations are noticed either for wriggling out of consequences of trade or for seeking return of brokerage.

37) Mr. Dhane's reliance on order of this Court in ***Kotak Securities Ltd.*** (supra) does not cut any ice. In case before this Court, the trades were found to be unauthorised and this Court refused to interfere in that matter in exercise of powers under Section 34 of the Arbitration Act, which is clear from the following observations recorded in para-4 of the order:

> 4) So far as the responsibility fixed on the Petitioner and the finding of some of the trades being unauthorised is concerned, there are three concurrent findings recorded by the GRC, sole Arbitrator and the Appellate Arbitral Tribunal. In exercise of powers under Section 34 of the Arbitration Act, I find no reason to interfere in such concurrent findings in absence of any case of gross perversity being made out.

In the present case however, the trades are found to be authorised and therefore the order in ***Kotak Securities Ltd*** (supra) would have no application to the facts of the present case.

38) As a matter of fact, it was never the case of Respondent that the trades were effected only for brokerage generation. This is the ingenuity of the IGRC and the two Tribunals, which is discussed in later part of the judgment. Respondent always wanted to recover the lost shares/their value. Initially, the Respondent sought to recover the amounts from Mateen which is clear from WhatsApp conversation reflected in para-22 of IGRC's order:

> 22. It is seen from WhatsApp conversations that there was some meeting between the complainant & Mateen to arrive at some settlement. On 16/11/2019 complainant put the settlement as under:
> *Dear Mateen / Bhaskar & Shishir,*
>
> *With reference to our meeting in 7 Bunglows on 12th nov,2019 in the presence of Sh. Ashwani Duggal, I give below the commitments consented by you & your collegues as mentioned below.*

The balance principal amount of Rs. 3.00 Lakhs given to you by me shall be paid to me at the earliest possible by 20/11/2019.

You will be transferring the part of Scripts of my holdings (Given to you by transfer in the DP account with NIRMAL BANG) every monthly before month end having market value of at least Rs.10.00 lakhs with effect from November., 2019. You will be providing Collateral security of the value of Rs. 50/60 Lakhs to me within a reasonable time of three weeks from 12/11/2019 or say by the end of November 2019.

39) However, after realising that the Respondent was unable to recover the lost shares from Mateen, he thought of chasing the Petitioner for the said amounts and filed complaint with IGRC falsely contending that he never authorised any trades and that his log-in credentials were misused by someone in the office of Petitioner/AP.

40) Therefore, the conclusion arrived at by the IGRC and the two Tribunals that the trades were effected for generation of large volume of brokerage is patently perverse.

AWARD OF BROKERAGE IN ABSENCE OF PRAYER

41) It is also noted that the IGRC and the two Arbitral Tribunals have granted in favour of the Respondent something which he never prayed for. As observed above, Respondent's prayer was for return of securities sold by the Petitioner or for refund of value of the said securities. Respondent never approached IGRC with a complaint that the transactions were carried out with the sole purpose of earning brokerage. He did not complain about brokerage charged by the Petitioner in respect of the trade transactions. Thus, charging of brokerage by the Petitioner was not the issue before the IGRC or the two Arbitral Tribunals. It would be necessary to consider what exactly was the prayer of the Respondent before IGRC. The complaint before the IGRC dated

12 April 2021 was in the form of a simple application to which Annexure-A and Complaint Registration Form were attached. Annexure-A contained list of documents relied upon by the Respondent. The Complaint Registration Form is filled up in handwriting. Para-3 of Complaint Registration Form contained the heading 'Nature of Complaint' and the Respondent was required to tick the relevant boxes. Respondent filled up Column-3 as under:

