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### Arbitration on Unauthorized Portfolio Management Scheme by the Trading Member of the Exchange: An Empirical Study

**B. Brahmaiah**

*Professor of Finance & Accounting, ICAI Business School, IFHE, Hyderabad, India, and also an arbitrator on the panel of arbitrators for NSE, BSE and MSEL for Telangana and AP, E-mail-brahmaiaabb@ibsindia.org*

**Abstract:** This case is an appeal matter with the Stock Exchange on the Order passed by the Member of the Investors Grievances Resolution Panel (IGRP) of the Stock Exchange with regard to a dispute between a client and trading member of the Exchange. Kolkata Securities Ltd, trading member, contended that the award passed by the IGRP Member did not take into account of the evidences, documents and rules of Stock Exchange appropriately while determining the case matter and passing the Order. Applicant challenged the Order on the grounds that the award was beyond the scope of submissions to the arbitration, pre mediated conclusion, non application of mind, ignorance of established judicial principles, misreading of the provisions of the Stock Exchange, and also it is in undue haste. The arbitrator has to determine whether there had been any lapses on the part of the IGRP Member in applying the trading rules and procedures of the exchange while analyzing the matter, determining the case and passing the award. Based on that, the Arbitrator had to decide whether to set aside the Order passed by the IGRP, modify the Order or uphold it

**Key words:** Arbitration, Trading member, Applicant, Respondent, Stock exchange

This is a reference for the Arbitration Matter<sup>1</sup> under the Rules, Bye-laws and Regulations of the Stock Exchange. Personal hearing for this matter was held on March 20, 2017 at the premises of the Stock Exchange, Hyderabad. Mr G S Reddy, Constituent (herein after referred to as Applicant) appeared for hearing and Kolkata Securities Ltd, (KSL) (herein after referred to as Respondent) was represented by Mr Jai Ram, Compliance Officer of the Respondent attended the personal hearing. Both the parties argued their respective cases and declared that they had nothing more to submit. Respondent was directed to provide details of various pay outs made to the Applicant and the account balances on the respective pay out dates and Applicant was directed to provide the pay inn and pay out details along with bank statement. Applicant and Respondent submitted the information as directed and also submitted additional submissions,

and rejoinders. The same were taken in to account while analyzing the matter and passing the arbitral award.

KSL is a trading member of Stock Exchange, the leading stock exchange in India. Incorporated under the Companies Act, 1956, it was one of the leading stock broking companies in India. KSL had grown from a standalone brokerage firm into a multiproduct and service company over a period of 15 years. It provides a comprehensive gamut of equity related advisory services to institutional and individual clients. With a team of experts and a nationwide distribution network of branches, franchisees, and associates, it offers include broking, and corporate advisory management services. Mr GS Reddy is a registered client (Respondent) with KSL for trading and investment in securities. He was in the business of trading i.e., buying and selling of securities for the last twenty years.

### **CASE OF THE APPLICANT AT THE IGRP**

Applicant submitted that he was marketed, motivated and influenced by representatives of the Respondent, Hyderabad Branch office to open a trading account and Demat account with the Respondent. They promised him to offer very good investor services and wealth management Scheme. He was not interested in the service being offered by the Respondent. However, both of them prevailed up on him and assured him an annual return of not less than 25 per cent per annum. Since they were continuously following up and chasing him on every day and he thought that they would honor their commitments. The representatives of Respondent pursued him with tall promises and even after making them clear that he was interested in their services and did not believe them. They forced him to accept the services offered by the Respondent.

Accordingly, he signed in all application forms without filling. He made payment of Rs. 30,00,000 (Rupees thirty lakhs only) to the Respondent in January 2013. He also transferred his holdings of share to his demat account lying with the Respondent and entrusted the same to the Respondent. Respondent had taken over his portfolio of shares valued at Rs. 47,00,000 in May 2013 and brought down his portfolio value to Rs. 2,84,000/- by October 2014 and eroded his entire capital. Respondent's representatives were telling him that his portfolio was doing extremely well and they would start paying every month, the surplus in his account after keeping what was required to manage his portfolio. Respondent started paying monthly pay outs of Rs 100,000 i.e., once in a month. Respondent paid an amount of Rs 150,000 as on May 28, 2013 and Rs 100,000 each for ten months, Rs 50,000 for one month on July 02, 2014 and last closure pay out of Rs 4780 was made on December 30, 2015. The monthly payment was discontinued from June 2014, promising him that a lump sum payment would be made. He brought these grievances to the notice of the Securities and Exchange Board of India (SEBI) dated 26 April 2016. SEBI referred the matter to the Investor Grievances Resolution Panel (IGRP), Stock Exchange, Hyderabad and IGRP heard the matter, analyzed the case and passed an Order.

