

For MARATHA SAHAKARI BANK LTD.

MRS. S. S. SAWANT
Authorised Signatory

MARATHA SAHAKARI BANK LTD
196, MATUSHREE APTS. M V ROAD
ANDHERI (EAST)
MUMBAI - 400 069

D-5/STP(V)/C.R./1099/01/10/802-05/10

भारत 45167
171201



SPECIAL
ADHESIVE

महाराष्ट्र

AUG 08 2013

2870 2870 2870 2870 000 2870 2870

15:12

Rs. 0000100/- PB7014

INDIA

STAMP DUTY

MAHARASHTRA

IN THE MATTER OF ARBITRATION AS PER THE BYE LAWS, RULES
AND REGULATIONS OF MCX STOCK EXCHANGE LTD., (MCX-SX)

REGIONAL ARBITRATION CENTRE, MUMBAI

BEFORE THE SOLE ARBITRATOR, MR. NARENDRA J. MEHTA

ARBITRATION MATTER NO.: MCX-SX CCL/ARB/MUM-01/2012

BETWEEN

M/s. Hrim Finance and Securities Pvt. Ltd.

.... Applicant

(Trading Member- MCX-SX)

AND

M/s. Globe Capital Market Ltd.

.... Respondent

(Clg. Member - MCX- SX)

STATEMENT OF CASE OF THE APPLICANT

1. This is an Arbitration reference submitted to me under the Rules, Bye-laws and Regulations of the MCX Stock Exchange Limited (referred to hereinafter for the sake of brevity as 'MCX-SX').
2. The Applicant is a constituent (also member of MCX-SX) of the Respondent and respondent is a Share and Stock Broker and a Trading cum clearing Member of the 'MCX-SX'.

Hearings:

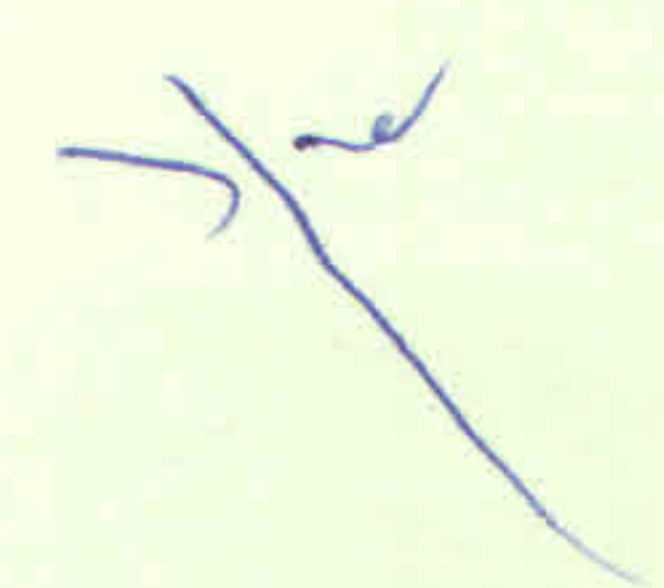
3. The hearing of the matter took place on April 22, 2013 & July 16, 2013. The Applicant was represented by Mr. Hitesh Daga, director of the company and Mr. Rajesh Khandelwal Advocate & respondent by Shri Pawan Kumar Hira legal and compliance officer.
4. On the first hearing on April 22, 2013 both parties requested for adjournment as they were of opinion that they are likely to reach to the settlement amongst themselves and hence the matter was kept for hearing on July 16, 2013 by giving parties sufficient time for settlement and also sufficient time was allowed to the respondent to file reply in case settlement is not reached to their satisfaction. The matter was to be finally adjourned to July 16, 2013 with specific direction for hearing.
5. The Exchange submitted the additional representation of the respondent in writing; which was submitted by the respondent on day before hearing (i.e. 15th July 2013). The tribunal already directed both the parties on April 22, 2013 to file all submission on or before May 10, 2013. It was further directed to both the parties that the matter shall be heard on the basis of the documents on record on July 16, 2013 and hence no further documents were to be submitted. Upon this the respondent withdrew the submission unconditionally.
6. After respondent's withdrawals of the additional submission; the matter was taken up for arguments on merits and the documents on record as per the minutes of April 22, 2013.
7. On July 16, 2013 parties tried to settle the dispute amongst themselves during the hearing with permission of tribunal and the same was permitted. Both parties were about to settle the dispute; where in respondent requested the tribunal; for adjustment of the award amount to be adjusted against their dues from the applicant in other exchange. The tribunal could not accept the proposal of the respondent for adjustment of the award amount with any other exchange dues as the same is out of the purview of the tribunal.
8. After lengthy arguments from both sides; the tribunal directed both the parties to submit ledger of opponents in their books of accounts up to 31st March 2012 from the disputed period by July

