



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMM. ARBITRATION PETITION NO. 390 OF 2024

ICICI Securities Ltd.

.....PETITIONER

: **VERSUS** :

Ridhi Siddhi Investment & Anr.

...RESPONDENTS

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**Mr. Victor K. Fernandes**, for the Petitioner.

**Mr. S.L. Shah** i/b. Shah Legal, for Respondent No.1.

**Ms. Anushka Shetty** with Mr. Nikhil Dhole i/b. MLS Vani and Associates  
for Respondent No.2.

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**CORAM : SANDEEP V. MARNE, J.**

**Reserved On : 25 FEBRUARY, 2026.**

**Pronounced On : 17 March, 2026.**

**Judgment :**

1) This is an interesting case where the constituent/investor raised a complaint before the National Stock Exchange Limited complaining about action of the Trading Member/Stockbroker in selling its shares purchased under the Margin Trading Facility (MTF) on account of technical glitch in the software leading to non-placement of requisite pledge by the investor thereby causing loss to the investor. The mistake is admittedly attributable to the stockbroker. The Stock Exchange referred

the dispute to an Institute for online dispute resolution mechanism which appointed a Conciliator. The Conciliator made attempt to resolve the dispute through conciliation and while submitting the Failure Report, determined the value of claim adjudicable in the arbitration. Strangely, the investor did not file any claim, but the Trading Member/Stockbroker was advised to challenge the report of the Conciliator *qua* the claim value determined by her in the Report. The challenge to the Conciliator's Report was raised by Stockbroker under a misconception that the Conciliator awarded Rs.75,00,000/- to the investor. The investor also carried the same impression and filed Statement of Defense. He felt that Rs. 75,00,000 determined by the Conciliator was sufficient and did not file any counterclaim. Thus, both Stockbroker as well as the investor laboured under a complete misconception as if the Conciliator had 'awarded' the claim in the sum of Rs.75,00,000/- in favour of the investor. In arbitration the Three Member Arbitral Tribunal, has delivered a split verdict. The Presiding Arbitrator has rendered minority award holding that the stockbroker did not file any arbitration claim and therefore dismissed its arbitration application. The Presiding Arbitrator further held that the investor did not file any counterclaim and that therefore no compensation is payable to him. In the majority award however, the two co-arbitrators treated the Statement Of Defence of the investor as a counterclaim and have awarded the claim in his favour in the sum of Rs.23.30 lakhs.

2) The issue that arises for consideration in the present Petition is whether the Arbitral Tribunal is justified in awarding the sum in favour of the investor, who failed to file any claim or counterclaim before it. As

both the sides laboured under a misconception that the Report of the Conciliator 'awarded' claim in favour of the investor, the issue for consideration is whether the approach in the majority Award treating the statement of defence as the counterclaim, is so irrational that the award is required to be invalidated in exercise of powers under Section 34 of the Arbitration Act. Also arises for consideration is the issue whether in the light of admission of liability by the stockbroker to compensate the investor, the computation and award of the compensation in the majority award deserves interference.

3) The issues arise in the light of challenge raised by the Petitioner-Stockbroker in the present Petition filed under Section 34 of the Arbitration and Conciliation Act 1996 (**Arbitration Act**) to the majority Award of the three-member Arbitral Tribunal awarding claim in favour of Respondent No.1 in the sum of Rs.23,30,000/- alongwith interest.

4) Petitioner is a Trading and Clearing Member of the Bombay Stock Exchange Limited (**BSE**) and National Stock Exchange Limited (**NSE**) and is registered with the Securities and Exchange Board of India (**SEBI**) as a stockbroker, merchant banker, portfolio manager, investment advisor and research analyst. The first Respondent is a partnership firm with Mr. Rakesh Agarwal as one of its partners.

5) Respondent No.1 has opened a trading account on 17 November 2023 with the Petitioner. Respondent No.1 also opted for

Margin Trading Facility. MTF is a product that allows the constituent/investor to buy stocks by paying only part of their value and the broker funds the remaining amount and charges interest on it. It appears that the partners of the Respondent-firm are high net worth individuals with a substantial margin funding portfolio with the Petitioner (Rs.50 crores plus as a family). Apparently, they faced certain operational issues in operating their multiple trading account with the Petitioner and therefore they opened a new trading account with the Petitioner on 17 November 2023 in the name of the partnership firm.