### **OBSERVATIONS, FINDINGS AND ORDER OF THE IGRP**

The IGRP Member found that complainant had not denied the receipt of margin statements, contract notes, mart to market (MTM) loss statements, SMS messages etc. The complainant had stated that he could not spare any of his time for day to day administration of his portfolio and he had made this very clear to the Trading Member. IGRP observed that the complainant had authorized Mr Subba Rao to do the trades which was evidenced by the transcription of confirmatory call logs submitted by the trading member

(Respondent). The main focus of the complainant was the breach of trust on the part of trading member in delivering the alleged 25 per cent annual rate of return and a better portfolio management. However, the complainant could not substantiate his stand by submitting relevant information and documentary evidences for any wrongful acts or fraudulent or unauthorized trading in his account. Complainant had totally believed and relied upon the promises made to him at the time of opening the trading account. He had neither gone through nor checked up the information provided to and received by him as he could not spare any time for the same. He had also believed that Mr Subba Rao, was an employee of the Respondent and that he would keep up the assurances made to him. The Trading Member had clarified that Mr Subba Rao was not an employee of the Trading Member and he had only introduced the account of the complainant to the Trading Member. As per the call transcription available with them, Mr Subba Rao is an authorized person for doing the trades on behalf of the complainant. On careful examination of the information made available, hearings and submissions of the both parties, the IGRP was of the opinion that the complainant could not establish and substantiate his allegations made in the complaint. Hence the complaint was dismissed as not admissible.

### **APPLICANT'S CONTENTIONS ON THE IGRP ORDER**

Applicant contended that the order of IGRP was fundamentally flawed and made it without application of mind and the documentary evidences available in the complaint on the different grievances. Applicant contended that Respondent could not contradict the facts of his complaints. In the proceedings of the IGRP meeting, Respondent tried to establish that entire transactions were done with the proper approval and authorization from him and the colossal losses they inflicted on him were with his knowledge and hence, they were not inclined to compensate the losses. Hence, the dismissal of his complaint is devoid of merit and is belittling the noble role bestowed on the Stock Exchange to safeguard the interest of investors.

### **ARBITRATION UNDER STOCK EXCHANGE MECHANISM**

Applicant filed an arbitration application seeking not only justice but also to send the right signals to the investor community who were enticed by these kind of operators. Applicant made the following claims in his statement of case from the Respondent such as to make payment of Rs 61,11,690/- the value of his portfolio which was given to the Respondent in May 2013, refund of Rs 30,00,000/- which was paid by him to the Respondent and an interest of 15 per cent per annum and losses and damages to the extent of Rs 50,00,000/- towards the breach of trust.

### **STATEMENT OF DEFENSE AND REJOINDERS BY THE RESPONDENT**

Respondent submitted that the Applicant after having gone through the Know Your Client (KYC), Member Client Agreement and other necessary documents for opening of trading account with the Respondent, signed all the documents on January 14, 2013 and got himself registered as a constituent for trading in Capital Markets and Derivatives segments of Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). Upon opening of Applicant's Trading Account, the Applicant was allotted a unique client code i.e., ABC 2818. The Applicant also opted for opening of a Demat Account with the Respondent. The Applicant was allotted the Depository Account Number, XYZ 2593680 in Central Depository Services Ltd (CDSL). Respondent stated that the Applicant was provided access to Respondent's back office information, data (online portal) and for the same Applicant was provided with a Log in ID and Password. The Applicant

