


Authorised Signatory

D-5/STP(V)/C.R.1061/04/05/1985-88



SPECIAL
ADHESIVE
महाराष्ट्र
JAN 28 2021

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

Arbitration Matter No.: NSEWRO/0016334/20-21/ARB

Between

Action Financial Services (India) Ltd.

46 & 47, 6TH Floor

Rajgir Chambers

12/14, Shahid Bhagat Singh Road

Fort Mumbai -400001

**...Applicant
(Trading Member)**

And

Yes Bank Ltd.

IFC Tower 3

7th Floor, Senapati Bapat Marg

Elphinstone (W), Mumbai - 400013

**...Respondent
(Clearing Member)**

Before the Panel of Arbitrators:

Mr. Gaurang Shah - Presiding Arbitrator

Mr. Kersi Limathwalla - Co-Arbitrator

Mr. G A Nayak - Co-Arbitrator

Appearances:

For Applicant: Mr. Neerav Merchant and Mr. Bharat Merchant – Advocates of the Applicant Company, Mr. Milan Parekh – Director of the Applicant Company.

For Respondent: Mr. Deepak Dhane – Advocate of the Respondent Company Mr. Nagesh Shrivastava – President, Mr. Ganapathy Puranik – President, Mr. Naveen Surana – SVP, Ms. Archana Choudhary – VP, Mr. Dharmil Ajmera – AVP of the Respondent Company.

I. Status of the Parties:

The applicant is a Trading Member (TM) of the NSEIL, and Respondent is the Professional Clearing Member (CM) of the Applicant.







II. Background:

The reference in this dispute being no. NSEWRO/0016334/20-21/ARB was entrusted to us by the National Stock Exchange of India Limited (hereafter referred to for the sake of brevity as 'NSEIL' or 'Exchange') Mumbai to consider and adjudicate the dispute and difference between the Applicant and the Respondent mentioned hereinabove and to deliver the Arbitration Award.

III. Binding nature of the Rules, Byelaws and Regulations, etc. of NSEIL:

Both the Applicant and the Respondent are bound to by the provisions of the Rules, Byelaws and Regulations of NSEIL.

IV. Proceedings:

The proceedings in the present Arbitration reference were initiated by filing the Arbitration Application dated 07/08/2020, by the Applicant with NSEIL

V. This Tribunal would like to address the preliminary objections of the Respondent at the beginning of this Award as follows:

PRELIMINARY OBJECTIONS:

The Applicant filed an application for revising the claim on 25/09/2020 and the Respondent had objected to the same. The matter was taken up at the commencement of the hearing and the Applicant pleaded that further claim may be considered as pursuant to the IGRP order the NSE had debited the account of the Applicant for shares of the Applicant's client sold by the Respondent amounting to Rs 1,01,23,964.15 as there was no pay-in after squaring the open portion in F&O segment. The Respondent objected that as the IGRP order was dated 24.07.2020 and the Applicant had accepted its liability to pay the same before IGRP and as the SOC was filed on 19/08/2020 there is no reason for allowing the Applicant for revising the claim as the Applicant was fully aware of its liability on the date of filing the Arbitration Application.

The Applicants further claim of Rs 41,68,914/- pertaining to other clients whose shares were also sold by the Respondent and who had claimed the same from the Applicant although no application had so far been made before IGRP, was also objected by the Respondent on the grounds that it was a liability of the Applicant vis-à-vis their clients. The Tribunal is of the opinion that the Applicant was aware of its liability in the cases vis-à-vis its clients on the date of filing the Arbitration Application and the same has been accepted by the Applicant, hence there is no reason to permit the Applicant to revise its claim.



VI. Statement of case of the Applicant:

The Applicant in its statement of claim has contended as under:

1. The Applicant has stated that, the Applicant and Respondent had executed a CM-TM agreement dated 11.05.2019 (the said agreement) and thereby the Applicant and the Respondent are bound by the terms and conditions of the said agreement. The Applicant had thus started availing the services of the Respondent for clearing and settlement of its deals / trades.
2. The Applicant has stated that, under clause 12 of the said agreement, the Applicant and Respondent have submitted themselves to arbitration in case of disputes.
3. The Applicant has stated that, the Applicant has consistently fulfilled its pay-in obligations, till the time of volatility in the markets and erosion of share prices on account of the corona pandemic, as per the margin requirements from time to time.
4. The Applicant states that, on 16.03.2019 the Applicant had sufficient collateral with the Respondent whereas the margin utilization against the collateral of the Applicant was at 69%. Despite having sufficient margin, the Respondent did not allow the Applicant to trade and kept the Applicant in Risk Reduction Mode ('RR Mode'). Due to which the Applicant or even Applicant's clients could not execute any fresh transactions as the Applicant was only permitted to square up the outstanding position and such outstanding position could be squared off only in Immediate or Cancel (IOC) mode.
5. The Applicant states that, the Applicant immediately issued an email on the same day i.e. 16-03-2019 to the Respondent seeking reasons for such an improper and unwarranted act and also visited to the Respondent's office on same day at around 11.45 am to discuss the issue with Mr. Naveen Surana and Mr. Ganapathy Puranik, representatives of the Respondent. The Respondent ignored the genuine and valid concerns of the Applicant and refused to address the issue brought to light by the Applicant.
6. The Applicant states that, being aggrieved by the lack of measures to mitigate the situation and the highhanded attitude of the Respondent, the Applicant again sought an audience with the Respondent at around 1.15 pm whereat Applicant once again explained and put on record the evidence of sufficient collateral available with the Respondent. Therefore, Respondent reluctantly allowed the Applicant to trade normally.
7. The Applicant states that, on the same day it could not square off its positions because it was already past 3.00 pm and market had fallen substantially. The Applicant states that had the Respondent not

  

wrongfully kept the Applicant from trading normally, the Applicant would have squared up the entire position on 16.03.2020 in the opening session and minimized the losses.