6) After opening of the trading account and availing of MTF, Respondent No.1 successfully executed the first trade on NSE on 28 November 2023 for purchase of 2,50,000 shares of Indian Oil Corporation Limited (IOCL) at the rate of Rs. 108.38/- per share. The contract note dated 28 November 2023 was issued by the Petitioner. It is the case of Respondent No.1 that the Petitioner forgot to activate the Unique Client Code (UCC) allotted to Respondent No.1 for the demat account and the mandatory pledge of the purchased shares did not take place. This happened as the Petitioner erroneously uploaded the PAN details of the partner rather than uploading the PAN details of the firm. Since there was no pledge to secure the purchased shares, the IOCL shares were auctioned by the Exchange on 29 November 2023 at Rs. 108.22/- per share. This lapse was repeated in the next two business days. On 30 November 2023, Respondent No.1 again bought 20,000 equity shares of VA-TEC-Wabag Ltd. which again remained unsupported by a pledge and therefore 20,000 shares of VA-TEC-Wabag Ltd. were auctioned on 1 December 2023

apparently to the detriment of the first Respondent. In the meantime, price of IOCL shares which were auctioned, shot up denying an opportunity to Respondent No.1 to repurchase them. According to Respondent No.1, auction of IOCL shares on 29 November 2023 led to significant financial losses to it.

7) Respondent No.1 complained to the Relationship Manager of the Petitioner by email dated 4 December 2023. Petitioner took note of the grievance and conducted internal system check and noticed that non pledging of shares was due to inadvertent mistake of uploading the PAN details of Respondent No.1. According to the Petitioner, individual PAN details of Mr. Rakesh Agarwal (partner) were uploaded rather than uploading the PAN details of the firm. Petitioner rectified the error and took corrective steps and from 6 December 2023, Respondent No.1 was able to carry out regular trades under the MTF. On 15 December 2023, Respondent No.1 sent email claiming notional loss of Rs.30,00,000/-. Respondent No.1 thereafter filed a client complaint with the SEBI against the Petitioner. Respondent No.1 also lodged a complaint with Investor Service Team of NSE for online dispute resolution mechanism. The Petitioner responded to the complaint of Respondent No.1, *inter-alia*, claiming that the compensation claimed by Respondent No.1 was towards notional loss which was not admissible.

8) NSE has empaneled Erdac Solutions Pvt. Ltd (**Erdac**) as an independent institution for facilitating and administering electronic alternate dispute resolution process vide its online platform CADRE. The

complaint of Respondent No.1 was referred by NSE to the Institution. The Institution appointed a Conciliator on 28 February 2024. The Conciliator made attempts for amicable resolution of the disputes. During conciliation, partner of Respondent No.1 insisted for sum of Rs.75,00,000/- towards loss suffered by Respondent No.1. Petitioner apparently agreed to pay actual losses which was only Rs.65,000/- plus free brokerage of Rs.35,000/-. Since Petitioner's offer was not accepted by Respondent No.1, the Conciliator treated the proceedings as 'unsuccessful'. However, the Conciliator quantified the 'admissible claim value/directions by conciliator' at Rs.75,00,000/-.

9) As a matter of fact, under para-20 of the SEBI Circular dated 31 July 2023, the nature of determination made by the Conciliator upon failure of conciliation proceedings is only for the purpose of application of appropriate slab for computation of fees for online arbitration. Though ascertainment of claim value of Rs.75,00,000/- by the Conciliator was solely for the purpose of determination of arbitration fees, the Petitioner was advised to challenge the order of the Conciliator dated 20 March 2024 before the Arbitral Tribunal. Accordingly, Petitioner filed Arbitration Reference No. NSE/SB/2024-02/948107 and filed its Statement of Case challenging the order of the Conciliator. Respondent No.1 filed Statement of Defense and prayed for pulling up and punishing the Petitioner and seeking a declaration that compensation of Rs.75,00,000/- was meagre. The Institution referred the dispute for adjudication to three member Arbitral Tribunal. The Arbitral Tribunal conducted arbitral proceedings online. It appears that during the course of hearing, the Arbitral Tribunal

asked Respondent No.1 as to whether it had filed counterclaim, to which its partner responded in the negative further stating that he did not intend to file any counterclaim.

10) After hearing the parties, the Arbitral Tribunal has delivered a split verdict. The Presiding Arbitrator, in his Award dated 21 June 2024, has arrived at a conclusion that Petitioner-Trading Member did not have any 'arbitration claim' as per the prevailing guidelines of NSE and therefore proceeded to dismiss its arbitration application. The Presiding Arbitrator further observed that Respondent No.1 did not file any counterclaim and therefore held that no compensation is payable to it. The two co-arbitrators however did not agree with the Award of the Presiding Arbitrator and have delivered a separate majority Award. The co-arbitrators have held that Respondent No.1 had made a counterclaim of Rs.75,00,000/- in the Statement of Defence and proceeded to award claim in the sum of Rs.23,30,000/- in favour of Respondent No.1 alongwith simple interest @ 6% p.a. from 5 December 2023 till the date of the Award with post award interest @ 10% p.a.