paid Rs. 25,00,000/- by cheque dated on January, 16, 2013 and Rs.17,50,000/- by real time gross settlement (RTGS) on January 17, 2013 and commenced trading in his account. Respondent stated the Applicant was also served with daily margin statements on his afore said Email ID. Applicant was also provided with information regarding the MTM losses in his account and calls were also made to the Applicant for confirmation of MTM losses, from time to time. Respondent submitted that upon opening of the account, the Applicant had authorized, Mr Subba Rao to trade on his behalf with the Respondent. Therefore, there was no question of Applicant now disputing the trades in his account. Respondent submitted that Respondent had received pay-ins from the Applicant and Respondent had made certain pay-outs to the Applicant and the said payments and receipts had been admittedly accepted by the Applicant and the Applicant never had raised any objections to the same. The last trade in the Applicant's account was on July 27, 2014 and there were never any grievances and objections by the Applicant during the entire trading period. Further upon receipt of letter dated March 13, 2015, Respondent's representative had personally met the Applicant and all his grievances were resolved. The various pay out details are provided in Exhibit-1.

Respondent submitted that the IGRP recorded several observations against the Applicant and dismissed the complaint filed by the Applicant. It is a matter of record that the contract notes and other relevant information were provided to the Applicant on the very same Email ID and mobile number. Applicant also did not deny receipt of any contract notes, SMS's, Payouts and other documents, particulars on his Email ID and Mobile Number. In spite of the knowledge of said losses, Applicant continued to trade in his account. Respondent submitted that the present claim by the Applicant is an afterthought, frivolous claim and was nothing but an abuse of the process of law. The Applicant had not approached this Arbitral Tribunal with clean hands and had presented a concocted, misleading and false story only to achieve his ulterior motive of recovering losses which he had incurred in the course of trading in the securities market. Respondent stated that the present claim by the Applicant was invalid, baseless un-lawful, illegal and without any particulars. Therefore the allegations are unfair, unwarranted and more importantly contrary to the conduct of the Applicant and the agreement between the parties. It is denied that Mr. Subba Ra had represented the Respondent and Applicant was made to assign his alleged portfolio to the Respondent. Applicant while raising said contentions ignored the fact that all contract notes, SMS alerts and other relevant documents were always received by the Applicant and he was well aware of the losses and trades in his account. In view of the above submissions and evidences relied upon by the Respondent, it is clear that the Applicant had entered into transactions in his account and losses incurred by the Applicant were on account of his own trades and it is inappropriate for the Applicant to make attempts to shift the burden of losses on the Respondent. It is denied that the Respondent administered the Applicants alleged portfolio. The amounts paid i.e., pay-outs to the Applicant were made on his request. It is also denied that the Respondent guaranteed the Applicant that his alleged portfolio will be restored and the losses will be recouped in the Applicant's account. It was denied that the Applicant had suffered huge losses because of the Respondent or its representatives. In view of the aforesaid, Respondent humbly submits that the present Arbitration reference and claim filed by the Applicant is false and baseless and same deserves to be dismissed.

### **MR SUBBA RAO, AUTHORIZED PERSON SUBMITTED AN AFFIDAVIT**

Mr. Subba Rao, resident of Hyderabad, submitted an affidavit and solemnly declared on oath that he was associated with Kolkata Securities Ltd, Hyderabad as Direct Sales Associate for the period from January

2013 to December 2015. He was responsible for canvassing high net worth individuals for associating with Respondent for both equity investment and commodity trading. He along with a team from the Respondent at his office as well as at his residence in the early 2013 and placed before him the investment opportunity with the Respondent. They, as a team from the Respondent, placed before him the modus of operations and promised him a return of not less than 25% per annum. On this offer, Applicant agreed for a minimum return of 15 per cent per annum. He agreed to associate with Respondent under the team's persistence and not voluntarily. Mr Subba Rao was a part of the Respondent on its rolls as Direct Sales Associate. Applicant never introduced him to the Respondent.