SN	Nature of complaint	CM	F&O	CDS	CO
1	Non-issuance of the Documents by the Trading Member	✓	✓	✓	
2	Non-receipt of funds/securities				
3	Non-Receipt of Funds / Securities kept as margin				
4	Non-Receipt of Corporate Benefit (Dividend/Interest/Bonus/Rights etc.)				
5	Auction clarification				
6	Close out / Square up of positions				
7	Trades executed without authorization/ consent	✓	✓	✓	
8	Excess brokerage charged by Trading Member	✓	✓	✓	
9	Service Related				
	a) Non/ Wrong execution of order				
	b) Opening / Closing of Account				
	c) Connectivity/ System related				
10	Others, Specify – AS PER COPY OF COMPLAINT ATTACHED				

42) Column-4 was for seeking value of claim in which the amount was left blank by the Respondent, and he sought following three prayers :

1. OUR SHARES GIVEN AS MARGIN + SOLD UNLAWFULLY SHOULD BE RESTORED AMOUNTING TO ABOUT RS. 1.40 CRORES.

2. ALTERNATIVELY BE GIVEN AN AMOUNT EQUIVALENT TO THE PRESENT VALUE OF OUR SHARES SOLD UNLAWFULLY.

3. COMPENSATION OF RS. 10.00 LAKHS FOR MENTAL TORTURE + HARASSMENT.

43) Thus, though Respondent ticked Item-8 in Column 3 about 'excess brokerage charged by trading member' in respect of all segments of CM, F&O and CDS, in the ultimate prayers in para-4, he has only sought return of shares or alternatively amount equivalent to the value of shares. Respondent also sought compensation of Rs.10,00,000/- for mental torture and harassment. However, the IGRC and the two Tribunals have granted in favour of the Respondent something which he never prayed for viz. refund of brokerage.

AWARD OF BROKERAGE ON PRINCIPLES OF EQUITY

44) Faced with the situation that the Respondent had not specifically sought return of brokerage, Mr. Dhane has sought to salvage the situation by contending that the relief of return of brokerage is granted in order to balance 'equities' between the parties. This submission contains an implicit admission that the IGRC and the two Tribunals have adopted equitable approach for awarding the amount of brokerage in favour of Respondent. Thus, after noticing that Respondent was responsible for the trades effected in his account and that the losses suffered by him cannot be directed to be refunded, the IGRC and the two Tribunals have thought it appropriate to do comfort the Respondent by directing the stockbroker to refund the brokerage. What could not be awarded directly as a matter of right is indirectly awarded by invoking equitable principles. This is done on a principle that since losses are suffered in

the trades, atleast the stockbroker should not earn anything in respect of those trades and that refund of brokerage would not result in losses to the stockbroker. Arbitral Tribunals, who are supposed to adjudicate the disputes strictly in accordance with contractual agreement between parties are not supposed to adopt justice-oriented approach and invoke principles of equity while deciding the claims. Arbitral Tribunals are not courts of law who can invoke notions of equity or fairness unless the parties confer such jurisdiction under Section 28(2).

45) Thus, what the IGRC and the two Arbitral Tribunals appear to have done in the present case is to do a sort of *panchayati* justice. I am tempted to borrow the word '*panchayati* justice' from judgment of Delhi High Court in ***Prakash Atlanta (JV) Versus. National Highways Authority of India***[9] where the Arbitral Tribunal had found 50:50 solution while allowing the claim for additional payment towards costs incurred by the claimant therein for providing the reinforcing element in the reinforced structure. While setting aside this part of the Award, the Single Judge of the Delhi High Court termed the 50:50 solution as '*panchayati* solution'. The Division Bench agreed with the finding of the Single Judge and held in paras-18 and 19 as under:

> **18.** The 50 : 50 solution found by the learned Arbitrators is on the reasoning that the tender made known to Prakash that there was a reinforcing element in the works and there was some hiatus between clause 703(A) and item No. 5.41(a) of the Technical Specifications. Putting the blame on Prakash for not having got the matter resolved i.e. the conflict resolved, the learned Arbitrators held that it could not be overlooked that NHAI was equally responsible for this because it was the author of the tender documents. Therefore, both parties had to share the blame 50 : 50.
>
> **19.** The learned Single Judge has held that this was a '*Panchayati Solution*'. The learned Single Judge is absolutely correct. As per the Arbitration and Conciliation Act, 1996, the mandate of an Arbitral Tribunal is to decide a

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> dispute in terms of a written agreement between the parties, if the dispute relates to the written agreement. If the language of the written agreement is clear, the Arbitral Tribunal has to give effect to the language. If the language is unclear, giving reasons to justify what was held to be unclear, the Arbitral Tribunal would have the mandate to give a meaning to the clause in question....

