



पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL

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**APPELLATE ARBITRATION AWARD**

BEFORE THE APPELLATE ARBITRAL TRIBUNAL CONSISTING OF  
Anjali Agrawal (Presiding Arbitrator), Anil Murarka (Co-Arbitrator)  
Shashi Chandra Mishra (Co-Arbitrator)  
MCX STOCK EXCHANGE LIMITED, KOLKATA  
Arbitration Appeal No: KOL-01/2015

BETWEEN

**NIRMAL BANG SECURITIES PVT.LTD.**  
38-B, Khatau Building, 2<sup>nd</sup> Floor, Alkesh  
Dinesh Modi Marg, Fort,  
Mumbai - 400 001

... APPELLANT (Trading Member)

AND

**MR. AMBARISH GHOSH,**  
23, Debendra Ghosh Road, Bhawanipur,  
Kolkata - 700 025, West Bengal.  
PAN no AENPG8491A

... RESPONDENT (Constituent)

**Appearances :**

Appellant : Mr. Arindam Ghosh, authorized representative  
Respondent : in Person

*Anjali Agrawal* *Anil Murarka* *Shashi Chandra Mishra*

**FACTS:**

1. The present Appeal is preferred by the Appellant against the arbitral award dated February 3, 2015, passed by the Ld. sole Arbitrator, rejecting the Appellant's contentions and upholding the decision dated May 5, 2014 of the IGRC member, with a direction upon the appellant to pay the respondent a sum of Rs.2,22,926/-.

2. The grievances of the appellant in the instant appeal inter-alia are:

- That the Ld. Sole arbitrator has erred in referring to clause 4.5.7 of MCX Stock Exchange (Capital Market Segment) when the dispute relates of trades executed in Currency Derivatives Segment.
- That the Ld. Sole Arbitrator has come to an erroneous finding that it was mandatory on the part of the Appellant to maintain order placement records.
- The Ld. Sole Arbitrator failed and neglected to give due weightage to proof of order confirmation documents produced by the Appellant in the form of contract notes, bills, margins statements, ledger statements etc.
- The Ld. Sole Arbitrator failed and neglected to appreciate that the Respondent had merely made oral allegations without furnishing any contra evidence in support of his monetary claim based on allegations of unauthorized trades in currency derivatives.
- The Ld. Sole Arbitrator had failed and neglected to appreciate that the burden of proof lay on the Respondent that the trades were unauthorized and/or without his consent.
- That the Ld. Sole Arbitrator failed and neglected to appreciate that the Respondent was bound by the terms and conditions of the documents executed by him and in case of any dispute with regards to trades, he was under an obligation to raise an objection within 24 hours of receipt of the contract notes/trades confirmation SMS. Any complaint thereafter was only an afterthought.
- That the Ld. Sole Arbitrator had failed and neglected to appreciate that the Respondent had himself admitted that he was receiving the contract notes and SMSs alerts on daily basis on his registered email ID and mobile phone.
- That the Ld. Sole Arbitrator has placed no reliance on the admissions of the Respondent that he was receiving all documents on each day of the trade executed and he never disputed them, which itself proves that he had full knowledge of his trades.
- That the Ld. Sole Arbitrator has arrived at erroneous findings and has ignored the order confirmation documents such as contract notes, bills, margins statements, SMSs of trade details and ledger balances all made within the time required under law upon execution of trades.
- The Appellant has thus prayed for setting aside the impugned Award.

3. The respondent in reply has contended that he was promised substantial profit by Appellant with some occasional losses and had there been profits he would not have had any grievances against the Appellant. Even though he received daily emails and SMSs towards trade confirmation he could not open them for technical reasons nor could he understand them. Further all trades in the Currency Derivatives were illegal as he had not given any consent for the same. He further stated that the Investor Grievance member NSEIL has made observations in his favour and he has received refund. He has also received Rs.75,000/- from Exchange pursuant to publication of

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*Arjun Agrawal*

*Arjun*

*Arjun Agrawal*  
*Arjun*

the impugned Award. Since both the IGRP members of NSEIL and this Exchange as also the L'd sole Arbitrator have held in his favour the Appellate Tribunal cannot take a contrary view. The Ld. Sole Arbitrator has committed no error by upholding the findings of admissible claim by the member Investor Grievances and passing an Award thereon. Thus he prayed for dismissal of the present Appeal.

**FINDINGS:**

The Appellant Bench heard the parties and went over the documents available records in the matter. We find that on pleading of the parties the Ld. Sole Arbitrator has framed only following two issues and determined those while excluding/overlooking all evidences produced and proved by the Appellant.

- Whether the Appellant had violated Clause 4.5.7 of MCX-SX (Capital Segment Regulation)?
- Whether non-production of any evidence by the Appellant regarding placement of orders, rendered the trades unauthorized?