23, 2013. Respondent was further directed to give reasons for non-levy of delay pay in charges from July 08, 2010 to November 22, 2010. However the applicant submitted the details as directed but respondent remained silent and did not submit any documents till dead line; in spite of the facts that MCX-SX has informed them for the same in addition to the minutes of the meeting dated July 16, 2013.

9. The respondents were delivered the minutes of July 16, 2013 by the Exchange, in spite of the presence of their legal and compliance officer as he refused to sign the same.
10. Since the reference is for the transaction charges charged on the transactions; which took place on the floor of the stock Exchange; the application of the applicant is well within The Rules, Regulations and bye laws of MCX-SX stock exchange and hence under the purview of arbitration. The application is within time.

The applicant in their statement of case, briefly, submitted and stated that:

11. They entered into an agreement with the Clearing cum Trading Member on 28th April, 2010.
12. They were initially clearing their trades from IL&FS Securities Services Limited (ISSL) since 2008 and they were paying fees of Rs.100000 per month for two exchanges namely NSEIL and MCX-SX. ISSL was providing interest on cash components of margin money deposited by them
13. The respondent approached them in April 2010 and requested them to open an account with respondent and in turn respondent will levy lesser charges than levied by ISSL. Respondent also wanted to increase their share for currency derivative segments aggressively in the market and hence the requested applicant to open account. Respondent stated that it shall charge clearing fees of Rs.10 per crore on traded value in currency future and option, which would further be subjected to maximum of Rs.50000 per month per exchange.



14. The summary of the terms and conditions offered by the Respondent was:

- a. Rs.10/- per crore on the traded value in futures and option in the Currency Derivatives Segment subject to a maximum of Rs.50,000/- per month per exchange.
- b. No other charges to be levied.

15. The Respondent further assured that no other charges viz. the penalty charges, late pay-in charges, bank guarantee charges, fixed deposit charges, demat charges, collateral charges for securities would be levied from applicant.

16. Several conditions offered by respondent were beneficiary as compared to ISSL and hence obtained no objection letter from ISSL to shift its business to the Respondent.

17. That the Respondent

- a. Never used to send any ledger of the Applicant and never raised any bills regarding its clearing fees upon the Applicant.
- b. The Respondent for the first time somewhere in the month of January, 2011, informed the quantum charges levied by the Respondent since July, 2010 till December, 2010 for all the segments of all the Exchanges.

18. That they were shocked to know the quantum of the exorbitant and unjustified charges levied by the Respondent which was contrary to the agreed terms between the Respondent and us. The Respondent orally informed to us that the Respondent's back office officials inadvertently did not apply the agreed clearing fees tariff on our account and accordingly levied wrong charges upon us, which was assured to be reversed immediately by the Respondent. However the Respondent partly reversed charges after repetitive follow ups, but the major charges were not reversed. In fact respondent started levy of late-pay-in chares after partial reversal of transaction charges amounting to Rs.243521.12ps.

19. That being aggravated by the respondent we thought of shifting our business back to ISSL step by step after formally requesting the respondent to reverse the wrong charges levied in our account.

20. That on repetitive persuasion by the Respondent, the Applicant shifted its own clearing in the F&O Segment of NSEIL from Self-Clearing to respondent vide agreement dated 4th April, 2011 with condition that the Respondent will immediately reverse the balance excess charges.