11) Petitioner is aggrieved by the Majority Award dated 21 June 2024 and has accordingly filed the present Petition under Section 34 of the Arbitration Act. By order dated 24 September 2024, this Court recorded statement on behalf of Respondent No.2-NSE that an amount in excess of arbitral Award was debited by NSE and that the same would be deposited in this Court. This Court accordingly directed deposit of amount of Rs.24,06,000/- to Respondent No.2 granting liberty to

Respondent No.1 to make an application for withdrawal of the awarded amount. Subject to the deposit, the majority Award has been stayed. Respondent No.1 thereafter filed Interim Application (Lodg.) No. 32367/2024 seeking withdrawal of the amount. Thus, by order dated 3 October 2025, this Court has permitted withdrawal of the deposited amount alongwith accrued interest upon executing P.R. Bond by Respondent No.1 and on filing of an undertaking to secure the amount permitted to be withdrawn.

12) Mr. Fernandes, the learned counsel appearing for the Petitioner submits that the impugned majority Award is patently illegal as it awards claim in the favour of Respondent No.1 which was never made by it. He submits that the claim was filed by the Petitioner in which Respondent No.1 did not file any counterclaim. That Arbitral Tribunal specifically inquired with partner of Respondent No.1 as to whether he desired filing of any counterclaim, to which he responded in the negative. That the majority Award erroneously treats the Statement of Defence as counterclaim contrary to the response made by Respondent No.1 before the Arbitral Tribunal. That the Presiding Officer has rightly held in his dissenting Award that no counterclaim was filed by Respondent No.1. He submits that granting any relief in favour of a party in absence of a claim constitutes conflict with the public policy doctrine and also renders the award illegal.

13) Mr. Fernandes further submits that what was suffered was merely a notional loss which was clearly inadmissible. That the complaint

of Respondent No.1 itself was not tenable and should not have been entertained by the NSE. That the Arbitral Tribunal did not have jurisdiction to entertain claim for notional loss.

14) Mr. Fernandes further submits that the Petitioner had challenged the order of Conciliator which erroneously determined the claim value at Rs.75,00,000/-. That determination of such value by the Conciliator was totally irrational and without any basis. That since value determined by the Conciliator ultimately becomes basis for adjudication of the claim, Petitioner rightly challenged the same before the Arbitral Tribunal. That the challenge was restricted to quantification of claim value. That in a challenge raised by the Petitioner for quantification of claim value by the Conciliator, the Arbitral Tribunal has erroneously proceeded to allow claim in favour of the Respondent, who neither filed counterclaim nor paid fees of arbitration. On above broad submissions, Mr. Fernandes would pray for setting aside of majority Award.

15) Mr. Shah, the learned counsel appearing for Respondent No.1 would oppose the Petition and support the majority award. He submits that partner of Respondent No.1 is layman and had appeared in person both before the Conciliator, as well as before the Arbitral Tribunal. That he specifically pressed the claim for Rs.75,00,000/- in the Statement of Defence. That the majority Award rightly treats Statement of Defence as a counterclaim by ignoring the form and concentrating on the contents. That sufferance of loss by Respondent No.1 cannot be disputed and has rightly been appreciated in the majority Award. That once cause of loss is

established, award made in favour of Respondent No.1 need not be set aside only on account of lack of legal knowledge on the part of Respondent No.1 in not formally branding his defence statement as a counterclaim.

16) Mr. Shah would further submit that the shares have been erroneously sold on account of mistake on the part of the Petitioner and the Petitioner must make good for the loss suffered by Respondent No.1. He submits that the majority award conservatively determines the loss at only Rs.23.30 lakhs, though the loss suffered is to the tune of Rs.75,00,000/-. He takes me through para-19 of the majority award to demonstrate as to how squaring off due to inability of pledged shares has resulted in actual losses for Respondent No.1. He submits that the losses suffered by Respondent No.1 are actual and not notional as sought to be suggested by the Petitioner. He would accordingly pray for dismissal of the Petition.

17) Mr. Shetty has appeared on behalf of Respondent No.2-NSE and has submitted to the jurisdiction of this Court.

18) I have considered the submissions canvassed on behalf of the rival parties.

19) As observed in the opening part of the judgment, the case involves a unique circumstance where both the parties have laboured under a misconception that the amount of Rs. 75,00,000/- determined by

the Conciliator in the Report was the claim allowed in favour of Respondent No. 1. This is the reason why the Petitioner thought it necessary to challenge the report of the Conciliator and Respondent No. 1 did not think it necessary to either file its claim or atleast a counterclaim in the reference sought by the Petitioner. In these unique circumstances, where both parties misconstrued the Conciliator's Report as the award of claim of Rs. 75,00,000/- in favour of Respondent No. 1, the Arbitral Tribunal while deciding the challenge to the said Report at the instance of Petitioner, has delivered a split verdict. The Presiding Arbitrator has held that the Petitioner had no claim for adjudication and that the Respondent No. 1 did not file his claim or counterclaim. On the other hand, the majority award delivered by the co-arbitrators treats the statement of defence of the Respondent No. 1 as counterclaim, by concentrating on the contents thereof and by ignoring its form, and has awarded sum of Rs. Rs.23,30,000/- in favour of Respondent No. 1.