46) In relation to arbitrations involving disputes over trades effected at stock exchanges, this court in ***Dhwaja Shares and Securities Pvt. Ltd. Versus. Sunita A. Khatod***[10], ***Peerless Securities Ltd*** and in ***Sharekhan Ltd*** (supra) has deprecated the system of dividing the losses incurred in trades by investors in proportion of 50: 50 by adopting *panchayati* approach.

47) In the present case as well, what is adopted by the IGRC and the two Arbitral Tribunals is essentially a *panchayati* approach. When it found that Respondent was negligent and had authorised all the trades and could not be awarded the value of shares sold from his account to recover the losses, the IGRC and the two Arbitral Tribunals came up with a novel idea of directing Petitioner to refund brokerage so as to ensure that Petitioner also does not earn anything out of the transactions. They apparently felt that some justice needs to be extended to a senior citizen who is duped by Mateen. But since no order could be passed by them against Mateen, they have made Petitioner as scapegoat by directing it to refund the brokerage. It is like giving something to a person not because he is entitled to it, but because the opposite party is better-off than him. This Robinhood jurisprudence or the theory of distributive justice is unknown to arbitral law. It is axiomatic in arbitral jurisprudence that the disputes are decided strictly in accordance with the terms of contract. The Respondent has contractually agreed to pay the brokerage in respect of each trade to the Petitioner. The arbitral tribunals therefore could not have adopted

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Robinhood kind of approach by taking away monies from the pocket of the Petitioner (forming part of its lawful brokerage) and giving it away to Respondent just because he faced losses in the trading.

48) Under Section 28(2) of the Arbitration Act, the Arbitral Tribunal can decide *ex aequoet bono* or as *amiable compositeur* only if parties have expressly authorised to do so. An *amiable compositeur* means an amicable or friendly councilor and in arbitration law is an arbitrator empowered by consensus of parties to settle a dispute on the basis of what is 'equitable and good'. Otherwise, it is bound to decide the disputes strictly in accordance with contractual terms under Section 28(3). Section 28(2) and (3) provide thus :

> (2) The arbitral tribunal shall decide *ex aequoet bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.
>
> (3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.

49) In the present case, the parties did not authorise the Arbitral Tribunal to decide *ex aequoet bono* or as *amiable compositeur*. In that view of the matter, jurisdiction in equity could not have been exercised by the Arbitral Tribunal. The Division Bench judgment of Delhi High Court in ***Prakash Atlanta*** (supra) has held in paras-20 and 21 as under :

> **20.** The phrase *Ex aequo et bono* (Latin for 'according to the right and good' or 'from equity and conscience') is used as a legal term of art. In the context of arbitration, it refers to the power of arbitrators to dispense with consideration of the law but consider solely what they consider to be fair and equitable in the case at hand. An *amiable compositor* also known as *amiable compositeur* under international law refers to an unbiased third party, often a king or an emperor, who suggests solution to a dispute between countries. Amiable compositor acts as a mediator in a dispute

between subjects of international law. The concept of amiable compositor has its historical origins in French law. An amiable compositor acts as a conciliator rather than a decision-maker in a dispute. An amiable compositor is also not bound to apply strict rules of civil procedure and substantive law. An amiable compositor is also authorized to modify the effect of certain non-mandatory legal provisions. Traditionally, amiable compositor provided equity correction to strict rules of law. But today, an amiable compositor has the power to depart from the strict application of rules of law and decide a dispute according to justice and fairness.

