

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 94 OF 2024
WITH
INTERIM APPLICATION NO. 6876 of 2025

Sharekhan Limited.

.....PETITIONER

: **VERSUS** :

Darshini Shah

....RESPONDENT

Mr. Prathamesh Kamat with Mr. Ativ Patel, Ms. Viloma Shah and Mr. Viraj Raiyani i/b. M/s. AVP Partners, for the Petitioner.

Mr. Saurabh Bacchawat with Mr. Rajesh Khandelwal i/b. M/s. Juris Link, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 27 NOVEMBER 2025.

Pronounced On : 09 DECEMBER 2025.

Judgment:

1) Petitioner, a stock broker, has filed the present Petition under Section 34 of Arbitration and Conciliation Act, 1996 (**Arbitration Act**) challenging the Award dated 29 August 2022 passed by the Three Member Appellate Arbitral Tribunal constituted under the Byelaws of National Stock Exchange (**NSE**) dismissing the appeal preferred by the Petitioner and confirming the Award of the learned sole Arbitrator dated 26 April 2022. The learned sole Arbitrator, by Award dated 26 April 2022, had overruled the decision of the Grievance Redressal Committee (**GRC**) and had

allowed the claim of the Respondent in the sum of Rs.4,87,513/- without any cost and interest.

2) Petitioner is a stoker broker registered under the Securities and Exchange Board of India (**SEBI**) and is in the business of share/stock broking and buying and selling of shares/stocks for and on behalf of its clients. Respondent is the client of the Petitioner. In September 2007, Respondent had approached the Petitioner to sign up as a customer for commencing trading of shares and stocks with the Petitioners through online mode. On 25 September 2007 Agreement was entered into between the Petitioner and Respondent in respect of Bombay Stock Exchange and National Stock Exchange. Under the Agreement, Respondent agreed to pay brokerage and statutory levies on transactions effected in her trading account. Respondent also signed a Brokerage and Account Maintenance Charges form (AMC) under which she was liable to pay yearly sum of Rs.6,000/- and avail benefit of reduced brokerage. Accordingly, Respondent continued paying AMC charges from 2007 to 2012 of Rs.6,000/- per year and availed the benefit of reduced brokerage of 0.25%. According to the Petitioner, Respondent failed to pay AMC charges from the year 2013 onwards despite sending several reminders. On account of negative balance during the relevant years, Petitioner could not recover the AMC charges or to renew the AMC scheme which got deactivated on 19 October 2013. It appears that Respondent's trading account was in a dormant stage during 2013 to 2020. In May 2021, Respondent commenced transactions in Future and Option segment (**F&O**). Petitioner permitted such transactions without securing any further KYC documents. On account of non-continuation of AMC scheme, Petitioner charged their brokerage on transactions effected by the Respondent. On 1

November 2021, Petitioner charged default brokerage on cash delivery @ 0.50% and derivatives @ 2.5%. Petitioner accordingly raised invoice of Rs.5,08,893.2/- towards brokerage. It appears that the Respondent incurred losses in the transactions to the tune of Rs.38,000/- and requested for reduction of brokerage charges. Petitioner has sent SMS dated 3 November 2021 reducing the brokerage rates from 3 November 2021 as a goodwill gesture.

3) On 8 November 2021, Respondent filed a complaint with NSE regarding charging of brokerage by the Petitioner. Petitioner responded to NSE with a reply justifying charging of normal brokerage on account of discontinuation of AMC scheme. GRC of NSE heard the complaint of the Respondent and by its order dated 10 December 2021, declined to grant any relief in favour of the Respondent.

4) Respondent applied for arbitral reference before the NSE. Accordingly, Arbitral Tribunal of the learned sole Arbitrator was constituted by NSE. The learned sole Arbitrator made Award dated 26 April 2022 holding the Petitioner responsible for not securing KYC documents from the Respondent at the time of reinitiation of trading activities in May 2021 which act was held contrary to NSE circular dated 10 February 2020. The learned sole Arbitrator accordingly directed to pay to the Respondent amount of Rs.4,87,513/- towards difference in brokerage charges. The learned sole Arbitrator did not award costs or interest in favour of the Respondent.

5) Petitioner filed appeal before the Appellate Arbitral Tribunal of NSE challenging the Award of the learned sole Arbitrator. The Appellate Arbitral Tribunal has dismissed the

Appeal by Award dated 29 August 2022, which is the subject matter of challenge in the present Petition.