8. The Applicant states that, the Applicant had an outstanding position of 283 lots of Nifty PUT strike price of 14000 and 24 lots of Nifty PUT strike price 14500 at the beginning of the trading day on 13.03.2020. Applicant states that, the Applicant had already squared up 81 lots of Nifty PUT strike price of 14000 on 13.03.2020 as soon as market opened. Further, according to the Applicant, the Applicant had planned for a complete square off on 16.03.2020 (Monday) but could not do what was planned due to NIFTY price crashed on that day.
9. The Applicant states that, the Applicant received the email on 18.03.2020 from the Respondent pertaining to liquidation of collateral of the Applicant. The Respondent informed the Applicant that the Applicant's utilization in F&O and Currency Derivatives segment at that time was more than 91% due to market volatility. The Respondent advised the Applicant to provide sufficient funds to cover estimated losses on squaring off the position in the Applicant's account.
10. The Respondent email further stated that as the Applicant's shares were lying with the Respondent as collateral and also made reference to the Applicant's request to the Respondent to liquidate the same through another broker. The said mail further stated that the majority of the Applicant's shares being proprietary shares, the Applicant should provide consent to the Respondent to proprietary shares. The Respondent further asked for the bifurcation of shares pertaining to proprietary account.
11. The Applicant states that, vide email dated 19.03.2020, the Applicant informed the Respondent about bifurcation of collateral shares lying with the Respondent in terms of own shares and Client shares and authorized the Respondent to sell the proprietary shares of the Applicant only in the event of default on 20.03.2020.
12. The Applicant states that, on 25.03.2020 the Respondent illegally and unauthorizedly sold the collateral of the Applicant, both proprietary and client collateral shares, whilst keeping the Applicant in complete dark. The Respondent has thus sold the Applicant's collateral shares against the Applicant's shortfall of Rs. 7,80,28,966.25/- for pay-in on 24.03.2020 in order to conceal the illegal liquidation of collaterals. The Respondent informed the Applicant about the sale of the shares belatedly almost after 10 days delay on 03.04.2020 at 01.16 pm, to which the Applicant promptly replied at 01.30 pm.
13. The Applicant states that, the Applicant's cash collateral of Rs. 56,28,663/- lying with the Respondent in F&O segment and the Bank Guarantee of Rs. 6,05,00,000/- as on 20.03.2020 which in total

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amounted to Rs. 6,61,28,663/-. It is a matter of fact and record that the shortfall would have at the most was limited to Rs. 1,19,00,303.25/-. The Applicant states that the Respondent allegedly sold shares worth Rs. 1,98,70,426.76/- on 25.03.2020 against an admitted debit of Rs. 1,19,00,303.25/-.

14. The Applicant states that, the Applicant vide email dated 09.04.2020 sought the information from the Respondent such as:

- a. Whether the Respondent had without express authority sold client shares? If yes, details thereof may be provided.
- b. Why the Respondent belatedly informed the Applicant on 03.04.2020 of the shares sold on 25.03.2020 and called for the details of shares sold, whether own and client shares as well as demanded contract thereof.
- c. Whether the share sold were in line with the obligations under the agreement. If yes, what was the amount debited on 25th March 2020 and the value of shares sold.
- d. The reason for late payout of balance shares.
- e. The reasons for not transferring our balance cash collateral despite there being no position in F&O and Currency.

15. The Applicant states that, the Respondent subsequently and belatedly replied on the email 16.04.2020 clarifying that the MTM pay-in obligations as on 24.03.2020 was Rs. 7,80,28,966.25/- for trades under taken by the Applicant and since pay-in of funds were not done within stipulated time, the Respondent had proceeded to liquidate the Applicant's collateral. The Applicant states that the said mail is gross violation of SEBI circular dated 26.09.2016 read with circular dated 20.06.2019 and 29.08.2019 in so far as it concerns selling and disposing client shares.

16. The Applicant states that, the Applicant called for the contract notes and ledger statement from the Respondent, however, Respondent failed to furnish the same to the Applicant. The Applicant further states that this act of illegally and unauthorized withholding information of the surreptitious sale of proprietary and client shares of the Applicant on 25.03.2020 and further not parting with the information thereof to the Applicant speaks volumes of the conduct of the Respondent.