20) To decide the validity of the majority award, it would be necessary to have a look at the manner in which the proceedings have transpired upto the stage of making of the Award. After Respondent No.1 got aggrieved by action of auction of shares, a complaint was filed for recovery of loss of Rs.75 lakhs with Investor Service Team of NSE, which was referred to the Erdac- an Institute of arbitration. Erdac appointed a Conciliator on 28 February 2024. The Conciliator held a meeting with both the parties on 13 March 2024. While Respondent No.1 pressed the claim for Rs.75,00,000/-, Petitioner contended that the actual loss was Rs.65,000/- and accordingly showed willingness to pay amount of loss of

Rs.65,000/- plus brokerage of Rs.35,000/-. Since the gap was wide, the Conciliator submitted a failure report on 20 March 2024. It would be apposite to reproduce the Conciliation Report dated 20 March 2024, which reads thus :

#### Conciliation Report

Erdac Solutions Pvt. Ltd. is an independent institution facilitating and administering electronic Alternative Dispute Resolution via its online platform, CADRE, also referred to as Online Dispute Resolution ("ODR") Institution, having its registered office at 42, 12th Main Rd, 4th T Block East, KV Layout, Jayanagar, Bengaluru, Karnataka-560011.

Erdac Solutions Pvt. Ltd. has been empanelled by NSE Limited ("Exchange") in accordance with the SEBI Master Circular No. SEBI/HO/OIAE/OIAE\_IAD-1/P/CIR/

The above-mentioned matter was referred Erdac Solutions Pvt. Ltd. via [SMARTODR.IN](https://SMARTODR.IN) ("ODR Portal"), a common Portal established by the Market Infrastructure Institutions ("MII") in accordance with the SEBI Circular, for harnessing online Conciliation and online Arbitration for resolution of disputes arising in the Indian Securities Market. Further, the parties have accepted the terms and conditions of ODR Portal

The undersigned has been appointed as a Conciliator by Erdac Solutions Pvt. Ltd. on 28th February 2024 in the present matter.

During the proceedings, attempts were made for resolving the matter through Conciliation in accordance with the SEBI Circular.

In the matter no. NSE-SB-2024-02-948107. raised by the Complainant against the Trading Member, meeting was held on date 13th March 2024 at time 01:30pm through Erdac Solutions Pvt. Ltd. via video conferencing

#### ISSUES RAISED BY THE PARTIES

Issues raised by the Complainant: Rajesh Agrawal

The Complainant raised the claim of Rs. 75,00,000/- towards loss suffered by him due to missing of opportunity as he could not trade even though he placed order to purchase the shares since the respondent had failed to activate the trade.

Response of the Respondent to the issues raised by the Complainant:

The Respondent has submitted that the respondent agreed to pay actual loss which according to respondent is Rs. 65,000/- plus free brokerage of Rs. 35,000/-

Observation of Conciliator:

It has been observed that as the offer was too meagre, the matter could not be conciliated.

Whether Conciliation was successful or unsuccessful: Unsuccessful

Agreed Settlement Value / terms: NIL

**Admissible Claim Value/ Directions by Conciliator: Rs. 75,00,000/-**

Dated: 20 March 2024.

*(emphasis added)*

21) The Conciliator thus indicated amount of Rs.75,00,000/- under the heading '*admissible claim value/directions by conciliator*'. It is the heading against which the Conciliator indicated the figure of Rs. 75,00,000/- which apparently created confusion in the minds of the parties. As a matter of fact and law, the Conciliator does not have power to award any sum in favour of or against any party.

22) SEBI has issued Master Circular for online dispute resolution on 31 July 2023 which mandates that all the Stock Exchanges and depositories, collectively referred to as 'Market Infrastructure Institutions' shall establish a common Online Dispute Resolution (ODR) Portal. The circular lays down a detailed procedure for dealing with resolution of disputes on online dispute redressal portal. Under para-17 of the Master Circular, the ODR Institution which receives the reference of complaint/dispute needs to first appoint a sole independent and neutral conciliator from its panel of conciliators. Such Conciliator is required to

hold meetings for arriving at amicable resolution of disputes. If the dispute is not resolved through conciliation process, the conciliator is required to ascertain the admissible claim value of the complaint/dispute which in the opinion of the conciliator is payable to investor/client and notify the same to the disputed party, as well as to the ODR institution of the concerned stock exchange. However, ascertainment of such admissible claim is only for the purpose of determining appropriate slab for computation of fees for online arbitration. The Arbitrator is not bound by such determination while making the Award. After the conciliator ascertains the claim value, the investor/client can pursue online arbitration by payment of fees as applicable to online arbitration. Paras-17 to 20(a) and (b) of Master circular dated 31 July 2023 are relevant in this regard, which reads thus :-

#### Conciliation

17. The ODR Institution that receives the reference of the complaint/dispute shall appoint a sole independent and neutral conciliator from its panel of conciliators. Such conciliator shall have relevant qualifications or expertise (please refer to Schedule D), and should not be connected with or linked to any disputing party. Mills shall ensure that appropriate measures are put in place regarding appointment of conciliators by the ODR Institutions.