21. Concededly, while making the reference to the Arbitral Tribunal NHAI and Prakash did not expressly authorise the Arbitral Tribunal to decide *ex aequo et bono* or as *amiable compositeur*.

50) The principle is also followed by this Court in ***John Peter Fernandes Versus. Saraswati Ramchandra Ghanate***[11] in which it is held thus:

23. Learned counsel for the respondents is also justified in referring to Section 28(2) and (3) of the said Act. The learned arbitrator, while discussing the reasons as to why direction for refund could be granted in favour of Mr. Fernandes, adopted an approach consistent with the principles of equity. But, in the teeth of the above quoted terms of the agreement dated 6th October 2003, there was no scope for applying the principles of equity, more so when the parties had not expressly authorized the learned arbitrator to decide the matter ex aequo et bono or as amiable compositeur under Section 28(2) of the said Act. In this context, learned counsel for the respondents is justified in relying upon the judgment of this Court in the case of ***Board of Control for Cricket in India v. Deccan Chronicle Holdings Limited*** (supra), the relevant portion of which reads as follows:—

> "232. Mr. Mehta points out that the terms ex aequo et bono and amiable compositeur have a specific legal connotation. The first means 'according to what is equitable (or just) and good'. A decision-maker (especially in international law) who is authorized to decide ex aequo et bono is not bound by legal rules and may instead follow equitable principles. An amiable compositeur in arbitration law is an arbitrator empowered by consensus of parties to settle a dispute on the basis of what is 'equitable and good'.
>
> 233. Given the wording of the Arbitration Act, a longer examination of the antecedents of these concepts is unnecessary. The statute itself is clear and unambiguous; and in Associate Builders, the Supreme Court in paragraph 42.3 extracted Section 28 and said that a contravention of it is a

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> sub-head of patent illegality. Ssangyong Engineering does not change this position. Given this now-settled position in law, it is unnecessary to examine the additional authorities on which Mr. Mehta relies, all to the same effect. They also say this : commercial arbitrators are not entitled to settle a dispute by applying what they conceive is 'fair and reasonable,' absent specific authorization in an arbitration agreement. Section 28(3) also mandates the arbitral tribunal to take into account the terms of the contract while making and deciding the award. Section 28 is applicable to all stages of proceedings before the arbitral tribunal and not merely to the making of the award. Under Section 28(2), the Arbitral Tribunal is required to decide ex aequo et bono or as amiable compositeur only if the parties expressly authorize it to do so. **The Arbitrator is bound to implement the contractual clauses and cannot go contrary to them. He cannot decide based on his notions of equity and fairness, unless the contract permits it**."
>
> *(emphasis added)*

51) In my view, this justice-oriented or equitable approach adopted by the IGRC and the Arbitral Tribunals in directing Petitioner to refund brokerage despite trades having been held authorised is clearly contrary to the provisions of Section 28 of the Arbitration Act. This renders the order of the IGRC and the two arbitral awards patently illegal.

AWARD FOR REFUND OF BROKERAGE FOR AUTHORISED TRADES CONTRAVENES PUBLIC POLICY DOCTRINE

52) Also, the very concept of directing a stockbroker to return the amount of brokerage to cushion the investor in respect of losses suffered in lawful trades is contrary to fundamental policy of Indian law. The IGRC and the two Arbitral Tribunals have completely misdirected themselves in awarding amount of brokerage as a compensation for alleged loss suffered by the Respondent. The case of the Respondent was that the trades were unauthorised and that therefore, losses arising out of the trades must be made good to him by return of securities/their value and compensation of Rs.10

lakhs. The first step in an enquiry into claim for damages is to ascertain whether there is breach of contract and which party is responsible for the breach. In the present case, the IGRC and the two Arbitral Tribunals have not held that trades are blatantly unauthorised or illegal. Ultimately, the Respondent is held to be the author of the trades. The case thus does not involve effecting of trade illegally or unauthorisedly by the broker or its person. This is clear from the following finding:

> 'the Complainant is considered responsible for trade losses since he permitted Mateen to trade in his account recklessly without any check and ignored contract notes, trade confirmations received from Trading Member, messages and emails received from exchanges, messages from depositories giving details of debit and credit in Demat Account of the Complainant and confirmed genuineness of trades when confirmation call received from broker, signed ledger balance depicting losses from trades without understanding full import of it'

53) Thus, the Respondent is ultimately held responsible for the trade losses. The breach of contract on the part of the Petitioner has not been established. Once the breach is not established, there is no question of compensating the Respondent for losses suffered by him. The fundamental policy of Indian law is that compensation can be awarded to a person only if there is breach of contract and the injured party suffers losses. In a case where breach itself is not established, mere cause of loss becomes an irrelevant factor. What is done in the present case by the IGRC and the two Arbitral Tribunals is to award compensation to the Respondent even though the breach on the part of the Petitioner is not established. This is against the fundamental policy of Indian law and contrary to the provisions of Section 73 of the Indian Contract Act, 1872. The entire parameter adopted by the IGRC and the two Arbitral Tribunals for awarding damages to the Respondent is itself faulty. Once the trades are held to be authorised and once Respondent is held liable to bear the losses arising out of the trades, there is no question of

refunding the brokerage generated out of the said trades. If the trades are valid, charging of brokerage is also automatically valid. If Respondent is liable to bear losses arising out of trades, he must also bear the brokerage on the said amount.

PETITIONER'S ASSOCIATION WITH MATEEN NOT A FACTOR RELEVANT FOR AWARD OF BROKERAGE

54) IGRC and the two Arbitral Tribunals have laid stress on Mateen's association with Petitioner for holding Petitioner responsible for refund of brokerage. No doubt, there is some material on record to infer that Mateen had association with Petitioner, even though he was not Petitioner's AP and though his father became AP after Mateen started trading in Petitioner's account. It has also come on record that Petitioner has shared the brokerage with Mateen even in respect of trades when his father was yet to be registered as AP.

55) Though association between Petitioner and Mateen to some extent is established, ultimately the IGRC and the two Arbitral Tribunals have held that the trades in question are effected with the consent or authority of the Respondent. Therefore, mere association of Mateen with the Petitioner is not sufficient and such association becomes an irrelevant factor the moment the trades are held to have been effected with consent and authority of the Respondent. The issue is not about Mateen's authorization to act on behalf of Petitioner. The real issue is whether Respondents authorised him to effect trades. It is established that Respondent had handed over his log-in credentials of the trading account to Mateen and he was operating the account. Therefore, even if Mateen was the AP of the Petitioner, the same would still not be a

ground for directing refund of brokerage, once the trades are held to be authorised. In ***Sharekhan Limited Vs. Monita Kisan Khade*** (supra), the trades were effected by the AP of stockbroker. However, this Court held that executions of trades were with full instructions and confirmations by the investors. Here also, relationship of Mateen with Petitioner is not a relevant factor. What is of relevance is Respondent trusting Mateen and allowing him to gamble on his behalf in the stock market.

56) Also, it is held that Mateen was allowed to act as an informal Portfolio Manager by Petitioner. Mere effecting of trades under informal and unauthorised portfolio management by Mateen (even with covert support from the Petitioner) would not entitle Respondent for refund of brokerage. If Respondent entered into informal or unauthorised portfolio management with Mateen, the Stock Broker cannot be made to refund the brokerage when the trades are ultimately found authorised. This aspect is covered in the judgment of Division Bench in ***Erach Khavar*** where also there was informal PMS arrangement by the investor with another person.