17. The Applicant states that, despite the Applicant providing the bifurcation of proprietary and client shares, the Respondent illegally and unauthorized sold the shares of the Applicant's clients and therefore, the subject dispute is pertaining to the unauthorized and illegal liquidation of the Applicant's and Applicant's clients' collateral shares by Respondent and also illegally reducing the trading limit of the Applicant resulting in the Applicant incurring losses as has been explained herein above.



18. The Applicant thus filed the present arbitration seeking relief on 4 counts:

- a. Illegally and unauthorized freezing the trading limits in 16.03.2020 by imposing restrictions by putting the applicant on RR Mode and on square off on Immediate or Cancel basis despite the fact that the Applicant had only assumed outstanding of 69% margin utilization against all collateral.
- b. Failure to first utilize the cash collateral of Rs. 56,28,663/- of the Applicant before proceeding to invoke the bank guarantee of Rs. 6,05,00,000/- and before selling shares held as a collateral.
- c. Selling client shares in gross violation of SEBI Circulars dated 26.09.2016, 20.06.2019 and 29.08.2019.
- d. Selling shares amounting to Rs. 1,98,70,426.76/- ignoring the fact that after utilizing the cash collaterals of Rs. 56, 28, 663/- of the Applicant and invoking the bank guarantee, the debit in the account of the Applicant was only Rs. 1,19,00,303.25/-.

19. The Applicant therefore prayed as follows:

1. An award be passed directing the Respondent to pay to the Applicant an amount of Rs. 2,63,83,434.78/- (Rupees Two Crores Sixty Three Lakhs Eighty three Thousand Four Hundred Thirty Four and Seventy Eight Paise only) on account of the illegal and unauthorized freezing the Applicant's account on 16.03.2020.
2. An award be passed directing the Respondent to pay to the Applicant interest @ 15% p.a. on the aforesaid claim amount of Rs. 2,63,83,434.78/- (Rupees Two Crores Sixty Three Lakhs Eighty three Thousand Four Hundred Thirty Four and Seventy Eight Paise only) from 16.03.2020 till the date of filing the arbitration claim and further interest at the rate of 24% per annum from the date of award till the date of realization.
3. An award be passed directing the Respondent to pay to the Applicant Rs. 79, 70,123.51/- (Rupees Seventy Nine Lakhs Seventy Thousand One Hundred Twenty Three and Fifty One Paise only) on account of the value of the excess shares wrongly sold by the Respondent.
4. The award be passed directing the Respondent to pay to the Applicant interest @15% per annum on the aforesaid claim amount of Rs. 79, 70,123.51/- (Rupees Seventy Nine Lakhs Seventy Thousand One Hundred Twenty Three and Fifty one Paise only) from 16.03.2020 till the date of filing the arbitration claim and further interest at the rate of 24% per annum from date of award till the date of realization.
5. An award be passed directing the Respondent to return to the Applicant all client collaterals that have been sold by the Respondent in violation of SEBI circulars dated 26.09.2016, 20.06.2019 and 29.08.2019.

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6. An award be passed directing the Respondent to return the Applicant all corporate benefits accruing on client collaterals till such date that the client collaterals have been delivered to the Applicant.
7. Cost of the present proceedings be provided for;
8. Any other relief as the nature and circumstances of the case;
9. Such other and further relief as the nature and circumstances of the reference shall deem fit and proper.

VII. RESPONDENT'S STATEMENT OF DEFENSE

The Respondent thereafter filed the statement of defence on 13/10/2020 praying that the Arbitration Reference/Claim filed by the Applicant be dismissed with exemplary cost in favour of the Respondent.

The Respondent's contentions are set out as under:

1. The Respondent states that on May 11, 2019 the Applicant and Respondent entered into a Trading Member Clearing Member agreement (TM-CM Agreement), a Clearing and Settlement Agreement (CS Agreement) for availing Respondent's services as a Clearing Member of the NSE Clearing Limited (herein referred to as "NCL"). The Respondent also states that at the time of entering into said Agreements the Applicant also entered into and executed several Declarations, Undertakings etc.
2. The Respondent states that the Applicant had certain open positions in the Futures and Options (F&O) and Currency Derivative (CD) segment of NSE. It is a matter of record that between March 06, 2020 and March 12, 2020, on account of the Covid-19 pandemic, Nifty-50 fell sharply by 14.9%
3. The Respondent states that on March 06, 2020 the Applicant's terminal for CD segment was put under Risk Reduction Mode (RRM) and / or disabled by NSE on account of breach in margin utilization levels i.e. beyond 85%. On March 11, 2020 at the end of the day, the Applicant's margin utilization against its open positions in F&O segment was 81.64% and on March 12, 2020 when the Nifty -50 was down by almost 8%, the Applicant's margin utilization against its open position at the end of day in F&O segment was at 103.08%. On account of such market conditions and since the Applicant's positions / margin utilizations was above 85%, the Applicant's trading terminal on the NSE F&O segment was also put under RRM/disabled by the NSE, for most of the day i.e. March 12, 2020. Further the Respondent states that, in such circumstances, the Applicant ought to have brought in sufficient collateral or ought to have squared off some or all of its open positions, in order to bring down the margin utilization level below 85%.