21. That after falling prey to the false promises of respondent we decided to shift all our activities and running business, but it was difficult to arrange the huge margin money required for shifting of business to other member. However after termination of F&O segment of NSEIL from respondent, respondent aggravated us by levying additional, unauthorized, unjustified and illegal charges and deliberately disabled our terminal in NSEIL, MCX-SX and USE currency derivatives segment.

22. We therefore pray:

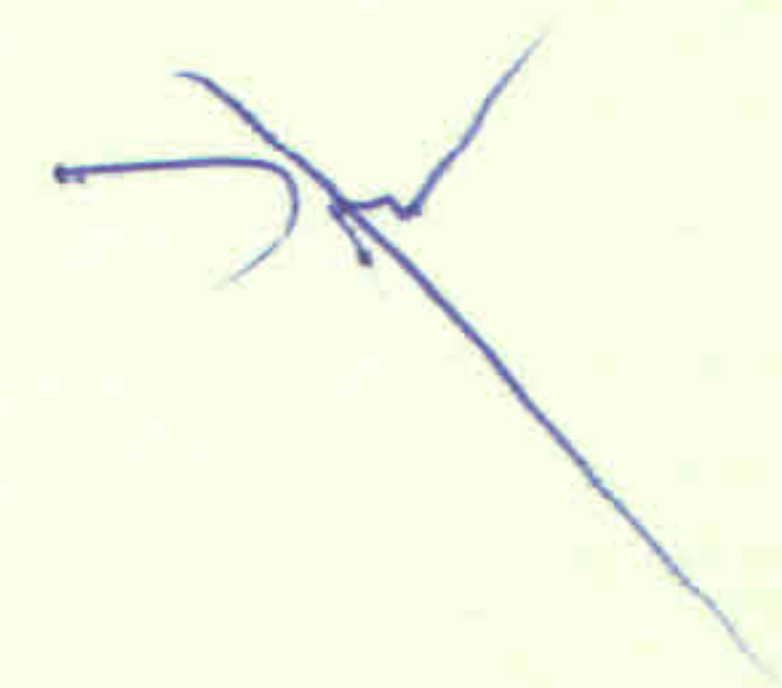
- a. The Learned Arbitral Tribunal be pleased to direct the Respondent to pay the Applicant a sum of Rs.11,72,006.64/- (Rupees eleven lakhs seventy two thousand six and sixty four paise only) along with interest @ 18% p.a. compounded quarterly from February 20, 2013 till the date of realization of the payment by the Applicant;
- b. The Costs of filing Arbitration be provided for;
- c. Any other relief or claim that the Learned Arbitral Tribunal may deem warranted on the basis of the facts of the case for furthering justice;
- d. Any other relief or claim that the Learned Arbitral Tribunal may deem fit and appropriate in the facts and circumstances of the case.

The respondent in their reply for defense, briefly, submitted and stated that:

23. That there Is a preliminary objection as the transaction charges allegedly levied wrongfully by the Respondent in respect of trading conducted by the Applicant in Currency Segments of three Exchanges i.e. National Stock Exchange of India. MCX Stock Exchange Limited (MCX-SX) and the United Stock Exchange of India Ltd. It is herein submitted that the claims arising out of any trading done at Stock Exchange other than the MCX-SX does not fall within the domain of Bye Laws of MCX-SX and such the said

claim is not maintainable before the Arbitral Tribunal constituted under the Bye laws of MCX-SX.

24. That the levy of transactions charges are governed by Clause 2.3 of the Clearing Member-Trading Member Agreement date 28th April 2010 and accordingly the transaction charges which were mutually agreed upon since **commencement of business** by and between the parties hereto were Rs. 20 per one crore. In the last week of October, 2010 it was decided that the said charges would be Rs.50,000/- flat per month irrespective of the Volume/Turnover of trade w.e.f. November, 2010. Since the applicant pleaded to give the said concession for the month of October, 2010 as well, the same was accepted and accordingly excess charges were reversed.
25. That the relationship between the applicant and ISSL has nothing to do with this reference and denied having agreed for lower transaction fees. It further states that there was no agreement in relation to levying of transaction charges as alleged; however the transaction charges were mutually agreed, but it was not inked out and the same was verbal. The Respondent had never assured that no 'other charges' would be levied by him except the Transaction Charges.
26. That all the requisite documents in relation to settlement and margin obligation i.e. financial statements, open position margin statement daily trade details etc were provided to the Applicant on FTP as well as the same were available on the web site of the Respondent.
27. That the late pay in charges was never assured to the applicant and the same have been charged as per circular No. MCX-SX/C&S/3A/2008 dt. October 04, 2008.
28. That the applicant has been suspended from trading as per letter dated 26.02.2013 issued by MCX-SX.



