भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

ગુજરાત गुजरात GUJARAT

AP 545917

Before the Appellate Tribunal
Comprising Mr. Viral G. Bhatt, (Presiding Arbitrator)
Mr. Fenil B. Shah, and
Mr. Paresh K. Thothawala

In the Matter of Arbitration under Bye-laws, Rules & Regulations of

MCX Stock Exchange Limited (MCX-SX)
Arbitration No: MCX-SX/APP/(AMD-01)/2014

BETWEEN

Mr. Rohit Chimanlal Patel ...... **Applicant**
51, Goyal Palace, Near Brand Bhagwati.
S. G. Road, Bodakdev, Ahmedabad – 380005

AND

M/s. Religare Securities Limited ...... **Respondent**
D3, P3B, District Center,
New Delhi - 110017

1.0 **Appellate Reference and Submissions**

1.01 This Appellate Tribunal had examined an appeal in the arbitration matter filed by the constituent/the applicant Mr. Rohit Chimanlal Patel against the respondent/the Trading member – M/s. Religare Securities Limited. Memorandum of Appeal was filed on May 25th, 2014.

1.02 The original award was given by an Arbitrator Mr. Divyabhash Chandrakant Anjaria on 4th September, 2014.

1.03 Appellate Hearing – November 18th, 2014

1.04 Appearance

For the Applicant: **Mr. Anish Kharidia authorized representative of Mr. Rohit Chimanlal Patel**

For the Respondent: **Mr. Kaushal Mehta authorized representative of M/s. Religare Securities Ltd.**

1.05 Submissions

Applicant - Oct 10th, 2014 and December 10th, 2014

Respondent - November 7th, 2014 and November 25th, 2014

2.0 Reference to the Appellate Tribunal/Claim of the applicant

The applicant Mr. Rohit Chimanlal Patel the constituent has filed a memorandum of Appeal of counter claim of Rs. 21,67,052.87 (Rupees Twenty One Lac Sixty Seven thousand Fifty Two and Eighty Seven Paise) only against the respondent trading member M/S Religare Securities Ltd.

There is claim from the respondent of Rs.2,86,506.06, which is accepted by the Sole Arbitrator.

3.0 Statement of Claim of Appeal – Grounds of Appeal

The Applicant has preferred an appeal against the arbitral award because

a. In the Applicant's opinion, 'the specifics of crucial references, submissions, evidences, circulars and irregularities referred to during the arbitration proceedings have either not found place in Arbitral Award or not dealt with judicially'.

b. The specific issues/disputes highlighted in the Appeal are

i. Neither the trades nor the claim amount nor the arbitral reference is in compliance of rules, byelaws and regulations of the exchange,

ii. The same are unauthorized, illegal and misuse of client code.

iii. The Contents of the contract note and the outstanding net Dr. / Cr. Are not reconcilable with the amount stated in the ledger.

iv. In absence of initial margin, mark to market margin, maintenance margin, mark to market loss, in-sufficient security to cover the margin requirement as well as outstanding debit balance, inconsistency explained in details with respect to voice chats and transcript, SMS log, contract notes and the trading took place during the period 5th July, 2011 to 29th December, 2011 are not in compliance of rules, byelaws and regulations of stock exchange.

4.0 The Respondent in response has questioned the scope of the appeal and submitted that

a. the Applicant's appeal merely because the Award does not specifically mention all references, submissions, etc. (as in 3 above) is not tenable.

b. on the specific issues raised by the Appellant, the Respondent has submitted that

i. the original award has dealt with this issue; that the KYC, CRA, RDA etc are prescribed by the exchange and that the investor has never specifically disagreed to deal in the derivatives segment.

ii. that there is any discrepancy in the transcript or it accepted any inadvertent error.

iii. that first and foremost amount stated in ledger for transactions should be compared with the bills and not contract note figures. Therefore, the reconciliation between the two documents i.e. contract notes and ledger statement attempted by the Appellant is wrong itself. MTM figures are reflected in bills not contract notes and do not require position to be closed out. MTM is posted even for open positions.

iv. that it was having sufficient margins during the alleged disputed period

5.0 Appellate Tribunal's Observations

5.01 The Appellate Tribunal has taken account of the grounds of appeal by the Applicant, and given the benefit of natural justice to the investor/applicant by re-examining the issues raised by the Applicant and reviewed the Arbitration Award as needed. The Tribunal's observations follow:

a. The Applicant contends that the Arbitrators did not take all evidence into account, and did not deal with it judicially. Hence, the Tribunal has examined the evidence as originally submitted to the Sole Arbitrator that, in the opinion of the Tribunal, was key evidence to determine whether the Applicant's contention is justified and whether the Arbitrator has ignored either the evidence or the underlying issue.