6) Mr. Kamat the learned counsel appearing for the Petitioner would submit that the findings recorded by the learned sole Arbitrator and Appellate Arbitral Tribunal are perverse and patently illegal under Section 34(2B)(ii) of the Arbitration Act. That the claim is awarded solely on the basis of NSE circular dated 10 February 2020 which has absolutely no application while deciding the controversy at hand. That the NSE Circular merely mandated conduct of KYC of inactive account and the circular did not contemplate any effect on brokerage on account of non-conduct of KYC. That the brokerage charged by the Petitioner is as per the terms of contract and that therefore even the NSE circular has no application and it cannot effect the contractual obligation to pay brokerage. He would submit that AMC scheme was admittedly discontinued in case of Respondent and that therefore the Petitioner was entitled to charge default brokerage. It is not the case of the Respondent that the trades were invalid for want of KYC and that transactions be reversed. Thus, execution of trades is not in dispute and that therefore Respondent's obligation to pay brokerage under the contract as a non-AMC member is absolute. That even otherwise, the assumption that Respondent did not transact between 2013 to 2021 is fundamentally wrong as the ledger annexed to the sur-rejoinder before the Arbitral Tribunal clearly indicates active trading by Respondent during 2013 to 2021. That she did not remain inactive for continuous period of 12 months, and the Arbitral Tribunal has ignored the ledgers. Since vital evidence is ignored, the award suffers from patent illegality. That the award is hit by Section 28(3) of the Arbitration Act by making wrongful reference to NSE

circular dated 10 February 2020. Mr. Kamat would accordingly pray for setting aside of the impugned award of the learned sole Arbitrator and of the Appellate Arbitral Tribunal.

7) The Petition is opposed by Mr. Bacchawat the learned counsel appearing for the Respondent. He would submit that the Respondent had reinitiated trading in the F & O Segment after 8 years in May 2021 and was required to give fresh KYC and in-person verification as per NSE circular dated 10 February 2020. Furthermore, as per Clause-8(c) of Annexure-A of SEBI Circular dated 3 December 2009, a broker is mandated to provide option for application of brokerage rate at the time of client registration. That the Appellate Arbitral Tribunal has rightly held that NSE circular dated 10 February 2020 was applicable in the present case and that Petitioner ought to have sought re-KYC and informed the Respondent about applicable brokerage.

8) Mr. Bacchawat would further submit that the Appellate Arbitral Tribunal has rightly held that Petitioner did not terminate AMC contract nor altered/modified the terms of brokerage in writing as per clause-1.7.27 of the original agreement. That text message relied upon by the Petitioner only referred to deactivation of AMC and did not amount to termination of AMC agreement. That in the year 2021, when F & O transactions were reinitiated, Petitioner never called upon the Respondent to pay AMC charges nor demanded past dues. Therefore, Petitioner could not have charged brokerage higher than the brokerage agreed under the AMC contract. That after Respondent complained about higher brokerage charges in September 2021, Petitioner had substantially reduced the brokerage charges in November 2021. He would submit that the

Petitioner is attempting to urge before this Court to reappreciate the evidence. That the Tribunal has taken a plausible view by relying upon evidence and material before it. That there are concurrent findings in favour of the Petitioner by the learned sole arbitrator and Appellate Arbitral Tribunal, which do not warrant interference in exercise of power under Section 34 of the Arbitration Act. He would pray for dismissal of the Arbitration Petition.

9) Rival contentions of the parties now fall for my consideration.

10) Respondent is a client and trading member of the Petitioner who is a stock broker, inter-alia registered with NSE. Respondent opened her trading account with the Petitioner in September 2007 and executed various agreements and documents, copies whereof are placed on record. Petitioner had apparently given options to its clients for charging brokerage rates. Clients could opt for AMC scheme by paying fixed AMC charges of Rs.6,000/-per annum. The reduced brokerage for AMC scheme account was as under:-

i. Cash-First Leg -0.05% or min 5p and Delivery - 0.25% or 5p

ii. FNO - First Leg -0.05% or min 1p and Next day 0.05% or 1p

11) For non-AMC scheme account, the usual brokerage charges were payable. The respondent signed the AMC form and paid Rs.6,000/- on 23 September 2007. She continued paying AMC charges until the year 2013 and availed the benefit of reduced brokerage charges. From 2013 onwards, Respondent failed to pay the AMC charges and according to the Petitioner, her AMC contract came to an end. It appears that Respondent was sent text messages

for renewal of AMC scheme by paying AMC charges of Rs.6,000/- on 30 September 2013 (two messages) and 7 October 2013. On 19 October 2013, following text message was sent to the Respondent

‘AMC scheme of Rs.6,000/- has been DEACTIVATED in your A/C W-445236 w.e.f’.

The Respondent was thus given a clear notice that the AMC scheme was deactivated. There is debate between parties about the activity in the account of the Respondent during 2014 to 2021. However it appears that Respondent was not very active in executing trades in her account during that period. In the year 2021 Respondents resumed her trading activities, especially in F&O segment. She effected several F&O transactions, on which Petitioner has charged normal brokerage and not reduced brokerage under the AMC scheme.