In Rejoinder the applicant further stated that:

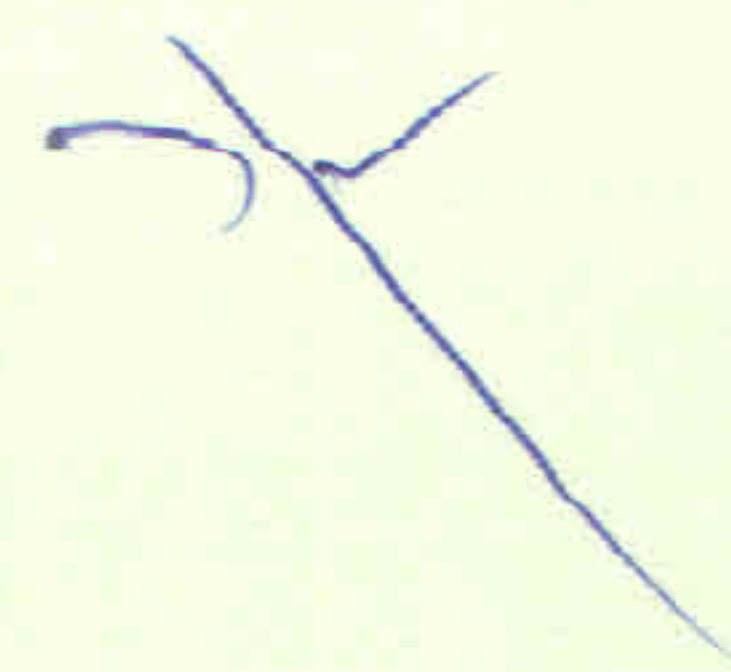
29. The following clauses in Trading Member-Clearing Member agreement and the extract is reproduced as under: *"This agreement shall supersede all previous communications between the Clearing Member and Trading Member with respect to clearing and settlement of deals, both oral or written, and the provision herein contained shall not be omitted, added to, modified or amended in any manner except in writing and signed by both the parties hereof."* And accordingly stated that any agreement has to be in writing only and must be signed by both parties
30. That since the Respondent approached the Applicant with an offer that the Respondent will charge lower clearing/ transaction fees as compared to charges levied by ISSL under the pretext that the Respondent was aggressively trying to increase its Clearing share of the Currency Derivatives Segment. The Applicant states that therefore on the persuasion of the Respondent and based on the following offer, the Applicant shifted its clearing from ISSL to the Respondent:
- a. Rs.10/- per crore on the traded vale in futures and options in the Currency Derivative Segment subject to a maximum of Rs.50,000/- per month per exchange.
 - b. No other charges to be levied.
31. That the contention of the Respondent that Rs.20/- per crore was agreed between the applicant and the Respondent collapses by the very fact that the Applicant was already enjoying a flat monthly fee of Rs.100,000/- across two Exchange with ISSL (effectively Rs.50,000/- per exchange) and would make no sense in shifting the clearing business of the Applicant from ISSL to the Respondent by paying huge charges. The applicant further states that no prudent business of the policy would permit shifting of relationship by paying higher charges and that too by shifting from a reputed Professional Clearing Member (who cannot trade for its own account) like ISSL to Respondent.
32. That the Respondent till date has not been able to provide the reasons and computation of the late pay-in charges allegedly debited by them since the said levy are unauthorized and illegal charges and on an ad-hoc basis; which were wrongly charged without any intimation to us. Applicant further stated that they

provided sufficient margin as required by respondent and hence question of charging late pay in charges does not arise.