  

4. The Respondent states that on March 12, 2020 Respondent inquired with the Applicant about open positions and margin utilization. The Applicant represented to the Respondent that the open positions belonged to their clients and they have been following up with their end clients to bring in sufficient collateral.
5. The Respondent states that on March 13, 2020 at the start of trading hours the Applicant had not arranged for necessary collateral. Further upon Respondent's diligence Respondent learnt that the Applicant had indulged into proprietary trades on F&O segment by selling Nifty PUT @14500 strike price 25 lots and 1400 strike price 283 lots and since these positions were not hedged they were carrying risk of unlimited losses in the event of unprecedented fall in the markets owing to panic and concern over the Covid-19 pandemic.
6. The Respondent states that the Applicant on March 13, 2020 squared off some positions in F&O segment i.e., 81 lots of Nifty PUT strike price @1400 the margin utilization levels. In spite of Applicant squaring of the above-mentioned partial positions, margin utilization of the Applicant at the end of day on March 13, 2020 was still 91%, hence the Applicant's terminal continued to be under RRM/Disabled throughout the day. It is also a matter of record that the above-mentioned partial positions squared off by the Applicant had resulted into huge losses and total Mark to Market (MTM) pay-in at the end of the day on March 13, 2020 was Rs. 3,35,15,477.75/- (Rupees Three Crore Thirty Five Lakhs Fifteen Thousand Four Hundred Seventy Seven and Seventy Five Paise).
7. The Respondent states on March 13, 2020 at the end of the day the Applicant was once again called upon to bring in additional collateral or square off the open positions immediately to bring down margin utilization. In the course of discussion, the Applicant informed the Respondent that there was some problem on the open positions and requested for a meeting on March 14, 2020. The Respondent agreed for the same, however, the meeting was cancelled by the Applicant by saying that they are working on the alternate plans and would update the Respondent accordingly.
8. The Respondent states that on March 16, 2020, considering the overall situation and huge loss/ outstanding in the Applicant's account, the Applicant was put in RRM before the market hours. The Applicant ought to have made pay-in towards the MTM by 8.15 am, in order to enable the Respondent to provide requisite margins to NCL. However, the Applicant delayed the pay-in and the MTM pay-in of Rs. 3,35,15,477.75/- (Rupees Three Crore Thirty Five Lakhs Fifteen Thousand Four Hundred Seventy Seven and Seventy Five Paise) was eventually brought in only at 9.15 am.
9. The Respondent states that on the very same day at 10.34 am, the

  

Applicant addressed an Email to the Respondent and *inter alia* stated that there will be no fresh positions in its proprietary account and no further addition will be done in its position. Vide said Email the Applicant stated that the existing proprietary positions would be brought down over a period of 2 months.

10. The Respondent states that vide email at 10.44 am Respondent specifically declined the Applicants requests, *inter-alia*, for closing the proprietary positions over a time period of 2 months and clearly states that the Respondent cannot take risk of price volatility in the markets and MTM. The Respondent also specifically asked to the Applicant to unwind all client positions immediately, if the Applicant cannot unwind and manage its positions; the Respondent shall be constrained to square off the positions at the risk and consequence of the Applicant.
11. The Respondent states that on March 16, 2020 at 11.30 am Applicant's representatives visited the Respondent's office and Respondent inquired with the Applicant regarding the unhedged positions taken by the Applicant on March 13, 2020, the Applicant accepted that it was a mistake on their part. Even in the said meeting, the Applicant did not have any plan of action regarding its open positions and repeatedly requested for 2 months' time to bring the positions under control. After repeated request to the Respondent the Applicant was removed from Risk mode at 12.52 pm on March 16, 2020 for the limited purpose to enable the Applicant to unwind its positions. However, the Applicant did not unwind any position on the same day.
12. The Respondent further states that on March 17, 2020 the Applicant did not unwind any of its proprietary positions as committed during meeting with the Respondent on March 16, 2020. On the said day Nifty fell by another 2.5% from the previous session and the Applicants losses on proprietary positions had further widened. The Applicant failed to bring in sufficient collateral during the day and the Applicant's margin utilization at the end of the day was 93.65%.
13. The Respondent states that the Respondent sent an email to the Applicant and stated that the Applicant's current utilization F&O and CD segment is more than 91% and advised the Applicant to provide sufficient funds to the Respondent to cover estimated losses on squaring off the positions. Vide said email the Respondent recorded the mutual understanding as arrived pursuant to discussion was that: -
 - i. The Applicant is willing to offload the collateral shares provided to the Respondent and had in fact requested the Respondent to liquidate the same through some broker.
 - ii. The Respondent understands that majority of the shares are Applicant proprietary shares and hence the Applicant is providing consent to the Respondent to sell the said shares provided as collateral.

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- iii. Applicant was requested to provide bifurcation of shares pertaining to proprietary account and stated that once the same is received, Respondent shall initiate liquidation.