12) In the light of the above factual position, the short issue that arises for consideration is whether the Respondent is entitled to the benefit of reduced brokerage under AMC scheme or was liable to pay full and regular brokerage to the Petitioner.

13) GRC dismissed the complaint of Respondent by order dated 10 December 2021 by holding as under :-

7.The TM has renewed arrangement in May 2021, on normal terms unlike the AMC arrangement which the complainant had with the TM in the past. As per the normal terms the rate card which is available at the website of the TM applies for all the trade executed in the F&O segment. The TM has also explained the circumstances which will appear as the case of high brokerage as applicable within the given regulated framework of F&O segment.

14) The GRC thus held that Respondent renewed the arrangement in May 2021 on normal terms (non-AMC arrangement) and that the normal brokerage charges as per the rate card published on the website was applied to the transactions. This is how the claim of the Respondent was rejected by the GRC.

15) When the dispute reached before the learned sole Arbitrator, the learned sole Arbitrator took notice of NSE circular dated 10 February 2020. By that Circular, it was directed that the client who had not traded continuously for a period of 12 months, his/her account needs to be tagged as 'inactive'. The learned sole Arbitrator held as under:-

24. As The statement of the respondent for default brokerage to be charged in absence of specific brokerage is not correct as the respondent on one side say that the member client agreement of September 2007 was in place for the trade carried out in May 2021 onwards where the tariff were specified, then he has to agree what is mentioned in that agreement of 2007.

25. The statement of respondent "We further state that there is no process of fresh KYC / new document in present case and the terms agreed by the applicant during the account opening is binding upon the client throughout the period till the termination of the said agreement." Is far from the truth considering the Circular reference no NSE/INSP/43488 issued by the National Stock Exchange dated 10.02.2020 which specifically states that the client not traded continuously for a period of 12 months, the trading member has to tag this client as "Inactive" and while allowing the same client for trading after a lapse of 12 months, trading member need to take fresh documents as stated in circular. This fact has not been stated by the respondent and to that extent respondent did not offer any explanation.

26. The clauses referred by the respondent has no relevance considering the non-compliance as per circular mentioned above for new KYC of applicant since it became inactive or dormant for non-trading continuously for more than 12 months.

27. It is also important to note that respondent's own statement of "There is no case of excess brokerage being charged" and statement made at IGRP "however it may appear that brokerage in excess of 2.5% has been charged in few cases, though within prescribed regulations are contrary to each other.

28. The contention of the respondent with reference to circular dated 10.02.2020 and their inability to map inactive client did not happen due to pandemic situation 2020, is far from truth as the actual pandemic situation started in India only after 20th March 2020 and not before that. Hence it is clear case of non-compliance by respondent.

29. Lastly it is important to understand the circular referred by the applicant dated 10th February 2020 which states as under:

A. As Definition of Inactive Trading accounts: In case of trading account, the term inactive account refers to such account wherein no trades have been carried out since last 12 (Twelve) months across all Exchanges. In this case respondent on their own states that client discontinued trading from 2012 and started in May 21

B. Transaction in Inactive Trading accounts: The inactive accounts identified based on the above criteria shall be flagged as 'Inactive' by the Trading Member in UCC database of all the respective Exchanges. In this case respondent have miserably failed to identify the client as inactive

C. The Members are also required to ensure that any further trading by such client should be allowed only after undertaking sufficient due diligence (including IPV) and obtaining the updated information related to KYC from the concerned Client. In this case no IVP or updated information related to KYC obtained by respondent

D. Appropriate disciplinary actions may be initiated in case of any trades are executed in any account flagged as 'Inactive'. In this case respondent failed to tag this account as Inactive

E. All trading members are advised to upload correct status of the client code in the UCC database of the Exchanges prior to the execution of the trades. In this case respondent failed to upload correct status of applicant on 10th February 2020 and allowed applicant

to carry trading activities from May 21 without taking required documents and IPV.

30. It is also important to note that the applicant while considering the difference between the brokerage as per agreement of 2007 did not consider the AMC of Rs 6000, however the respondent neither objected to the calculation given by the applicant nor claimed the AMC of Rs.6000 per year and hence the claim of the applicant is accepted in full.

16) Thus, by solely relying on NSE Circular dated 10 February 2020, the learned sole Arbitrator proceeded to allow the claim of the Respondent in the sum of Rs.4,87,513/-. The learned sole arbitrator has utilized the NSE circular dated 10 February 2020 for the purpose of rejecting the defence of the Petitioner that after resumption of trading activities in the year 2021, Respondent continued to be governed by the terms of conditions applicable at the time of opening of the account in the year 2007. The learned sole arbitrator expected Petitioner to classify the account of Respondent as 'inactive' and undertake fresh KYC exercise when she resumed trading post issuance of NSE Circular dated 10 February 2020 and to offer her fresh options for choosing the brokerage.