### **OBSERVATIONS, FINDINGS AND CONCLUSIONS OF THE ARBITRATOR**

It is noticed that the Applicant committed a grave mistake and error by accepting the offer of portfolio management and wealth management services of the Respondent orally without any written agreement or memorandum of understanding. Applicant paid an amount of Rs 30,00,000/- in January 17, 2013 but details of payments were provided only for Rs 20,00,000 and transferred few companies' equity shares valued at Rs 47,00,000/- to the Respondent in May 13, 2013. Respondent confirmed the receipt of Rs 20,00,000. It is considered to take in to account the amount of Rs 20,00,000/- was paid by the Applicant to the Respondent. Applicant received all trade details such as daily purchases and sales through contract notes, bills, margin statements and losses in his account regularly. It was observed that all trades were conducted by authorized representative, Subba Rao. It is interesting to note that there were two contracts in this dispute, one was written contract and the other one was oral contract. Applicant opened a Trading Account and a Demat Account with the Respondent by signing all applications. These forms were signed by the Applicant before duly filled. The other contract was orally agreed between the Applicant and Respondent. Respondent proposed an offer for an annual return of 25 per cent and finally it was agreed for 15 per cent per annum. It is concluded that there were two parallel contracts, one was written and the other one was oral. The Respondent followed all its duties and obligations such as sending daily trade details, losses and other details over phone as well as relevant documents were sent to his email and SMS to his mobile number, including confirmation of authorization of Mr. Subba Rao for trading, very meticulously and promptly so that records speak of everything was correct, fair and proper from the Respondent's side and nothing was wrong from Respondent's side i.e., no lapses and no mistakes.

It is observed that the Applicant had never disputed any of the trades in his account. Applicant was aware of all the trades and losses in his account. Applicant had confirmed and accepted all these without saying no to any one of activities or losses incurred in his account by his authorized person. Respondent contended and reiterated that Mr Subba Rao was introduced by the Applicant to the Respondent for his trading and looking after his portfolio management. But the conclusions are contrary to this. Mr Subba Rao's affidavit claimed that he was associated with the Respondent as Direct Sales Associate, from 2013 till 2015. He along with his team approached the Respondent as a team and placed before him the investment opportunity with the Respondent. They, as team from the Respondent guaranteed him a moderate return of not less than 15% per annum. It is concluded that Mr Subba Rao acted as part of Respondent's team and he was on the Respondent's rolls as Direct Sales Associate and Applicant did not introduce him to the Respondent. It is very clear from the affidavit of Mr Subba Rao and submissions and statements of



Applicant that there existed an oral contract with a promise of 15 per cent per annum on his portfolio. Mr Subba Rao acted on these trades as part of the Respondent's team even though his name was inserted in the application form as authorized person of the Applicant. It is observed and concluded that Mr Subba Rao was *de jure* Applicant's authorized person and *de facto* Respondent's associate.

It is observed from the call transcription available with the Respondent. Mr Subba Rao was authorized person for doing the trades on behalf of the Applicant. The call transcription was reproduced for confirmation and conclusions. But there was no confirmation regarding who had appointed Mr Subba Rao as the authorized person, whether the Applicant had appointed him as his authorized person or Respondent had appointed him as Applicant's authorized person. It was noticed that Mr Balaji, from Respondent's office confirmation, over phone with the Applicant that "sir in your account Subba Rao will be trading," Applicant said "Ok". Mr Balaji asked the Applicant "no problem na sir," Applicant replied "no problem". This is clearly confirmed that Mr Subba Rao was appointed as an authorized person. It was not very clear from the transcriptions that who had appointed Mr Subba Rao. If Applicant had appointed the Mr Subba Rao, Respondent's representative would have been confirmed as "Sir as appointed by you, Subba Rao would be trading on your behalf." The conversation neither specified nor confirmed who had appointed Mr Subba Rao as authorized person. Was it by the Applicant? or was it by the Respondent? Applicant simply ratified/agreed for Mr Subba Rao was an authorized person for trading in his account.

It is observed from the Form of Authorization to Third Party, the Form was signed by the Applicant but the details were filled by the third person other than Applicant. Applicant simply signed the Form. Applicant's name, broking account number, name of authorized person, his father's name, date were written by third party. The witnesses were signed by Mr Bhooma Rao and Mr Chandra Rao, both of them were associates of the Respondent. It is observed that the KYC Application Form was filled and documents were verified on January, 11, 2013. Applicant was interviewed, and in person verification was also carried out on January, 11, 2013. Respondent sent a welcome letter to the Applicant on January 16, 2013, and the welcome letter contained a lot of details and information such as client code, email Id, Demat account, bank details, segments of trading, back office log in and centralized service help desk number, but there was no mention of authorized person. Had Applicant proposed the name of Mr Subba Rao as his authorized person, Respondent would have been mentioned the name of Mr Subba Rao as authorized person in its welcome letter. Applicant is an educated person and capable of writing the names and other details as required in the Form of Authorization to Third Party. What was the need for the Respondent to fill the important and crucial details of the authorized person? It is observed that Application was signed on January, 11, 2103, and other details were duly filled on January, 16, 2013.