b. Since the applicant's contention on the evidence must relate to the underlying issues, the Tribunal sought to do justice to the underlying issues raised by the Applicant at the Appellate stage; its observations are given below first on each of the issues raised by the Investor/Applicant and responded to by the Trading Member/Respondent:

i. Member Client Agreement

1. The Tribunal enquired during the hearing and confirmed from the Trading Member that applicant has signed and ticked in the both the exchange column; barring any other facts and evidence, imply that the investor's consent to deal in a segment of the market or at a particular exchange.
2. The Tribunal noted the Respondent's contention that even in the absence of the agreement or the investor's signature against the segment where trading was to be carried out, the consent is implied by the later active participation in the trading by the investor as evidenced by the voice transcripts of conversations between the Trading Member Trader/RM and the Client himself)

3. No fresh evidence to the contrary has been submitted at the appellate stage.

ii. Exercise/Assignment Alerts/notes for Losses

1. The Applicant has complained about the absence of all exercise/assignment (of options) for all losses recovered from the investor by the Trading Member. No specific instances have been pointed out.
2. The Trading Member's defense is the same – that the investor was actively participating in trading and was kept aware through voice calls; as also that detail of profit and loss on positions is not an obligatory requirement.
3. The arbitrator's conclusion from the evidence of voice chats is that the investor has left the choice of the exchange and the currency trades to the trading member. Besides, he was aware of the trades even if after execution. The investor had not exercised his right to contest the trades at the time of the voice confirmation, unless any voice recordings are available to indicate such contestation by the investor.
4. The investors has identified and contested specific deals that trades done on 1/11/2011 and 2/11/2011 are unauthorized transactions. The arbitrator has reviewed the ledgers and the voice chats along with trade confirmations evidence produced by the respondent.
5. The arbitrator notes that on both days, the investor was given credits of Rs.1,68,750/- and Rs,1,76,215/- that brought the debit balance in the running account down to Rs.92,022.77. These credits, according to the trading member explanation, represents the mark-to-market amount- in this case receivable by the client – that is the net of all the deals done for the day and reflected on the bill and the contract note.
6. The arbitrator has noted that the balance as of 28/12/11 of Rs.2,85,506.06 represents the cumulative debit balance on the separate MCX SX financial statement from 1st July, 2011. The exchange has confirmed, as required by the Arbitrator, that all these currency trades were executed on its platform, the mark to market loss of Rs.2,85,506.06 becomes payable by the investor.
7. The arbitrator's observation is that Log confirmation of contract notes by email, log of SMS are the evidence for the fact of dispatch of documents and there is no evidence presented by the investor to suggest that the documents are not genuine.
8. The Appellate Tribunal agrees with the observations in the original award based on the evidence seen by the arbitrators.

iii. Unauthorized Logins in client specific user ID.

1. The Applicant as contended that orders were placed directly by the Respondent Trader using the client specific id.
2. The Respondent has clarified that the orders were placed by the trader after talking to the client and obtaining his consent, using the exchange authorized system for permitting client orders to be placed for execution on the Exchange system.

iv. Unauthorized Trades.

a. The Applicant alleges that the orders were placed with unauthorized logins in his account, resultant trades could be considered unauthorized; but no evidence has been produced at the appellate stage also.

6. The Question of Evidence Not Examined

Having re-examined the original arbitration award for each of the issues raised by the Appellant, the Appellate Tribunal addressed the major contention of the appellant that the original arbitration panel had not examined all of the evidence. The Appellate Tribunal findings and conclusions follow:

1. In this connection, the Appellate Tribunal notes the concluding remarks in the Award given earlier, which state that:

   "The decision leading to the arbitration award is arrived at after perusal of documents, recordings/transcripts after consideration of all written and oral submissions from both the parties."

2. Further, following principles of natural justice, the Appellate Tribunal re-checked the evidence that was reviewed by the arbitrators in their award. Its findings are as follows:

   The Tribunal notes that the major and related allegations of the investor centre around the issues of whether there was unauthorized trading without the knowledge and consent of the investor. The allegations would hold if supported by evidence. The issues were examined by the arbitrators and the evidence was found to be contrary, that is the technical evidence from the Exchange and the Trading Member does not support orders being placed by using the investor's account directly, and the voice recordings even if for some trades prove the investor was aware after which orders were put through the system by the Trader as authorized user of the system. Both sets of evidence – technical data and the voice recordings – were seen again by the Appellate Tribunal to reach this conclusion.

3. The Applicant has not produced any fresh evidence to the contrary, despite hearings opportunity given by the Tribunal.

Appellate Tribunal's Award

With the main contention of the Applicant being untenable on account of existing evidence and absence of any further evidence to the contrary, the Appellate Tribunal is in agreement with the Arbitrators' Award dated 04/09/2014. The Appeal is therefore dismissed.

05/01/15		Paresh K Thothawala
Mr. Viral G. Bhatt	**Mr. Fenil B. Shah**	**Mr. Paresh K. Thothawala**
Presiding Arbitrator	**Arbitrator**	**Arbitrator**

Dated: 05-01-2015 Place: Ahmedabad