The Respondent further states that on the same day, Nifty 50 fell by another 5.5% from the previous session and the Applicant's losses on its proprietary positions had further widened. The Applicant's margin utilization at the end of the day was 103.33%

14. The Respondent states that on March 19, 2020 the Applicant provided bifurcation of collateral shares (Proprietary and client shares). The Applicant vide said email stated that the Respondent can sell the proprietary shares lying with the Respondent as collateral, in case of its pay-in default on March 20, 2020. The Respondent further states that at the end of same day margin utilization of the Applicant was still at 101.6%
15. The Respondent states that on March 19, 2020 at the end of the day, the Applicant's total MTM pay-in on account of square off of some proprietary positions was Rs. 2,71,88,416.50/- (Rupees Two Crore Seventy One Lakhs Eighty Eight Thousand Four Hundred Sixteen and Fifty Paise). This MTM was payable by the Applicant on T+1 day in F&O segment i.e. on March 20, 2020.
16. The Respondent further states that on March 19, 2020, the Applicant informed that he has availed a Temporary Overdraft from Bank of India to meet its pay-in obligations in F&O segment on March 20, 2020 and requested the Respondent to release the collateral shares to enable the Applicant to meet its pay-in obligation on March 23, 2020 in the Equity Segment for the shares sold by it. At the request of the Applicant, Respondent released the shares to the Applicant on March 20, 2020. At the end of day on March 19, 2020, the Applicant's margin utilization was 101.6%.
17. The Respondent states that at the end of the day on March 20, 2020, the Applicant's margin utilization was at 85.36%.
18. The Respondent states that on March 21, 2020 the Applicant provided bifurcation of the shares (proprietary and client shares) and stated that the Respondent can sell proprietary shares lying with the Respondent in case of pay-in default on March 24, 2020 (for the purposed squared off to be done on March 23, 2020).
19. Respondent states that on March 23, 2020, after repeated follow-ups and reminders, the Applicant squared off all its proprietary positions resulting in a MTM pay-in of Rs. 7,80,28,966.25/- (Rupees Seven Crores Eighty Lakhs Twenty Eight Thousand Nine Hundred Sixty Six and Twenty Five Paise). The Respondent called up the Applicant and enquired about the sources of funds for honoring the MTM obligations on March

  

24, 2020. The Applicant stated that it is arranging the funds and obligation shall be honored next day.

- 20.** The Respondent states that on March 24, 2020 the Applicant did not bring in any funds and kept on giving false assurances to the Respondent that the outstanding amount shall be cleared by end of the day. However, the Applicant failed to clear the outstanding amount, the Respondent was compelled to provide funds to NCL out of its own pocket. Since the Applicant did not clear the outstanding by the end of the day, the Respondent was compelled to liquidate the collateral provided by the Applicant and accordingly, invoked the Bank Guarantee of Rs. 6.05 Crores provided by Bank of India.
- 21.** The Respondent states that on March 25, 2020 the Respondent once again enquired with the Applicant regarding the funds and the Applicant kept giving false assurance that they are still expecting funds. Considering the fact that the Applicant had already defaulted, the Respondent liquidated the collateral shares provided by the Applicant and realized an amount of Rs. 1,98, 90,358.76/- (Rupees One Crore Ninety Eight Lakhs Ninety Thousand Three Hundred Fifty Eight and Seventy Six Paise) against the outstanding dues amounting to RS.7,80,28,966.25/- (Rupees Seven Crores Eighty Lakhs Twenty Eight Thousand Nine Hundred Sixty Six and Twenty Five Paise)
- 22.** The Respondent states that on March 31, 2020, the Respondent received an amount of Rs. 6.05 Crores from Bank of India towards the invocation of Bank Guarantee provided as collateral by the Applicant. Thus, the entire pay in obligation of Rs.7,80,28,966.25/- (Rupees Seven Crores Eighty Lakhs Twenty Eight Thousand Nine Hundred Sixty Six and Twenty Five Paise) was settled from the proceeds of the sale of shares and invocation of bank guarantee.
- 23.** The Respondent states that the action to liquidate the Applicant's collaterals was as per the terms of the said Agreement and Transactions documents entered into between the Applicant and the Respondent.
- 24.** The Respondent states that on March 26, 2020 the Applicant had open proprietary positions in the CD segment. In spite of the repeated follow-ups and email sent to the Applicant, the Applicant had not arranged for additional sufficient collateral neither did it square off the positions to bring down utilization levels. The Respondent considering the fact that the Applicant had already defaulted on huge MTM pay-in of Rs. Rs.7,80,28,966.25/- (Rupees Seven Crores Eighty Lakhs Twenty Eight Thousand Nine Hundred Sixty Six and Twenty Five Paise) and since CD segment positions were reflecting huge losses since March 06, 2020, the cash collateral of Rs.56,28,663/- (Rupees Fifty Six Lakhs Twenty Eight Thousand Six Hundred Sixty Three) was set aside towards the losses

anticipated from squaring off the proprietary positions in CD segment and for meeting penal charges to be levied by the Exchange for the month of March 2020.