18. Such conciliator shall conduct one or more meeting/s for the disputing parties to reach an amicable and consensual resolution within 21 calendar days (unless extended for a maximum period of 10 calendar days by consent of the disputing parties to be recorded in writing/electronically) from the date of appointment of conciliator by the ODR Institution, which shall do so within 5 days of receipt of reference of the complaint/dispute by the ODR Institution. Apart from attempting to actively facilitate consensual resolution of the complaint/dispute, the conciliator may consider advising the Market Participant to render required service in case of service-related complaints/disputes and/or consider issuance of findings on admissibility of the complaint/dispute or otherwise in case of trade related complaints/dispute (as the case may be).

19. If the process of conciliation is successful, the same shall be concluded by a duly executed settlement agreement between the disputing parties. Such an agreement shall be executed and stamped through an online mode, as permissible in law. When such agreement requires the Market Participant to pay the admissible claim value to the investor/client, the Mil shall monitor the due payment/adherence to the terms of the settlement agreement until due receipt by the investor/client and/or performance of the required terms of settlement agreement.

20. In case the matter is not resolved through the conciliation process within the 21 calendar days (or within the extended period of 10 calendar days, extended by consent of the disputing parties):

**a. the conciliator should ascertain the admissible claim value of the complaint/dispute that the conciliator determines is payable to the investor/client and notify the disputing parties as well as the ODR Institution and the MII of the same. Such determination should also be made in all claims/complaints/disputes where the monetary value has not been ascribed by the person initiating the dispute. The nature of determination made by the conciliator is only to provide an admissible claim value of the complaint/dispute for purposes of appropriate slab for computation of fees being applied for online arbitration. Subject to the forgoing, the investor / client, the market participant and the arbitrator/s would not be bound by such determination for the making or defending or deciding the claim/complaint/dispute, as the case may be.**

b. An investor/client may pursue online arbitration (which will be administered by the ODR Institution, which also facilitated the conduct of conciliation) on or after the conclusion of a conciliation process when the matter has not been resolved through such process, subject to payment of fees as applicable for online arbitration. The Market Participant against whom the investor/client pursues the online arbitration shall participate in the arbitration process. Accordingly, within 10 days of the initiation of the online arbitration by the investor/client, the Market Participant shall make the deposit of 100% of the admissible claim value with the relevant MII and make the payment of the fees as applicable for online arbitration. Non-adherence of the foregoing by the Market Participant may result in action against the Market Participant by MIs and/or the Board.

*(emphasis added)*

23) Thus, the amount indicated in the report of the Conciliator does not become the amount awarded to any party or against any party. The said amount has relevance only for the purpose of determination of payment of fees by the claimant for online arbitration. The amount reflected in the report of the Conciliator does not bind the arbitrator, who is not precluded from awarding the claim in the sum higher than the one reflected in the report of the Conciliator.

24) Thus, the amount of Rs.75,00,000/- indicated in the Report of the Conciliator was only for the purpose of payment of fees of arbitration. The Conciliator did not award Rs.75,00,000/- in favour of Respondent No.1 or against the Petitioner. Ignoring the above position, the Petitioner unnecessarily challenged Conciliator's Report dated 20 March 2024 before the Arbitral Tribunal. In its 'Statement of Case', Petitioner raised following prayers:

In view of the above submission's, the Applicant therefore prays:

1. The entire **claim passed** by the unnamed Ld. Concillator be set aside on the basis of the above grounds and **no claim can stand as per the norms set by NSE**
2. The Applicant reserves its rights to file additional reply on receipts of various documents called for, if required.
3. The Applicant craves leave to refer to and rely upon Exchange / SEBI circulars various Arbitration Awards/judgements etc. passed in the similar kind of matters.

*(emphasis added)*

25) Thus, the Petitioner itself labored under a misconception that the amount indicated in the Conciliator's Report has been awarded in

favour of the Respondent No.1. It challenged the Conciliator's Report treating the amount indicating therein as 'claim passed' and prayed for a declaration that 'no claim can stand as per the norms set by NSE'.