57) Respondent's reliance on the factor of Mateen's address being reflected in contract notes prior to registration of his father as AP may again give rise to an inference that Mateen was associated with the Respondent before registration of his father as AP. However, this alone is not reason enough for awarding any claim in favour of the Respondent.

58) Another factor considered by both the Arbitral Tribunals for ruling against the Petitioner is sharing of brokerage with Mateen even prior to registration of his father as AP. Again, this may indicate association of Mateen with the Petitioner even before registration of his father as AP, the same still

does not absolve the Respondent of his conduct of blindly trusting Mateen. Merely because Petitioner shared brokerage with Mateen, which he may not be entitled to in law, the same does not mean that Petitioner can be made to refund the entire brokerage amount resulting out of authorised transactions. Once IGRC or the Arbitral Tribunals of NSE arrived at a conclusion that the transactions are authorised and that losses suffered by the investor cannot be awarded to him, they cannot find an alternate way of providing some solace to the investor by directing refund of brokerage. Refund of brokerage can be resorted to only when the transaction is found to be unauthorised. The arrangement of sharing of brokerage by Petitioner with Mateen/his father cannot be a ground for presuming that the entire trades were effected with the sole objective of generating brokerage or that Respondent is entitled for refund of the brokerage amount. In fact, the impugned Awards have resulted in an absurd situation where 70% of the brokerage is already shared by the Petitioner with Mateen/AP but it is made to refund 100% brokerage to the Petitioner. Thus, Mateen, who is accused of being the main person responsible for execution of trades in the account of the Respondent, has walked away with his share of brokerage and Petitioner, who is merely a stock broker is made to refund the brokerage not only received by it but also paid to AP.

RESPONDENT'S ASSOCIATION WITH MATEEN AFTER SUFFERANCE OF LOSSES

59) Another vital facet of the case is that the Respondent continued trusting Mateen even after noticing his acts. It has come on record that after incurring losses from transactions in the account maintained with the Petitioner upto 21 June 2019, Respondent decided to transfer the trading account to a different stock broker (Tradebulls). Mateen drafted letter for

transferring of Respondent's holdings to Tradebulls demat account. This is clear from the following findings recorded by IGRC in para 24 of the order :

> 19. It is observed from WhatsApp conversations that on 27/6/2019, Mateen drafted letter for the complainant to transfer his holding to Trade Bull Demat account. By 21712019, all holdings got transferred to Trade Bulls Account. **However, complainant's faith in Mateen continued and he provided free hand to him to handle his portfolio even at Trade Bulls.**
>
> *(emphasis added)*

60) Thus, Respondent's association with Mateen continued even after noticing that transactions effected by Mateen resulted in losses. Respondent apparently permitted Mateen to effect transactions even in trading account with Tradebulls which is clear from various WhatsApp conversations on record. This, in my view, is a clinching factor which goes against the Respondent. The whole case of the Respondent and which is accepted by the three fora is that Petitioner and Mateen were in collusion and acted in a manner to enrich themselves at the cost of the Respondent. If this was the case, why Respondent continued his association with Mateen even after noticing resultant losses in his account and why he permitted Mateen to effect trades even in Tradebulls trading account has not been explained in any manner. The effect of this vital aspect is completely ignored by all the three fora. Respondent's continued association with Mateen even after transfer of trading account from the Petitioner indicates the real motive of the Respondent to earn profits from trading. This is particularly true from following message of Respondent to Mateen:

> PLEASE TAKE CARE, FIRST PRIORTY IS TO BRING MY OLD PORTFOLIO HOLDINGS IN TACT AS I M VERY SENTIMENTAL ABOUT IT & THEN TO RESTART AFTER OUR MUTUAL DISCUSSION PLEASE.

61) Additionally, the IGRC has recorded finding that Respondent's greed has resulted in the losses to him. He approached the IGRC with a false case that he did not authorise any trades and was not aware of the same. Considering this position, the direction for refund of brokerage by Petitioner is egregiously erroneous.