33. That the respondent has not justified the levy of unjust, unauthorized and illegal charges under the head 'late pay-in charges' and has further not been able to provide any justification or calculation for the levy of such charges even in the Statement of defense submitted by the Respondent and hence respondent have expressly admitted the claim of the applicant and the prayer of the applicant may be granted.

Respondent in their Sur-rejoinder stated that:

34. All the charges were levied as per the decided terms and conditions i.e. Rs. 20 per crore subject to maximum Rs.50,000/- w.e.f. October, 2010 onward. Before the said month charges were Rs. 20 per crore without any maximum limit. The late pay in charges was charged as per Bye-laws of MCX-SX as well as circulars issued from time to time by it, more specifically the circular No. MCX-SX/C&S/3A/2008 dt. 04 October, 2008. The applicant in their email dt. 17 January, 2011 sent to the Respondent has accepted the same.
35. That all the charges has been correctly calculated according to decided terms and condition and as such no counter calculation is required.
36. That if there were any Issue with regard to levy of transaction charges and/or late pay in charges the applicant would not have added the F&O segment of NSE for clearing with the respondent. It all goes to prove that the applicant is having no issue pending prior to this date and being satisfied with previous charges levied by the respondent. The applicant also made payments and took payouts during 2010-11 without any protest during alleged disputed period
37. That the respondent most respectfully prayed that this Hon. Tribunal would be graciously pleased to dismiss the claim filed by the applicant.



FACTS AND FINDINGS.

38. The claim pertains to transaction charges and delayed pay in charges. It is settled facts that the applicant have shifted their trading activities from IL&FS Securities services limited to the respondent on the agreed verbal terms for transaction charges and other charges; keeping aside terms and conditions of the Member client agreement; which have been accepted by both the parties. However both parties have come out with their version of understanding and hence the application.
39. The applicant prayed that the brokerage charges be levied @Rs.50000 p.m. for MCX-SX transactions and additional amount charged by the respondent may be deleted from July 2010. The applicant also prayed that the delay payment charges may be deleted in toto as agreed verbally. The respondent accepted of brokerage be charged @Rs.50000 p.m. but from October 2010 and not from July 2010; and accordingly they have acted upon. Respondent further stated for levy of penal charges have been admitted by the applicant vide their email dated 17th January 2011 and it is also as per the rules and regulations of the exchange.
40. There is another version of brokerage forwarded by the applicant which states "brokerage be charged @Rs.10 per one crore and Rs.50000 p.m. whichever is less; while respondent have stated that it was Rs.20 per one crore and Rs.50000 p.m. without any maximum limit. However it is important to note that why the applicant started the business with respondent in case respondent is going to charge more than earlier broker (i.e.ISSL)? Any prudent business man (specially trading broker) shall not shift his business to the new broker (person) unless he is benefited from the said shifting.
41. It is important to note that respondent have claimed that the applicant continued to make payments and took payouts during the alleged disputed period; however the fact is the applicant never paid or received the funds after 15th September 2010. This is very important since the dispute for the charges must have started since then. It is important that respondent have accepted and charged transaction fees of Rs.50000 p.m. from October 2010 and or Rs.20 per one crore.