26) As a matter of fact, Respondent No.1 ought to have filed claim before the Arbitral Tribunal by paying fees corresponding to the claim value determined by the Conciliator. However, Respondent No.1 failed to file its claim for arbitration. Both the parties construed the Report of the Conciliator as the one awarding amount of Rs. 75,00,000/- in favour of Respondent No. 1 and the same was challenged by the Petitioner and defended before the Tribunal by Respondent No. 1. After receiving notice of filing of arbitration application by the Petitioner, Respondent No.1 appeared before the Arbitral Tribunal and filed its Statement of Defense. In its Statement of Defence, Respondent No.1 raised following prayers:

1. ICICI securities Be pulled up and punished strongly for their apathy towards client losses and failure to provide seamless trading facilities in spite of earning huge brokerage income and interest income on the margins landed.

2. Compensation of Rs. 75,00,000 Which is also meagre according to the losses that we suffered but some of them could be termed as notional losses although they would have been earned definitely had I not defaulted in providing seamless services.

27) It appears that some confusion prevailed before the Arbitral Tribunal about need of filing of counterclaim by Respondent No.1. The Arbitral Tribunal apparently interviewed the partner of Respondent No.1 and asked whether a counterclaim was filed. The partner of Respondent

No.1 answered in the negative with a further clarification that there was no intention of filing any counterclaim. This is clear from the following findings in the Award:

During the Hearing, the AT specifically asked the Respondent whether they have filed any counter claim? Shri Agarwal categorically replied "No." He added that he did not intend to do so.

28) However, the majority Award ultimately treats the Statement of Defence as the counterclaim by observing as under:-

17) Respondent has made counter claim of Rs. 75 lakhs in the SOD and is present in the prayer mentioned on page & para 1 of this Award. It may not be strictly as per the CADRE ODR rules (page 10 para 1 of this Award) **we would prefer to go by the contents rather than by the form of the claim of Respondent.**

*(emphasis added)*

29) Faced with the position where a specific claim/counterclaim was not filed by the Respondent No. 1, Mr. Shah has contended that the partner of Respondent No.1 is a layman and was not conversant with the peculiarities of the procedure. He has relied on findings recorded in the majority award in para-17 where the co-arbitrators have gone by the contents of Statement of Defence rather than its form. I have accordingly gone through the entire Statement of Defence, which clearly narrates a brief summary of case. Respondent No.1 has thereafter given point wise responsibilities/defenses to the statement filed by the Petitioner as under:

Pointwise responses/defense to the statement filed by the Arbitrator are as follows:

1. Mr. Rajesh Agrawal being the Partner of Riddhi Siddhi Investments, has filed a complaint on behalf of the firm. He lawfully and legally

represents the firm and hence, there is no conflict of interest in this case, whatsoever.

2. The allegation by the Applicant that the claim is notional and opportunity loss and hence cannot be claimed is with all due respect untrue and not applicable to the subject matter of the current case and the loss incurred by me, since the loss is actual in nature. I had purchased the security already, duly paid brokerage for such purchase transaction and such security got auctioned the next morning without linking the demat pledge facility for the same. A concern was immediately raised by me to the applicant, however 4 days passed until the could figure out as to why the pledge facility is not being activated, due to which I was unable to repurchase the auctioned security, and in the meantime, the price of the scrip sizeably rose leading to actual financial loss to me.

**3. The Conciliator has been selected and appointed by Erdac Solutions Private Limited which has been empaneled by NSE Limited (the Exchange') and hence is totally unbiased, neutral and undoubtedly an expert in this segment and the subject matter of the case.**

4. Calculation of the loss has been already mentioned above.

**5. We are neither professional litigants, nor are engaged in such arbitration matters on a regular basis,** we have been compelled to resort to legal recourse due to the size of the loss and extreme lack of response by the applicant despite all our attempts in approaching them to resolve the issue amongst ourselves, in an amicable manner.

30) From perusal of the statement of defence filed by the Respondent No. 1, it is clear that it has dealt with the merits of the disputes as the Petitioner had raised the point of the loss being 'notional' and not 'actual'. Since Petitioner proceeded to treat the amount indicated in the Conciliator's Report as the one awarded in favour of Respondent No. 1 and challenged the same on the ground that the same was merely a notional loss, Respondent No. 1 joined issues with the Petitioner and answered the Petitioner's challenge on merits, while making it clear that

the Respondent No. 1 was a layman and not conversant with the intricate procedures of arbitration. It is also seen that Respondent No.1 filed 'written submissions' before the Tribunals, in which it justified entitlement of compensation in the sum of Rs. 75,00,000/-. The justification in the written submissions was as under:

Question Posed: Calculation of the Rs. 75,00,000 Loss:

Respondent's Version:

Particulars	Quantity	Rate	Amount
Shares purchased on November 28, 2023 (A)	2,50,000	108.38	2,70,95,000
Shares auctioned on November 29, 2023 (B)	2,50,000	108.22	2,70,55,000
Price of Shares at a later date had we held them and not lost them in auction (C)	2,50,000	160	4,00,00,000
Loss due to ICICI glitch and carelessness (A-C)	2,50,000		1,30,05,000
Claim put up on a round figure on a median basis (explanation below)			75,00,000