It is concluded on the basis of KYC Application Form, which was filled on January, 11, 2013 and Form of Authorization to Third Party and other details were filled by third person, was filled on January, 16, 2013, and welcome letter was issued on January ,16, 2013 and confirmation call was made by the head office on January, 17, 2013. Authorization was filled by the Respondent's representatives since it was witnessed by the employees of the Respondent. Besides this, Mr Subba Rao, the authorized person confirmed himself and reiterated the same that he was an associate of Respondent and represented the Respondent and he was appointed by the Respondent as an authorized person of the Applicant and Applicant only accepted for the same. The other important observation was regarding pay outs by the Respondent. As per extant rules, regulation and bye laws of Stock Exchange, the Payout would be T+2 days. It means that the

payment would be made on the third day from trading day i.e., the seller gets payment on third day (T+2), buyer gets shares on third from the trading day. Generally pay out would take place for full amount of credit balance unless and until client instructs contrary to the regular pay out mechanism of the Exchange. Respondent made about 14 pay outs, the first pay out of Rs 150,000/- as against his credit balance of Rs 41,58,740/- on May 28,2013, Rs 100,000/- as against his credit balance of Rs 44,24,400/- on June 27, 2013 and eight monthly payments of Rs 100,000/- each per month from September 2013 to May 2014 and Rs 50,000/- on July 02, 2014 and final account closure payout of Rs 4780/- on December 31, 2015. (Exhibit-1). Applicant was losing about Rs 500,000/- per month, why he was interested in Rs 100,000/- as pay out as against his credit balances of about Rs 40,00,000/-. On oral enquiry, Respondent responded that pay outs were made as per requests of Applicant and or authorizes person of the Applicant but there were no documentary evidences for the same. It is found that the Respondent had provided documentary evidences for all issues and contentions except for the pay outs requests. The above patterns of pay out were extremely extraordinary, unusual and not as per the rules and regulations of the Stock Exchanges and SEBI. It is observed that Applicant was losing more than five lakhs per month and to keep him happy, a small amount of Rs 100,000 was regularly paid as return on his portfolio. It is concluded on the basis of pattern of pay outs and frequency of monthly payments, it is nothing but an incentive or return on his portfolio. Respondent should have been followed the Stock Exchange's calendar of daily pay outs on the basis of T+2 rather than its innovative and creative monthly pay outs. Pay outs are based on T+2 trading days. Pay outs of settlements should be there on every day and not on one day for every month.

It is concluded that the Applicant and Respondent were equally responsible for the dispute of two contracts (one was written and other one was oral). Applicant consented, co operated and collaborated with the Respondent for dual contracts with a motive of making money and Respondent took advantage of the situation and wanted to earn brokerage income on unwarranted speculation and trading volumes. As a result of the negligence, casual approach and indifferent attitude of Applicant and Respondent's disguised and creative portfolio scheme, Respondent's team lost the wealth of about Rs 70,00,000/- within a span of less than two years. Respondent managed all the aspects in this account by doing things right except monthly pay outs. It is concluded that Respondent's branch office, Hyderabad had indulged and entertained two contracts, one was written (trading account) and the other one was oral contract (portfolio management scheme) with an offer of fifteen per cent return per annum. It is concluded that under extant rules and regulations of the Stock Exchange, Respondent (Trading Member) is not allowed to accept such portfolio management scheme or disguised portfolio management scheme and such kind of monthly special payouts are neither allowed nor permitted under present rules for a Trading Member. These kinds of practices by the branch offices should be prevented by the Compliance Dept or Head Office of the Respondent, since these are not allowed by the Stock Exchange. Trading Members' operations and activities are regulated by the BSE, NSE and SEBI in order to protect the interests of investors.