17) In Appeal preferred by the Petitioner before the Appellate Arbitral Tribunal, it has held that the findings recorded by the learned sole Arbitrator about applicability of NSE Circular could not be found fault with. The Appellate Arbitral Tribunal has held as under :-

c) The short point of dispute is only on account of increased brokerage charged by the Appellant on the Respondent's trades in F&O segment from May 21, 2021 to November 03, 2021, basis the plea that AMC arrangement which the Respondent had with the Appellant since 2007 had expired in 2012 and default brokerage rate at a higher rate of 2.5% was made applicable to her trades since then. It is, however, strange that the Respondent realized the higher brokerage charges only in September 2021 i.e., 4 months after commencing the F&O trades by her online in May 2021.

d) The Appellant has in its Appeal Memorandum stated that the Respondent had re-initiated trades in F&O segment during May 2021 after 2012 and no fresh KYC documents were executed while commencing trades in May 2021, except calling for income proof documents and taking them from the Respondent. Although the Appellant has contended that the account was never inactive or dormant during the period of 12 months prior to the NSE circular dated 10/02/2020 and as such no need to categorize/map the account of the Respondent as inactive or dormant as required in NSE's aforesaid circular.

However, since there was no trade in F&O segment from 2012 to May 2021, it cannot be ascertained which trades were carried out between 2012 and 2020 in cash segment/capital market segment. The Respondent, an online constituent, has stated that she did not do any business between the aforesaid periods. **We are, therefore, of the considered view that the applicability of the NSE circular dated 10/02/2020 to the Respondent's trading account and default of the Appellant to treat /flag it as inactive or dormant account as observed by the Ld. Sole Arbitrator in the impugned Award and his decision thereon cannot be faulted by the AAT. We also concur with the views of the Ld. Sole Arbitrator that the Appellant should have taken updated information related to KYC including brokerage from the Respondent before starting trades in May 2021 as required by NSE circular dated 10/02/2020, instead of continuing with the old KYC executed by the Respondent in 2007.**

e) The Appellant had extended the lower brokerage charges of 0.1% under AMC scheme through its KYC on September 25, 2007, it did not terminate the arrangement of AMC scheme through a contract/agreement or exchange of letters specifically instead of by way of SMS. It did not alter / modify the terms of brokerage in Writing as per clause 1.7.27 of the Agreement between Stock Broker and client, which is at pg. 35 of the Memo of Appeal. It is, therefore, normal on the part of the Respondent to assume that the old AMC rates of brokerage were applicable in her case post-May 2021 as well.

f) We have gone through the calculations and supporting statements thereof of the claim of Rs.4,87,513/- preferred by the Respondent and observe that it is only the difference between the brokerage as per the Member Client Agreement (KYC Document) of September 2007 and the brokerage actually charged by the Appellant after 21/05/2021 and till 03/11/2021. We observe that the Ld. Sole Arbitrator has conceded the Respondent's claim based on these statements and calculations and on the basis that higher brokerage cannot be charged. We therefore do not have any reason to question the decision of the Ld. Sole Arbitrator and thus, agree with the same

(emphasis and underlining added)

18) Thus, the NSE Circular dated 10 February 2020 is relied upon both by the learned sole Arbitrator as well as by the Appellate Arbitral Tribunal for award of claim in favour of the Respondent. It would therefore be apposite to consider the exact effect of NSE circular dated 10 February 2020.

19) Circular dated 10 February 2020 is issued by the NSE, in joint consultation with other exchanges, for the purpose of framing of policy for treatment of inactive accounts for ensuring uniformity across all members. The relevant part of NSE Circular dated 10 February 2020 reads thus :-

To All Members,
Sub: Treatment of Inactive Trading account

This has reference to the NSE circulars no. NSE/INSP/13606 dated Dec 03, 2009 and NSE/INSP/14048 dated Feb 03, 2010 regarding Dealings between trading members & their clients wherein members were required to frame policy of treatment of inactive accounts and implement the same.

In order to provide guidelines regarding treatment of inactive account and ensure uniformity across all the members, the following guidelines, framed in joint consultation with other Exchanges, are being issued:

1. Definition of Inactive Trading accounts: In case of trading account, the term inactive account refers to such account wherein no trades have been carried out since last 12 (Twelve) months across all Exchanges

2. Transaction in Inactive Trading accounts: The inactive accounts identified based on the above criteria shall be flagged as 'Inactive' by the Trading Member in UCC database of all the respective Exchanges. **The Members are also required to ensure that any further trading by such client should be allowed only after undertaking sufficient due diligence (including IPV) and obtaining the updated information related to KYC from the concerned Client.** Appropriate disciplinary actions may be initiated in case of any trades are executed in any account flagged as 'Inactive'.

3. All trading members are advised to upload correct status of the client code in the UCC database of the Exchanges prior to the execution of the trades.