42. It is admitted facts that the applicant were carrying on the business thru IL&FS Securities services limited and to increase the business the respondent approached applicant with better services and charges. The respondent have not denied these facts at any time and hence it is obvious that the respondent approached applicant to increase their business and in turn have agreed for better terms and services than applicant's earlier broker. It is fact that the applicant's portfolio was sizable and any broker would be interested to make applicant as their client and accordingly the respondent approached to the applicant for shifting their business from IL&FS Securities services limited to them. The applicant was one of the top volume driver in currency derivatives segment of this exchange and this fact have been accepted by the respondent since no explanation offered for the same. It is important to understand the circumstances under which the applicant shifted their business from one broker to another.
43. This also can be seen from the action of the respondent as they have started charging Rs.50000 p.m. from October 2010[✓], though there was agreement for such charges and the same were mutually agreed. The important issue is that applicant started the business from July 2010 than why flat amount of transaction fees from October 2010? The applicant stated in their statement of claim that they have shifted from their earlier broker to the existing respondent broker only with a view to save money on transaction fees and other charges.
44. The respondent in their rejoinder stated that they have decided in the last week of October 2010 for charging of Rs.50000 flat brokerage or Rs.20 per crore without any maximum limit. One needs to understand this statement carefully as it is the same respondent who stated that there is no agreement in writing for the levy of the brokerage charges. It is also important to note that any prudence business man shall change the broker if they have to pay less brokerage than what they used to pay. Respondent have stated that the transaction charges have been mutually agreed; however confirms that it was verbal. Considering these facts and circumstantial evidence I hold the contention of the applicant and allow them the amount of brokerage being the difference of the amount of brokerage already charged less chargeable @Rs.50000 p.m. from July 2010. The difference works out to be Rs. 1,59,296.31ps. The amount of fixed transaction charges has been

made applicable considering the circumstantial evidence and in absence of any documents on record and accordingly the difference of transaction charges have been allowed to the applicant. The arguments for rate of transaction charges of Rs.10 per crore or Rs.20 per crore has been dealt with; while announcing this award; since both were verbal terms. This also supports the respondent having agreed on the details of email dated 17th January 2013 which clearly establishes the transaction charges.

45. It is also important to note that the respondent never sent contract notes and ledger balance except on FTP, which was available to the applicant only for some days. It is respondent's duty to send the required documents to the applicant and for that reason respondent failed in fulfilling their duties as broker under the provisions of byelaws of the exchange.

46. As far as delayed charges are concern the same is not trade on the exchange, the same is not an instruction to buy or sell security-option-derivatives nor does it mean that constituent has paid money or given security. These are normally charged by broker to the constituent for providing the finance during the period of operation. However the SEBI as per their circular dated 3rd December 2009 vide their circular no. MIRSD/SE /Cir-19 /2009 stated that ***"Imposition of penalty/ delayed payment charges by either party, specifying rate and the period (This must not result in funding by the broker in contravention of the applicable laws)" This is mandatory document.***

The respondent and the applicant have agreed on the ledger account submitted by the applicant. It was confirmed by the respondent that the delayed payment charges was charged for the first time on 22nd November 2010 and till such time respondent did not charge the delayed payment charges in spite of the debit balance in the account of the applicant. In fact the respondent did not reply to the question asked to them "why they did not charge the delayed payment charges to applicant till 22nd November 2010" and also "why they did not credit the applicant with the same rate of interest on their credit balance from beginning". This means that the delayed payment amount charged by the respondent is not correct and the same is an afterthought. The same is required to be awarded to the applicant in full considering the above. This also means that the applicant is also not entitled to any interest on

their credit balance with the respondent during the whole period except the reversal of delayed payment charged by the respondent amounting to Rs.243521.12ps. I would have permitted the delayed payment charges to the respondent to claim to the extent there was debit balance in the account of the applicant minus Credit balance in the account of any of the members but there is no counter claim by the respondent nor the respondent have given particulars hence I am unable to decide for the same.

47. The award amount is worked out as under:

Transaction charges charged by respondent.	4,59,296.31 ps.
Transaction charges chargeable by respondent	<u>3,00,000.00 ps.</u>
Difference in transaction charges	1,59,296.31 ps.
Add: Delayed payment charges	<u>2,43,521.12 ps.</u>
Total amount	4,02,817.43 ps.

48. The applicant has claimed interest at the rate of 18% per anum which I consider on higher side. I allow the claim of applicant at the rate of 12% per annum only from the date of application and no order as cost. The applicant thus succeeds partially and the following award is passed:

In view of the above, I pronounce award as under:

Award:

- 1) The respondent is directed to pay to the applicant Rs. 402817.43 ps. with interest at the rate of 12 % from the date of application till realization.
- 2) There shall be no order as to cost.
- 3) MCX-SX may retain the stamped original and forward one original to each of the applicant and respondent.

Place: Mumbai

Date: August 10, 2013


Narendra J Mehta