Applicant sought relief on three grounds. Applicant transferred a portfolio of shares value of Rs 47,00,000/- in May 2013. The second claim was for refund of his payment of Rs 30,00,000/- and interest thereon. Applicant provided details only for Rs 20,00,000/- hence this amount would be considered and taken as payment to the Respondent. As regards the third claim, this Arbitration Forum is neither appropriate nor competent to assess and evaluate the losses and damages for breach of trust and Applicant is free to approach competent Forum or Court for claiming damages for breach of trust. Respondent made 13 pay

outs for an aggregate amount of Rs 12,04,780/- to the Applicant and there was a residual portfolio value of Rs 2,84,250/-. It is arrived at the Applicant's loss of total capital of Rs 20,00,000/- in this trading account and received pay out amount of Rs 12,04,780/- resulting a net loss of Rs 7,95,220 and lost portfolio value of Rs 44,15,750/- (Rs 47, 00,000/- minus Rs 284,250/-), through the disguised portfolio management scheme. The Applicant's loss was to the extent of Rs 52,10,970/- consisted of Rs 7,95,220 loss from capital and loss of Rs 44,15,750 from portfolio scheme. His claim of return on his investment is rejected as he was also responsible for agreeing oral contract rather than written contract and accepted the losses to continue and not made any efforts to prevent from the losses as a result of intraday trading and speculation in spite of full information and knowledge of trades and losses. Only recovery of his losses on account of principal and payments and portfolio value of shares are considered.

### RECOMMENDATIONS (AWARD)

In view of the foregoing submissions, hearings, documents, rejoinders and arguments of the both parties, and on the basis the arbitrator's observations, findings and conclusions, it is his considered opinion based on the facts and circumstances of this matter that if the Applicant is not awarded the amount of loss suffered by him on account of unauthorized scheme of portfolio management and guaranteed return on the capital, of the Respondent, it will be a traverse of justice and fair play.

Hence, an award was passed that Kolkata Securities Ltd, the Respondent is directed to pay an amount of Rs 52,10,970/- ( Rupees fifty two lakh, ten thousand nine hundred and seventy only) with an interest of 18 per cent per annum from the date of this award till payment (for the delayed period) to the Applicant. Parties have to bear their own costs.

**Exhibit- 1**  
**Pay out details and credit balances of the respective pay out dates**

<i>Sl/No</i>	<i>Pay – Out Dates</i>	<i>Pay Out Amount(Rs)</i>	<i>Credit Balance as on Pay out Date(Rs)</i>
1	28/05/2013	150,000	41,58,740
2	27/06/2013	100,000	44,24,400
3	03/09/2013	100,000	25,21,330
4	03/10/2013	100,000	24,22,990
5	06/11/2013	100,000	27,54,250
6	03/12/2013	100,000	26,35,260
7	02/01/2014	100,000	9,03,210
8	04/02/2014	100,000	27,36,160
9	04/03/2014	100,000	18,91,040
10	03/04/2014	100,000	18,52,300
11	02/05/2014	100,000	7,72,500
12	02-07-2014	50,000	1,41,090
13	30-12-2015	4,780	4,780
	<b>Total</b>	<b>1, 204,780</b>	



### **Stock Exchange's Arbitration Procedure**

**Arbitration:** Arbitration (the Arbitration and Conciliation Act, 1996) [3] is a quasi judicial process of settlement of disputes between two parties i.e., between a trading member and an investor. Arbitration aims at quicker legal resolution for the disputes. When one of the parties feels that the complaint has not been resolved satisfactorily either by the other party or through the complaint resolution process of the Exchange, the parties may choose the mechanism of arbitration. All disputes arising out of transactions done on the Exchange by the parties or anything incidental thereto are under the purview and eligible for arbitration mechanism provided by the exchange.

**Arbitration Framework:** Arbitration is governed by rules, bye laws, regulations & circulars issued by the Exchange and SEBI, from time to time. The arbitration is conducted in accordance with the principles of natural justice and rules and regulations as may be prescribed by the Exchange. If the claim value is more than Rs. 2.5 million a panel of three arbitrators is constituted and if the claim value is less than Rs. 2.5 million, a sole arbitrator is appointed. (SEBI, 2010)

**Arbitration for Margin Trading:** The arbitration mechanism of the exchange would not be available for settlement of disputes, if any, between the client and members, arising out of the margin trading facility. However, any disputes relating to transactions done on the exchange, whether normal or through margin trading facility, shall be covered under the arbitration mechanism of the exchange.