25. The Respondent states that on March 27, 2020, the Applicant squared off the proprietary positions in CD segment which resulted in a MTM pay-in for Rs.25,46,525/- (Rupees Twenty Five Lakhs Forty Six Thousand Five Hundred Twenty Five) on March 30, 2020.
26. The Respondent states that on March 30, 2020 the Applicant once again failed to bring in the necessary funds towards aforesaid pay-in and therefore defaulted on MTM pay-in in the CD segment as well. In these circumstances, the Respondent was compelled to appropriate the available cash collateral towards the said MTM outstanding in CD segment.
27. The Applicant states that, on April 07, 2020 and April 09, 2020, despite final working of actual amounts due and payable by the Applicant being pending, the Respondent released all the balance collateral shares and partial cash to the Applicant.
28. The Respondent states that, from April 9, 2020 to April 30, 2020 there were several mails exchanged between the Applicant and Respondent, wherein the Applicant sought some information/clarification from the Respondent. The Respondent vide its emails provided all the details and clarifications to the Applicant.
29. The Respondent states that on May 07, 2020 the Applicant made a request to the Respondent to provide its in-principle approval for No-Objection (NOC) in order to shift its dealing from the Respondent. On May 15, 2020 the Respondent provided its NOC and the Applicant shifted its dealings from the Respondent.
30. Relied upon submissions and evidences the Respondent states that the Applicant has entered into transactions in its account and losses incurred by the Applicant were on account of its own trades and it is inappropriate for the Applicant to blame the Respondent and make attempts to shift the burden of losses on the Respondent.
31. Therefore the Respondent submits that the present Arbitration reference to be dismissed with exemplary cost in favour of the Respondent.

VIII. Hearing:

The Hearing was held through the Exchange Empaneled Video Conference Application – Microsoft Teams Meeting on November 10, 2020 at 11:30am.

Both the parties submitted an undertaking for conducting the said

  

hearing through Exchange Empaneled Video Conference Application – Microsoft Teams Application.

Heard both parties at length. The matter was reserved for award.

IX. Findings and Conclusion:

1. All the relevant documents of proof like copy of CM-TM Agreement, copy of undertaking, copies of mails for a relevant period, copies of contract notes have been produced and taken on record.
2. The Tribunal observed that the period of dispute was mid of March 2020 where on account of Covid-19 Pandemic concern Nifty 50 fell sharply from its monthly High of 11433 on March 02, 2020 to reach a low of 7511.10 on March 24, 2020 and finally closed at 8597.75 on March 31, 2020. The return of Nifty 50 for the entire month was negative 2604 points (-23.25%).
3. The Tribunal relied upon the SEBI circulars no. CIR/MRD/DP/34/2012 dated December 13, 2012, CIR/MRD/DRMNP/CIR/P/2018/145 dated November 27, 2018 along with the NSECL circular no. NCL/CMPT/40859 dated April 27, 2019 which explain about the interoperability and pre-trade risk control.

Para 5.5 (2) & (3) of SEBI circular no. CIR/MRD/DRMNP/CIR/P/2018/145 dated November 27, 2018 states as under:

(2) In order to mitigate any risk arising out of latency, in partial modification of para 7 of the SEBI Circular CIR/MRD/DP/34/2012 dated December 13, 2012 on "Pre trade Risk Controls", Stock Exchanges shall ensure that stock brokers are mandatorily subjected to risk reduction mode on utilization of 85% of the stock broker's collateral available for adjustment against margin

(3) Other provisions with regard to risk reduction mode, prescribed vide the above mentioned SEBI circular dated December 13, 2012 shall continue to be applicable.

The Extract of para 7 of the SEBI circular dated December 13, 2012 reproduced hereunder same shall be read with the necessary changes as per the SEBI circular dated November 27, 2018 as mentioned above:

Risk Reduction Mode

7. Stock Exchanges shall ensure that the stock brokers are mandatorily put risk – reduction mode when 90% of the stock broker's collateral available for adjustment against margins get utilized on account of trades that fall under a margin system. Such risk reduction mode shall include

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the following:

a) All unexecuted orders shall be cancelled once stock broker breaches 90% collateral utilization level.

b) Only orders with immediate or Cancel attribute shall be permitted in this mode.

c) All new orders shall be checked for sufficiency of margins.

d) Non-margined orders shall not be accepted from the stockbroker in risk reduction mode.

e) The stock broker shall be moved back to the normal risk management mode as and when the collateral of the stock broker is lower than 90% utilization mode.

Note: The margin utilization level as per the SEBI circular dated November 27, 2018 was reduced to 85% and same shall be read in place of 90% mentioned in above.

4. From the above circulars it is clear that at 85% of margin utilization level Stock Exchanges shall ensure that stock brokers are mandatorily subject to risk reduction mode (RRM). In a given a situation on March 12, 2020 the Applicant's margin utilization against its open position at the end of the day in F&O segment was at 103.08%, which was above the 85% of margin utilized level, and hence the action taken as per the SEBI circular as mentioned above and put the Applicant on RRM by NSE. The Applicant to be removed from the RRM ought to have reduced the open positions or to have brought in sufficient collateral. On a contrary on Friday March 13, 2020 it was learnt that the Applicant had indulged in un-hedged proprietary trades on F&O segment by selling Nifty PUT @14500 strike price 25 lots and 14000 strike price 283 lots which carrying risk of unlimited losses in the event of unprecedented fall in the market owing concern over the Covid 19 pandemic, on a same day Nifty 50 crashed by 966 points or 10.07% to 8,624 and trading was stopped for 60 minutes to avoid further erosion of investor's wealth.