31) Considering the above position, it is clear that there was *lis* between the parties before the Arbitral Tribunal on the twin issues of (i) sufferance of loss by Respondent No. 1 and (ii) the quantum of such loss. Petitioner never contended before the Tribunal that there was no counterclaim by the Respondent and maintained its position that the Conciliator awarded Rs. 75,00,000/- in favour of Respondent No. 1. It has maintained this position in the present Petition as well, which aspect is discussed in greater details in the latter part of the judgment. In view of this position, the majority Award rightly proceeded to consider the case of

Respondent No.1 on merits rather than rejecting the same by adopting a hyper-technical approach of non-filing of a formal counterclaim. The majority Award rightly went by the contents of the Statement of Defence rather than concentrating on its mere form.

32) It appears that use of the expression 'admissible claim value/directions by conciliator' against the sum of Rs.75,00,000/- created confusion in the minds of both the parties and both the parties treated as if the Conciliator directed payment of amount of Rs. 75,00,000/- to Respondent No.1. This is the reason why Petitioner challenged Conciliator's Report dated 20 March 2024. Even after passing of the majority Award, the Petitioner has continued to treat the Conciliator's Report as the one 'granting' the claim amount of Rs.75,00,000/- to Respondent No.1. This is clear from the following pleading in para 18 of the Petition:

'Conciliator appointed by Respondent No.2 passed order dated 13 March 2024 determining the claim amount of Rs. 75,00,000/- (Rupees Seventy-five lakh only) as the admissible amount which is due and payable to Respondent No.1 by the Petitioner'.

(underlining added)

33) Similarly in the grounds raised in the petition, Petitioner has not treated the Report of the Conciliator as merely the one determining the claim value for the purpose of payment of fees of arbitrator. No such averment is raised in the entire petition. On the other hand, ground clause (e) in the Petition is as under:

Considering the aforesaid, Ld. Arbitrators have failed to exercise the power vested in them to quash the conciliation order dated 13th March 2024.

34) More importantly, Petitioner has not raised a plea in the present Petition that counterclaim was not filed by Respondent No.1 on account of which nothing could have been awarded in its favour. The only ground on which majority Award is challenged is essentially because it has allowed notional claim of Respondent No.1. Therefore, though Mr. Frenandes has strongly argued the point of failure to file counterclaim, no such ground is raised in the Petition. Absence of pleading about non-filing of counterclaim assumes significance on account of the fact that the Petition is filed after noting the observations of the Presiding Arbitrator in the dissenting Award, who has rejected the claim for the compensation only on the ground that Respondent No.1 did not file any counterclaim. Therefore, having not raised the ground of failure to file counterclaim, Petitioner cannot be permitted to orally argue the said ground. No doubt the Court exercising powers under Section 34 of the Arbitration Act can itself locate perversity or patent illegality in absence of a pleaded ground and the law in this regard appears to be well settled by the judgment of the Apex Court in **State of Chhattisgarh and another Versus. Sal Udyog Private Limited**<sup>1</sup>. However, even if the ground of failure to file counterclaim was to be pleaded, it would have been difficult to uphold the same considering the fact that the Petitioner itself treated Conciliator's Report as the one awarding claim in the sum of Rs. 75 lakhs.

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1 2022 (2) SCC 275.

35) If a professional entity like ICICI Securities, who is otherwise a giant organization in the financial sector, well advised by legal professionals, could misread the Conciliator's Report, it was but natural for Respondent No.1 to treat the same as the one awarding compensation of Rs.75,00,000/-. This appears to be the reason why Respondent No.1 did not file a specific claim or a counterclaim and believed that Rs. 75,00,000/- is already awarded in its favour. When Arbitral Tribunal inquired with Respondent No.1 as to whether it had desired to file a counterclaim, the partner of Respondent No.1 apparently assumed the said query to mean as to whether Respondent No.1 desired compensation in an excess of Rs. 75,00,000/-. This appears to be the reason why he answered the query in the negative. From the Award it does not appear that the Tribunal first clarified to both the parties that (i) the Conciliator has not awarded any sum in favour of Respondent No. 1, (ii) that Petitioner has unnecessarily challenged the Conciliator's Report and (iii) it was necessary for Respondent No. 1 to file its claim by paying fees on the claim sum determined by the Conciliator. If all these things were clarified to the parties and then Respondent No. 1 was to indicate unwillingness to file any claim/counterclaim, what the dissenting award holds could have been correct.

36) Thus, the confusion in the minds of the parties continued throughout the arbitral proceedings. As observed above, the confusion has continued in the minds of the Petitioner even while filing the present Petition. Considering the peculiar facts and circumstances of the case, I

am of the view that adjudication of claim of Respondent No.1 in the majority Award on merits cannot really be found fault with.