**Statement of Claim and Defence:** In arbitral proceedings, the most important documents are statement of claim/case filed by the Applicant/Claimant and the statement of defense submitted by the Respondent. The party who moves for arbitration and sets out claims is called Claimant /Applicant and the person against whom the claim is filed is called respondent, the opposite party. While the Claimant files a claim statement which contains details of his grievances, the Applicant of dispute, description of the case, summary of events leading to the dispute, basis of arriving at the claim amount and relief sought through arbitration. Entire dispute described in date wise sequence of events which took place between the investor and the trading member needs to be described. Statement of case is the first source of information which the sole arbitrator/ arbitrator panel refers to in advance to understand the case and hence it is very significant. The respondent meets/attacks with his statement of defense. Respondent counters the claim with the details given in the statement of defence. Further, both the parties also may file the necessary documents in support of their respective claims/defence statements. The Respondent may also set a counter claim against the claimant. The contentions of the respective parties obviously must be supported by proper evidence.

**Hearings and Written Proceedings:** After filing of the necessary papers, the next important part of the arbitral proceedings is the personal hearings of the case and considering the documentary evidence. The normal procedure adopted is that after presentation of claim statement and defense statement, the arbitral tribunal hears the parties and receives written arguments. Section 24 of the Arbitration and Conciliation Act, 1996 contains the relevant provisions pertaining to hearings and written proceedings.

**Award:** Award is a judgment passed by the arbitration panel which gives a direction to either of the disputing parties as regard to their claim raised in the arbitration matter. The arbitral award includes an interim award. An arbitral award shall be made in writing and shall be signed by the members of arbitral tribunal. Section 31 of the Arbitration and Conciliation 1996, prescribes the form and contents of an arbitral award. The arbitrator shall make an award within four month or such time as may be specified by the Exchange after entering into the reference. The decision of the arbitrator shall be by way of an award in writing which shall clearly state the reasons for arriving at such decision. Such an award shall be final and binding on the parties to the reference. After the arbitration award is made, a signed copy shall be delivered to each party. The Arbitrator may at any time during the arbitration proceedings, make an interim arbitration award on any matter with respect to which he may make a final arbitration award. Under Section 35 of the Arbitration and Conciliation Act 1996, an arbitral award shall be final and binding on parties as regards the matter referred to and decided by the arbitral tribunal. The award once passed by the arbitrator is final and binding on the parties unless challenged before a higher forum. In case of certain corrections or interpretation required to be made in the award, any party to arbitration can file application with the Exchange u/s 33 of Arbitration and Conciliation Act, 1996 for correction or interpretation of award, within a month from the date of receipt of award. The Exchange will forward the application to

the concerned arbitrator/s. In case the arbitrator/s feel/s the requirement of correction/interpretation in the award as requested, he/she can do so by passing a separate order.

**Appeal on the Arbitral Award:** Even though there is no provision for appeal against an arbitral award, against any order of the court under Section 34 of the Arbitration and Conciliation Act, 1996, an appeal lies to the Appellate Court under Section 37 of the Act, 1996. The aggrieved party of the award may approach the Exchange with an application in the prescribed format for appeal before the appellate arbitrators, along with applicable deposit, within a period of 30 days from the date of receipt of the arbitral award or the aggrieved party can challenge the award U/S 34 of Arbitration and Conciliation Act, 1996 in the district civil court. When the appellate arbitral award is passed in favour of investor:

- (a) Trading member may settle the award and confirm the same to the Exchange; or
- (b) Trading member may challenge the appellate arbitral award under Section 34 of the

Arbitration and Conciliation Act, 1996, can file petition under section 34 of the Arbitration and Conciliation Act 1996. The appellate arbitrator panel hears both the parties and passes an Appellate Arbitral Award. The appellate arbitral award may set aside decision of the original arbitral award or uphold the same.

### **NOTE**

1. Names of trading member, (Appellant), client (Respondent) and Exchange were disguised to preserve confidentiality and facts and circumstances were remain same to maintain originality of the case matter. It was based on an Arbitration matter. The Arbitration mechanism of the Exchange is framed under the Arbitration and Conciliation Act, 1996.

### **REFERENCES AND SUGGESTED READINGS**

SEBI's Circular No.CIR/MRD/DSA/29/2010, dated August 31, 2010.

The Arbitration and Conciliation Act, 1996 (As Amended by the Act No.3of 2016).

SEBI 2012, Rights and Obligations of Stock brokers, Sub Brokers and Clients (Annexure-4).