4. Return of Clients assets: Members are required to ensure that all client accounts are settled on monthly or quarterly basis (as per the client preferences) in the manner prescribed from time to time.

In case a member is unable to settle the client accounts due to non-availability of client's bank account and demat account details and non-traceability of client, Members are advised to make all efforts to trace the clients to settle their funds and securities lying with them and maintain an audit trail for such efforts made for tracing such clients and settling funds and securities of such clients.

Further in cases where Members are unable to trace such clients in spite of all efforts taken, members are directed to take the following steps:

- i. Open one separate Client Bank/Client collateral Demat account and immediately set aside the funds and securities of these clients in such account.
- ii. Maintain audit trail of UCC wise client funds transferred to/from such bank account and UCC wise/BO ID wise securities transferred to/from such demat account (as the case may be).
- iii. Submit UCC wise/BO ID wise and fund/securities information of such account to the Exchange on quarterly basis. The mechanism and the format of the same will be shared in due course.
- iv. In case of receipt of any claims from such clients, members are advised to settle the accounts immediately and ensure that the payment/delivery is made to the respective clients only.

5. Reporting of client Funds & Securities: Henceforth, Members will not be required to upload the details of such inactive clients having NIL balances in their weekly submission of securities holding to the Exchange as prescribed in NSE Circular NSE/INSP/40743 dated April 12, 2019 and NSE/INSP/41711 dated July 25, 2019 and monthly upload of client funds and securities balances to Exchange under Enhanced Supervision prescribed in NSE Circular NSE/INSP/33276 dated September 27, 2016, NSE/ISC/2017/35268 dated July 3, 2017 and NSE/ISC/36817 dated January 24, 2018. However, details of clients having funds or securities balances shall be reported even if their UCC has been flagged as 'Inactive'.

Members are requested to take note of the contents of the circular and ensure compliance of the same with immediate basis.

(emphasis added)

20) Thus, all that NSE Circular dated 10 February 2020 directs is to classify a trading account remaining inactive for 12 months to be 'inactive account'. The Circular directs that the Members are also required to ensure that any further trading be allowed only after undertaking sufficient due diligence (including IPV) and after obtaining the updated information related to KYC from the concerned client. The circular thereafter provides guidelines for taking actions in respect of inactive trading accounts. The Circular dated 10 February 2020 does not, in any manner, deal with the rate at which brokerage needs to be charged by the brokers in respect of the transactions effected by the trading members.

21) The learned sole arbitrator has criticized Petitioner for not classifying Respondent's account as inactive in terms of Circular dated 10 February 2020. Though the findings recorded by the learned sole Arbitrator require some efforts to comprehend the same, what can be gathered from those findings is that the learned sole Arbitrator has rejected the defence of Petitioner about applicability of terms and conditions of 2007 Agreement on the ground that the account needed to be reactivated in 2021 by seeking fresh KYC documents as per the 10 February 2020 circular.

22) Coming to the Award of the Appellate Arbitral Tribunal, it has proceeded to concur with the findings of the learned Arbitrator relating to violation of NSE circular dated 10 February 2020 by the Petitioner. The Appellate Arbitral Tribunal has held that

the lower brokerage charges under the AMC scheme through KYC of 25 September 2007 was not terminated by the Petitioner. It is held that Petitioner did not address a letter of termination but merely sent a text message. The Appellate Arbitral Tribunal has accordingly held that Petitioner did not alter/modify the terms of brokerage as per clause-1.7.27 of the agreement between stock broker and client.

23) Thus, there appears to be apparent contradictions in the findings recorded by the learned sole Arbitrator and Appellate Arbitral Tribunal. While the learned sole Arbitrator has held that the contractual clauses were rendered ineffective due to failure to seek fresh KYC documents in respect of inactive account, the Appellate Arbitral Tribunal has held that the clause of charging concessional brokerage continued to operate due to failure of the Petitioner to terminate the same. This apparent contradictions in findings recorded in the two awards is clear from the following comparative chart:

Findings of Sole Arbitrator	Findings of Appellate Arbitral Tribunal
The clauses referred by the respondent has no relevance considering the non-compliance as per circular mentioned above for new KYC of applicant since it became inactive or dormant for non-trading continuously for more than 12 months.	It did not alter / modify the terms of brokerage in Writing as per clause 1.7.27 of the Agreement between Stock Broker and client, which is at pg. 35 of the Memo of Appeal. It is, therefore, normal on the part of the Respondent to assume that the old AMC rates of brokerage were applicable in her case post-May 2021 as well.

Thus, the two Tribunals have recorded contradictory findings *qua* operation of clauses of 2007 Agreement in respect of trades executed by Respondent in 2021. Be that as it may. Ultimately, the learned sole Arbitrator and the Appellate Arbitral Tribunal appear to be *ad idem* that the Petitioner ought to secured fresh instructions

regulating brokerage from the Respondents before permitting her to commence trading activities in the 2021.