REGULATORY VIOLATIONS BY PETITIONER

62) On behalf of Respondent, many alleged lapses on Petitioner's part are sought to be highlighted. It is contended that Petitioner allowed effecting of trades in currency derivatives segment which was never opted by the Respondent. One transaction is apparently effected through off-line mode before registration of Mateen's father as AP. Similarly, the Appellate Arbitral Tribunal has held Petitioner responsible for not restricting heavy trades in the Respondent's Trading Account considering his low-income range. Mr. Dhane has also sought to contend that the Compliance Officer of the Petitioner took disadvantage of Respondent's impaired hearing abilities and rather than stopping the trading activity considering the high volume, deliberately took vague conformations on telephone. However, it is not the case of the Respondent that he did not want the trades to be effected. He was playing a gamble in the stock market, had the greed of making profits, trusted Mateen and hoped that Mateen would earn profits for him. Apart from telephonic conversations, he was receiving contract notes every day, emails from Exchanges and from Depositories giving details of trades effected. Therefore, notwithstanding any lapse on the part of the Petitioner, Respondent never intended to stop the trades. He continued the trading with another broker by

continuing his association with Mateen even after realising the incurring of losses in account with the Petitioner.

63) Therefore, the lapses, if any on Petitioner's part would give rise to consequences for regulatory failure, and due directions in this regard have already been issued by the lower Arbitral Tribunal. NSE/SEBI can take necessary regulatory actions against the Petitioner if it is found that the same has breached any of the Regulations/Circulars. This position is well established in judgments of this Court in ***Erach Khavar, Ulhas Dandekar*** and ***Sharekhan***. However, failure on the part of the Petitioner in not implementing robust risk-reduction measures cannot be a ground for directing refund of brokerage when the trades are ultimately held to be authorised.

64) Respondent's status as senior citizen is used by IGRC, Lower Arbitral Tribunal and the Appellate Arbitral Tribunal as one of the factors for directing refund of brokerage. In my view however, the age of the Respondent cannot be a relevant factor considering the position that he is an experienced Chartered Accountant with full capability of understanding the consequences of his actions. In his complaint addressed to IGRC, he described his age as 68 years. He was in continuous conversation with Mateen in respect of various decisions taken towards execution of trades. He has signed the contract notes issued from time to time without any demur. He was wise enough to transfer his trading account from Petitioner to Tradebulls and continued association with the hope of recovering the losses and making profits. He is accused of not approaching IGRC with clean hands. Considering these peculiar facts and circumstances, mere age of the Respondent is not the relevant factor for upholding the awards which are patently illegal.

CONCLUSIONS

65) Considering the overall conspectus of the case, I am of the view that the impugned Arbitral Awards passed by the Lower Arbitral Tribunal and Appellate Arbitral Tribunal are in conflict with the fundamental policy of Indian law. Both the Tribunals have committed egregious error in awarding brokerage in favour of the Respondent despite holding that trades effected in the account were authorised. Thus, the award of the claim by both the Tribunals is against the public policy of India. The very basis for awarding the amount of brokerage is patently illegal. The award of claims is also contrary to settled law in various judgments of this Court wherein it is repeatedly held that mere regulatory failure cannot lead to award of any amount towards the loss suffered by the investor. In my view therefore, the impugned Awards are clearly unsustainable and liable to be set aside.

ORDER

66) I accordingly proceed to pass the following order :

(i) The Award of the Appellate Arbitral Tribunal dated 15 March 2023 and the Award of the Lower Arbitral Tribunal dated 14 October 2022 and the order of the IGRC dated 14 January 2022 are set aside.

(ii) The Judgment would not come in the way of taking action against the Petitioner by the Exchanges/Regulators in respect of any regulatory failures committed by it.

67) Arbitration Petition is allowed in above terms. Considering the facts and circumstances of the case, there shall be no order as to costs. Petitioner shall be entitled to withdraw the deposited amount with accrued interest.

[SANDEEP V. MARNE, J.]