37) So far as merits of the claim awarded in favour of the Respondent No. 1 is concerned, it is seen that the Petitioner has objected to the majority Award on solitary ground that what is awarded is a notional loss which is not actually caused to the Respondent No. 1. Petitioner does not deny the mistake on its part in erroneously uploading the PAN details of the partner instead of uploading the PAN details of the firm leading to non-creation of pledge in respect of the purchased shares through MTF. Even in the present Petition, the Petitioner has accepted its mistake by pleading that *'The petitioner immediately took note of the grievance and after conducting internal system check found out that aforesaid failure of the pledging of the shares was due to inadvertent mistake in uploading the PAN details of the respondent no.1. The petitioner had uploaded the individual Pan details of Mr. Rajesh Agarwal (partner) rather than the pan details of the respondent no.1 firm.'* Admission of the mistake appears to be the reason why the Petitioner offered to pay to Respondent No.1 amount of Rs 65,000/- plus brokerage of Rs. 35,000/-. This is clear from the following response of the Petitioner before the Conciliator:

Response of the Respondent to the issues raised by the Complainant:

The Respondent has submitted that the respondent agreed to pay actual loss which according to respondent is Rs. 65,000/- plus free brokerage of Rs. 35,000/-.

38) This liability to compensate Respondent No.1 is thus admitted by the Petitioner. The issue for consideration is whether Respondent No. 1 is entitled to receive only the difference in the amount of purchase and sale of shares of IOCL or Petitioner should also be made liable to pay for the loss of opportunity in respect of purchased shares? Respondent No.1 claimed compensation by treating the value of 2,50,000 shares of IOCL at Rs. 160/- and claimed that the loss suffered is Rs. 1.30 crores, but restricted the same to Rs. 75,00,000/-. On the other hand, the majority Award considers the value of 2,50,000 shares of IOCL shares as 5 December 2023 at the rate of Rs. 117.70/-. The date of December 2023 is the date on which the Petitioner corrected its mistake of uploading the PAN details and this is the day from which the pledging of purchased shares took place under the MTF. If 2,50,000 shares of Respondent No.1 were not to be auctioned, it would have owned the said shares, value of which apparently increased enormously. However, on account of mistake of the Petitioner, the shares were sold at lesser price than the one at which they were purchased. Considering this position, the majority Award has decided to grant the difference between the purchased value of shares on 28 November 2023 and the value of shares as on 5 December 2023, when mistake was corrected by the Petitioner. This approach adopted by the Arbitral Tribunal is the most conservative approach, considering the peculiar facts of the case.

39) In a case like the present one, cause of loss to the Respondent No. 1 and liability of Petitioner to compensate Respondent No. 1 for such loss is not disputed. The dispute is only with regard to the

sum that needs to be awarded to Respondent No. 1. It was difficult to ascertain the exact loss suffered by Respondent No.1. Considering the peculiar facts of the case, it cannot be contended that the difference between the purchase and sale price of shares would alone constitute the loss suffered by Respondent No. 1. It is well settled position that when conclusion of loss caused to the injured party is reached but Arbitral Tribunal finds it difficult to quantify the exact amount of loss, the Arbitral Tribunal can enter into the realm of guesswork and or apply rough and ready formula for determining the amount of compensation. [SEE: *M/s. Construction & Design Services Versus. Delhi Development Authority*<sup>2</sup>, *Board of Control for Cricket in India & Anr. Versus. Kochi Cricket Private Ltd*<sup>3</sup>, *New India Assurance Co. Ltd. Versus. Shirdi Industries Limited*<sup>4</sup>.] In the present case the majority award adopts extremely conservative yardstick of determining the value of IOCL shares on the day on which Petitioner corrected its mistake. The approach by the Arbitral Tribunal cannot be treated as so irrational that no fair-minded person would ever adopt the same. Though I do not propose to suggest an abstract proposition that claims for notional losses can be entertained or awarded in stocks related arbitrations, in my view, the facts of the case are so peculiar that there is no warrant to exercise the limited power under Section 34 of the Arbitration Act for invalidating the award, which appears, to my mind, to be just and reasonable.

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2 Civil Appeal No. 1440 of 2015 decided on 4 February 2015

3 ARB Petition NO.-1752-2015 decided on 17 June 2015

4 Arbitration Petition No.375 OF 2024 decided on 9 December 2025.

40) Considering the overall conspectus of the case I am of view that no case is made out for interference in the majority Award in exercise of jurisdiction by this Court under Section 34 of the Arbitration Act.

41) The Arbitration Petition is accordingly dismissed. PR Bond and Undertaking, if any, executed by Respondent No. 1 stands discharged. Considering the facts and circumstances of the case, I deem it appropriate not to award any costs against the Petitioner.

**[SANDEEP V. MARNE, J.]**

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