24) In my view, the above finding recorded by the learned sole Arbitrator and Appellate Arbitral Tribunal about need to secure fresh instruction (meaning execution of fresh contract) governing brokerage before permitting trades in 2021, is against most basic notions of justice and in conflict with the public policy of India. Indian law does not permit contract to operate for one purpose and not for the other. The contract is held valid for legitimizing the trades but is held illegal for charge of brokerage.

25) The learned sole Arbitrator and the Appellate Arbitral Tribunal have adopted non-judicious approach by using the NSE Circular providing for classification of inactive accounts and for seeking fresh KYC documents for freeing up the Respondent from contractual obligations under the 2007 Agreement executed by her. The NSE circular of 10 February 2020 has no co-relation with the liability of client to pay brokerage. If the broker has acted contrary to the circular by letting the client to effect trades without seeking fresh KYC documents, the broker could be subjected to disciplinary action. However, to hold that classification of account as 'inactive' would bring to an end the contractual obligations between Petitioner and Respondent is too farfetched and illogical. The finding recorded by both the Tribunals would then throw the trades effected by Respondent without any contract with the broker, which position is impossible to accept. Thus, what the Tribunals have done is to accept the contractual relation between Petitioner and Respondent for the purposes of legitimizing the trades, but when it comes to paying

brokerage under the same contract, the tribunals have treated the very same contract void.

26) As observed above, permitting trades in respect of account supposed to be classified as 'inactive' may invoke disciplinary action against the broker as envisaged by the circular dated 10 February 2020. But how it can have any effect on the liability of Respondent to pay brokerage is incomprehensible. It is not that the trades effected in the account of Respondent, which was supposed to be classified as inactive, are sought to be reversed. They are thus treated as legitimately effected trades. Brokerage on such trades is also held to be payable. But the learned sole Arbitrator and the Appellate Arbitral Tribunal have held that the brokerage would be concessional as per the AMC scheme and not at normal rates. The alleged irregularity committed by Petitioner in permitting trades in the inactive account without seeking fresh KYC documents is sought to be confused with the brokerage rates payable to the Petitioner. The NSE Circular dated 10 February 2020 has absolutely no application to the issue at hand. Therefore, the findings recorded by the learned sole Arbitrator and the Appellate Arbitral Tribunal suffer from the vice of patent illegality. Both the tribunals have recorded findings based on such inapplicable circular, which no fair-minded person would ever record.

27) The learned sole Arbitrator and the Appellate Arbitral Tribunal have not bothered to apply their mind to a very simple contractual arrangement, where Respondent was given an option of choosing to pay lower brokerage charges by paying fixed AMC charges of Rs.6,000/- p.a. or to opt for regular brokerage charges. Thus in lieu of receipt of yearly charges of Rs. 6000/-, Petitioner

offered to charge lower brokerage rates. Payment of AMC charges of Rs. 6000/- was thus condition precedent for charging of lower brokerage charges. The scheme of brokerage rates offered by the Petitioner was such that trading member engaging in larger volume of trades would find it cheaper to pay yearly AMC charges of Rs. 6,000/- and lower brokerage charges than another trading member indulging in smaller volume of trades, who may find it cheaper to opt for regular brokerage charges. In the present case, Respondent opted for lower brokerage charges by agreeing to pay AMC charges of Rs. 6000/- p.a.. Thus, under the option exercised by the Respondent in the year 2007, Petitioner was compensated in the form of fixed yearly charges of Rs. 6,000/- in lieu of charging brokerage at lower rates. The agreement for charging lower brokerage rates was premised on and conditional upon payment of consideration fixed at Rs.6,000/- p.a. The moment trading member stopped paying fixed AMC charges of Rs.6,000/- p.a., the account would automatically get converted to regular brokerage charges. In this regard, it would be apposite to reproduce the AMC Form signed and submitted by the Respondent:

	Table A		Table B	
Scheme Type	Brokerage Rate (for AMC Scheme Account)		Brokerage Rate (for NON-AMC Scheme Account)	
AMC	AMC RS.6000 p.a.		NIL	
Account Opening Charges (one time)	Speed Trade A/c Rs. 1000 Classic Account Rs. 750 Offline Account		Speed Trade A/c Rs. 1000 Classic Account Rs. 750 Offline Account	
	Percentage	Min Paisa	Percentage	Min Paisa
Cash Segment				
Trading				
First Leg	0.05%	05p		
Second Leg	NIL	NIL		
Delivery				

Delivery Brokerage	0.25%	05p		
Other charges Cash Segment (Trading and Delivery)				
Stamp Duty	Y	Y	Y	Y
Turnover Tax	Y	Y	Y	Y
Service Tax	Y	Y	Y	Y
Default Brokerage				
Futures & Options Segment				
First Leg	0.05%	01p		
Second Leg (same day)	NIL	NIL		
Next Day	0.05%	01P		
Other charges F & O Segment				
Stamp Duty	Y	Y	Y	Y
Turnover Tax	Y	Y	Y	Y
Service Tax	Y	Y	Y	Y
Default Brokerage				

Min brokerage as prescribed by SEBI will be charged in the options segment.