5. The Applicant claimed that on Monday March 16, 2020 in spite of there was a 69% of margin utilization level the Respondent kept the Applicant under RRM and not allowed it to execute the normal trades resulted into losses (Excess Purchase Cost) incurred by the Applicant to the tune of Rs. 2,63,83,434.78/-, the Tribunal gone into the matter and found that the open positions of the Applicant and margin utilization levels on March 12 and March 13, 2020 was above 85% in addition to that even after continuous follow ups from the Respondent to Square off the open positions to bring down the margin utilization level or bring in sufficient collateral, the Applicant did not bring in sufficient collateral or squared off open positions to bring down its margin utilization levels. The Applicant did mention the trades were of end clients and Applicant was following the same to bring additional collateral from the end clients which later found Applicant indulged in un-hedged proprietary trades by selling Nifty PUT option @14500 strike price (25 lots) and @14000 strike price (283 lots)

since the positions were not hedged they were carrying further risk of unlimited losses. On March 13, 2020 after rigorous follow up from the Respondent Applicant reduce its proprietary open positions and squared off only 81 lots out of 283 lots of Nifty PUT strike price of 14000 which brought the margin utilization level at 91% which was still above the 85% of utilization levels. The said square off transaction by the Application had resulted into a MTM pay-in of Rs. 3,35,15,477.75 (Rupees Three Crore Thirty Five Lakhs Fifteen Thousand Four Hundred Seventy Seven and Seventy Five Paise) on account of this, the Applicant required to pay the MTM losses to the Respondent on T+1 basis, which the Applicant failed to provide well within time as per the terms of the CM-TM agreement executed between Applicant and Respondent.

6. Further about the margin utilization level of 69%, as Respondent correctly pointed that this was because the Applicant had sold partial proprietary positions which included a Buy Premium as a pay-in receivables on March 16, 2020 and on account of the said premium the Applicant's margin utilization had come down for some time. However we should not forget the unhedged proprietary positions in the Applicant's account which carrying the risk of unlimited losses on the same day as the market was falling drastically over the concern of pandemic. Furthermore, the statement of the Applicant that the proprietary positions would be brought down over a period of 2months is unreasonable and not in accordance with the CM-TM agreement.
7. Therefore, considering the above facts and circumstances, the Tribunal finds that the action of the Respondent to put the Applicant under RRM on March 16, 2020 is prompt, within the terms of Agreement as well within the legal framework and found no merit in the contention of the Applicant since the Applicant had failed to perform its obligations as stated under the CM-TM agreement.
8. The Tribunal has also gone into details of other grounds raised by the Applicant and defense of the Respondent. The Tribunal has gone through the email conversation between the Applicant and the Respondent and found that there was a continuous communication between Applicant and Respondent during the dispute period where the Respondent continuously in follow-up with the Applicant for bringing in sufficient collateral or reduce the proprietary open positions in order to bring down the margin utilization level at 85% as per the guidelines of the Regulators. Given the fact that the Applicant also was aware of the open positions and outstanding MTM obligations and was promptly replying on the continuous request of the Respondents. However, the Applicant failed to provide sufficient collateral or brought down the open proprietary positions.
9. The Email correspondences between Applicant and Respondent suggest that Applicant was willing to offload the collateral shares provided to the Respondent and had infact requested the Respondent to liquidate the same

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through some other broker. The Applicant also provided the bifurcation of collateral shares (Proprietary and Client) and stated that the Respondent can sell proprietary shares lying with Respondent in case of pay-in default. On March 24, 2020 the Applicant defaulted to its obligation on account of position squared off by the Applicant on March 23, 2020 resulting in MTM Pay-in of Rs. 7,80,28,966.25/- (Rupees Seven Crore Eighty Lakhs Twenty Eight Thousand Nine Hundred Sixty Six and Twenty Five Paise) after waiting for entire day for the Applicant to fulfill its obligation, the Respondent initiated the liquidation of collaterals provided by the Applicant and accordingly invoked the Bank Guarantee of Rs.6.05 Crores as against the Applicants obligation of Rs.7,80,28,966.25/- (Rupees Seven Crore Eighty Lakhs Twenty Eight Thousand Nine Hundred Sixty Six and Twenty Five Paise) Therefore, the Applicant's ground that had the Respondent intimated the Applicant, the Applicant would have arranged funds does not stand good or hold any merit. Infact, the Respondent was continuously intimating the Applicant about the open positions of the Applicant with the Respondent and about the margin utilization levels and the Applicant also was well aware of the position taken and squared off by the Applicant/Respondent.