I/ We hereby confirm that I/we have understood and willing to subscribe AMC Scheme Non AMC scheme offered by Sharekhan. I/ We am/are aware that in case of AMC scheme, the initial amount of AMC will be paid separately me/us and from the 2nd year onwards it will be debited to my our account. The AMC once debited is non refundable This AMC by will be adjusted (to the extent of the AMC amount paid by me/us), on a monthly basis, against the brokerage earned by Sharekhan through the trades done in my/our account. **I/We understand that I/We can opt out of the AMC Scheme and in that case the scheme mentioned in Table B will be automatically applicable to my/our A/c.**

I/We confirm that Sharekhan reserves the right to extend or discontinue the schemes & In case of continuation of scheme the AMC may differ from the original amount offered by Sharekhan.

In case Sharekhan discontinues to offer the AMC scheme or **I/we opt out of the scheme, the rates mentioned in Table B will be applicable** my trades with Sharekhan. Sharekhan reserves all rights to amend the scheme by giving 30 days notice and will be binding on me us,

Kindly find enclosed my cheque of Rs 6000/- towards the AMC scheme. The cheque number is 49545 and is drawn on HDFC Bank.

Name of the Client: DARSHINI BHARAT SHAH

Date: 23/09/07

28) However, the learned Sole Arbitrator and the three-member Appellate Arbitral Tribunal have apparently not even

bothered to read specific undertaking given by the Respondent that she would be charged brokerage in Table-B on opting out of the AMC scheme. The 'opting out' could not necessarily be an active or positive act of communicating that the AMC scheme be discontinued. It could also be implied. 'Opting-out' would kick-in immediately the moment there is failure to pay the AMC charges of Rs. 6000/- per year. The AMC Scheme provided for deduction of yearly AMC charges at Rs. 6000/- from the account of the Respondent. However, in the present case, there was no sufficient balance in the account of the Respondent for deduction of the AMC charges. With non-payment of AMC charges, the scheme got automatically discontinued and it was not necessary to give any intimation to the Respondent regarding discontinuation of the AMC scheme. In fact, if Respondent wanted the AMC Scheme to be continued, she ought to have paid the AMC charges by writing to the Petitioner. Once there was failure on the part of the Respondent to pay the AMC charges, the responsibility of communication fell on Respondent and not on Petitioner. Nonetheless, Petitioner send text messages to the Respondent intimating her that the AMC scheme was discontinued.

29) Both the Tribunals failed to appreciate the factum of existence of two distinct contracts between the parties. The account opening contract was a distinct contract than the contract for payment of reduced brokerage charges. While the "Agreement between stock broker and client" continued notwithstanding non-payment of AMC charges by Respondent, the distinct contract of 'AMC' (envisaging charging of lower brokerage rates) came to an automatic end on account of failure on the part of Respondent to perform her part of contract by paying the AMC charges. Failure to secure fresh KYC documents in 2021 may impact the former

contract, but certainly not the latter. In any case, even the former contract is not actually affected as the trades are treated as legitimate. The Circular merely contemplated initiation of disciplinary action against the brokers. The latter AMC contract had no impact on account of failure to classify the account as 'inactive' and failure to secure fresh KYC documents as the scheme of concessional brokerage has already come to an end. The effect of the findings recorded by the Tribunals is that failure to secure fresh KYC documents has revived the AMC contract, which had expired on account of non-payment of KYC fees by the Respondent. thus the findings recorded by the Tribunals has resulted in an absurd situation and an element of patent illegality has crept in.

30) The Appellate Arbitral Tribunal has erred in expecting the Petitioner to give written communication to the Respondent for deactivation of AMC scheme. There is no contractual stipulation requiring written communication of termination of AMC Scheme upon failure by client to pay the AMC charges. Such communication would be necessary if the Scheme was to be discontinued from Petitioner's end. So far as Respondent is concerned, she was fully aware that the lower brokerage option would subsist only so long as she paid the AMC charges. The moment payment of AMC charges stopped, the lower brokerage option came to an end, not requiring any written communication of termination by Petitioner. Therefore, the Appellate Arbitral Tribunal has erred in recording a perverse finding that *'It is, therefore, normal on the part of the Respondent to assume that the old AMC rates of brokerage were applicable in her case post-May 2021 as well'*. In recording that finding the Appellate Arbitral Tribunal has rewritten the terms of contract between the parties and has foisted a new commercial bargain on the parties. The