10. Similarly, on March 25, 2020 the Applicant did not come up with the additional funds required to satisfy the obligations. Therefore, the Respondent liquidated the collateral shares provided by the Applicant and realized an amount of Rs. 1,98,90,358.76/- (Rupees One Crore Ninety-Eight Lakhs Ninety Thousand Three Hundred Fifty-Eight and Seventy Six Paise). On March 31, 2020, the Respondent received the amount of Bank Guarantee of Rs.6.05 crores. Therefore, the entire pay in obligation of Rs.7,80,28,966.25/- (Rupees Seven Crore Eighty Lakhs Twenty Eight Thousand Nine Hundred Sixty Six and Twenty Five Paise) was settled from the proceeds of shares and invocation of bank guarantee. Further the Respondent had returned the surplus amounts available with the Respondent after adjustment of all penalties, charges etc.to the Applicant. Thus, the contention made by the Applicant with regard to wrongful sale of Applicant's shares cannot be easily accepted by this Tribunal. Thus, a detailed investigation/inspection needs to be done by the NCL/NSE in this regard.
11. This Tribunal finds that Respondent had followed and adhered to the due process and the norms of the Clearing and Settlement Agreement, CM-TM Agreement and other transaction documents while selling the collateral shares of the Applicant and promptly sold the shares after invoking the Bank Guarantee of Rs. 6.05 crores to meet the remaining pay-in obligation of the Applicant. The email dated April 09, 2020 of the Applicant sought the point wise information with regard to action taken by the Respondent on account of default made by the Applicant to fulfil the margin obligation on March 24, 2020, the Respondent have explained vide its email dated April 30, 2020 all the queries raised by the Applicant and also have provided contract notes and list of shares sold. The argument of the

Applicant that the Respondent sold the Applicant's client shares has not been backed-up by any substantial supportive evidence; therefore, we have found it difficult to give our opinion with regard to violation or otherwise of instructions/guidelines in SEBI circulars dated September 26, 2019, June 20, 2019 and August 29, 2019. The Respondent has, however, highlighted the relevant clauses of Agreements to support its action to liquidate the Applicant's collateral in its Statement of Defense which is reproduced as under:

"Collateral" shall mean the Deposits, the Base Minimum Capital, Securities and any other collateral, margin or security, including fixed deposits and bank guarantees, furnished by the Trading Member to the Clearing Member for procuring the provision of the Services as per the terms of transactions.

The Clearing Member shall at all times without assigning any reason have the right to call upon the Trading Member to deposit additional amounts or margin towards IM deposit or MTM deposit, and the Clearing Member shall be obliged to forthwith comply with such requirement.

The clearing Member shall specify, subject to the requirements prescribed by the NSE Clearing Limited from time to time, the exposure limits upto which open positions can be taken by Trading Member. Such limits may be increased or reduced by the Clearing Member from time to time. The Clearing member has the authority to initiate any action necessary to protect its/his interests in this regard which may, inter alia, include restriction on further trading and close-out of open positions of the Trading Member or withdrawal/disablement of trading facility of the Trading Member by making necessary request to NSEIL/NSE Clearing Limited for initiating such action.

The Trading Member agrees and confirms that the clearing member has the right to sell, liquidate, invoke, transfer, encumber, dispose, encash or setoff and/or otherwise adjust all or any amount that are due to it or the Clearing corporation/Exchange from the trading member.

The Trading Member agrees and confirms that the Clearing Member/Clearing Corporation/Exchange have the absolute right to sell, liquidate, encash, set off and/or otherwise dispose of any collateral/Securities or Deposits or any other margin/deposits provided by the Trading Member, to recover any outstanding dues/amounts payable by the Trading Member.

The Trading Member hereby declares that the Securities which have been transferred to the Designated Account of the Clearing Member are free, and shall continue to be free, from any charge, lien, interest, lock-in or encumbrance of any nature whatsoever.

The Clearing Member has a right to sell, liquidate, invoke, transfer,

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encumber, dispose, encash and set off and/or otherwise adjust all or any amounts that are due to it or the Clearing Corporation/Exchange from the Trading Member against any collateral received from the Trading Member.

The Clearing Member would have the exclusive right to refuse the withdrawal/release of any Collateral placed by the Trading Member, if the balance Collateral is inadequate to cover the margin requirement of the Trading Member and if there are any dues of the Clearing Member are outstanding or reasonably expected to arise.

The Clearing Member has the absolute right to sell, liquidate, invoke, transfer, encumber, encash, set off, and/or otherwise dispose of any Collateral/Securities or Deposits or any other margin/deposits provided by the Trading Member to recover any outstanding dues/amounts payable by the Trading Member.

- 12.** Considering the overall position and facts and circumstances of the case, the Tribunal is of the opinion that the arbitration reference filed by the Applicant does not deserve support. However, since the validity or otherwise of sale of clients' shares of the Applicant-Trading Member by the Respondent- Clearing Member, from regulatory angle, requires a detailed investigation by NCL/NSE on priority basis.

- 13.** Therefore, the Tribunal passes the following award

AWARD

- a. This Tribunal finds merit in the Respondent's case and as such, support the Respondent and decides against the Applicant.
- b. The Claim of the Applicant is, therefore, rejected.
- c. The Tribunal has also felt that in the absence of sufficient back-up evidence to decide on violation or otherwise of the SEBI instructions/guidelines in its circulars as discussed at paragraph 11 of Findings and Conclusion, a thorough and detailed investigation needs to be done by NCL/NSE on priority basis.
- d. There is no order as to cost.

Award is signed and issued in the originals. The NSE retain one of the stamped original and forward one stamped original to the Applicant and Respondent.

Place: Mumbai

Date: 30 day of JANUARY, 2021


Kersi Limathwalla
(Co-Arbitrator)


G A Nayak
(Co-Arbitrator)


Gaurang Shah
(Presiding Arbitrator)