Awards therefore falls foul of ratio of judgments in PSA Sical Terminals Private Limited Versus Board of Trustees of V.O.Chidambranar Port Trust Tuticorin And Another¹ and Ssangyong Engg. & Construction Co. Ltd. Vs. NHAI²

31) As a matter of fact, even sending of text message by the Petitioner was not necessary as the AMC scheme envisaged charging of brokerage at reduced rates in consideration of trading member paying fixed annual charges. The moment the consideration of fixed AMC charges is not paid, the scheme of reduced brokerage rates is automatically discontinued. Respondent is not an illiterate person. She has traded from time to time in F&O contracts. It is therefore difficult to accept that she did not understand a simple contractual arrangement of charging lower brokerage subject to payment of AMC charges. Her expectation of being charged concessional brokerage despite her own fault in not paying the AMC charges was clearly misplaced. After having not paid the AMC charges for about 8 long years, the onus was on her to verify the applicable brokerage charges before venturing into the trading activity.

32) In my view therefore, the Award of the learned sole Arbitrator, as well as of the Appellate Arbitral Tribunal suffer from the vice of perversity. The findings recorded by the learned sole Arbitrator and the Appellate Arbitral Tribunal are in conflict with public policy of India. Their findings are in ignorance of the contractual clauses. They have failed to appreciate that Respondent did not pay AMC charges from 2013 onwards and

¹ (2023) 15 SCC 781

² (2019) 15 SCC 131

expected the Petitioner to charge reduced brokerage rates which were applicable only under the AMC scheme. The expectation by the Appellate Arbitral Tribunal of sending written communication in place of text message for deactivation of AMC scheme is also in conflict with the most basic notions of justice. Respondent had requisite notice (through text messages) in the year 2013 itself that her AMC account was deactivated. She took the calculated risk of trading transactions in F & O segment with full knowledge of the fact that brokerage at normal rates would be charged to her due to deactivation of AMC scheme. Respondent being a knowledgeable person, had signed the AMC form by paying cheque of 6,000/- with full knowledge that if she failed to pay the AMC charges, and thereby opted out of AMC scheme, brokerage mentioned in Table-B would automatically apply to her account. She knew very well that the AMC charges for 8 long years were not paid by her and therefore her expectation of Petitioner charging concessional brokerage rates was clearly unwarranted.

33) The Tribunals have erroneously expected Petitioner to demand deduction of unpaid AMC charges from Respondent's claim amount. This is clear from the following finding of the learned sole Arbitrator:

It is also important to note that the applicant while considering the difference between the brokerage as per agreement of 2007 did not consider the AMC of Rs 6000, however the respondent neither objected to the calculation given by the applicant nor claimed the AMC of Rs.6000 per year and hence the claim of the applicant is accepted in full.

The above finding again indicates complete non-judicious approach of the learned sole Arbitrator. The learned sole Arbitrator thus had

held that the Respondent had the option of not paying the AMC charges for 8 long years and after incurring the higher brokerage charges, to conveniently demand that the AMC scheme be reactivated by charging the due AMC charges for 8 years in 2021. The expired AMC contract could not be reignited unilaterally by the Respondent, that too after discovering that the trading activity indulged by her had resulted in higher brokerage charges. It is another thing that the learned sole Arbitrator has not deducted the AMC charges for 8 years while offering on the platter the benefits of the AMC scheme to the Respondent. Thus, the findings recorded by the learned sole Arbitrator as upheld by the Appellate Arbitral Tribunal is so irrational that no fair-minded person would have recorded the same.

34) The conspectus of the above discussion is that the Awards of the learned sole Arbitrator, as well as, of the Appellate Arbitral Tribunal are egregiously perverse and unsustainable. They are liable to be set aside. The findings recorded by both the Tribunals are contrary to specific contractual clauses agreed between the parties and therefore the findings are in teeth of provision of sub-section (3) of Section 28 of the Arbitration Act. Petitioner has thus made out a case for setting aside the Arbitral Awards which are found to be in conflict with public policy of India. The Arbitral Awards of the learned Sole arbitrator and of the Appellate Arbitral Tribunal are thus indefensible and liable to be set aside.

35) Since the Award is being set aside, in ordinary course, this Court would have been justified in awarding costs of arbitration in favour of the Petitioner. However, considering the fact that the Petition is aimed more at preventing fastening of similar liability in

other cases, rather than escaping the relatively insignificant financial implication for Petitioner, I deem it appropriate not to award costs against the Respondent.

36) The Arbitration Petition accordingly succeeds. The Award dated 26 April 2022 passed by the learned sole Arbitrator as well as the Award dated 29 August 2022 passed by the Appellate Arbitral Tribunal are set aside.

37) The Arbitration Petition is **allowed** in above terms. There shall be no order as to costs. Interim Application is rendered infructuous and the same is disposed of.

[SANDEEP V. MARNE, J.]