(a) In the impugned award made and published, the Ld. Sole Arbitrator has answered issue no. 1 in favour of the respondent, which is erroneous on the face of it. The trades were done in the Derivatives Segment, thus there could not have been any violation by the Appellant of any regulations in Capital Segment.

(b) The issue no.2 has also been answered in favour of the respondent, ignoring/overlooking the following admitted facts and documents:-

- The respondent was bound by the rules regulations, bye-laws and all circulars issued from time to time by the concerned Exchanges and SEBI and the contractual obligations.
- The contract note is a vital and the key document, which is a confirmation of trades done on a particular day on behalf of a client. It is the document which establishes a legally enforceable relationship between the client and trading member. It consists of key details of a particular transaction together with date, time, price, quantity traded order number, trade number and brokerage charged, settlement reference number, details of other charges including service charges. Once issued it is binding on the constituent unless timely disputed by him.
- The Respondent was bound to check the details appearing on contract notes and in case of any discrepancies, to lodge complaint within 24 hours of receipt of the same.
- Respondent's admissions regarding timely receipt of the Contract notes and SMSs.
- No specific dispute giving any particulars raised by the respondent.
- The Appellant had done all due diligence. After execution of each trade they had provided the Respondent with order confirmations i.e. contract notes, bills, margin statement, SMS alerts, ledger statements etc. These actions are required subsequent to execution of any trades done on behalf of the constituent, being the common course of procedure (as prescribed under rules, regulations, and bye-laws of Exchange).

(c) We further find that there is no denying of the fact that the respondent had received the order confirmations in various forms immediately i.e. within 24 hours of

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execution of trades on his behalf. There is no denial of the fact that the said order confirmations were sent to him on his registered email-id and mobile number as appearing in the KYC. Whereas there is no material on record produced by the respondent to prove his contentions that he had not placed the orders nor opened the emails and/or not understood the SMSs. These are mere oral submissions made by the respondent without producing any contra evidence in support thereof. There is no denial of the fact that the voice recordings produced by the Appellant prove that the respondent had knowledge of his derivatives currency trades on daily basis. The respondent had received pay-outs from time to time against the trades in currency derivatives.

(d) The Ld. Sole Arbitrator after examining the material on record placed before him recorded his finding based only on failure on part of the Appellant to produce any order placement evidence, ignoring all other evidences. The Ld. Sole Arbitrator wrongly put the burden of proof of order placement upon the Appellant, who had placed on record other documentary evidences to support his conduct as well as the compliances of contract conditions and rules, regulations, bye-laws of Exchange, as required for such trades executed on behalf of the respondent. The Ld. Sole Arbitrator overlooked the fact that respondent could not prove his case of "trades without his prior consent" and had merely filed a complaint on oral submissions. There is no dispute regarding mode and method of communication of transactions. There is sufficient material on record which proves admission of timely receipt of contract notes by the respondent. Under these circumstances, the trades executed cannot be termed as unauthorized more particularly when the timely order confirmations were not objected to within the given period. On oral submissions, the monitory claim cannot be allowed particularly when no contra evidence is placed by the respondent in support of such claim.

(e) What is important in the instant case is that on the facts proved before the Ld. Sole Arbitrator, he has failed to draw an inference which ought to have been drawn and the inference which is drawn by the Ld. Sole Arbitrator is untenable (for the reasons stated hereinabove) resulting in miscarriage of justice. The Ld. Sole Arbitrator ought to have drawn the inference that the respondent had knowledge of the trades executed in his account on the same day of trade as he had received the ECN's, SMS alerts as also telephonic confirmation, which he never disputed within the agreed time.

(f) In the instant case the Ld. Sole Arbitrator failed to consider the aforesaid glaring facts and failed to apply his mind to the admissions made by the respondent while upholding the finding of IGRP member dated May 5, 2014.

(g) The respondent has made monitory claims based on oral submission, without leading any contra evidence. The Appellant was wrongly, saddled with the burden of proof, who had placed on record the documentary evidence to support his conduct as

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*Arjuna Agrawal*

*Jury*

well as compliances of rules, regulations and byelaws of the exchange. In view of these facts it is concluded that the respondent who had based his monetary claim on oral submission, could not lead any contra evidence to prove his allegation of unauthorized trades.

(h) Therefore we are of the view that mere non production of evidence towards proof of order placement could not render the trades unauthorized. Thus we are inclined to interfere with the impugned Award. Award is bad in law for the reasons stated here-in-above. The respondent is not entitled to any relief. The Appeal is thus allowed.

(i) The Apex Court in the case of "Oil and Natural Gas Corporation Ltd. -Vs- Western Geco international Ltd." observed that :-

*"40....what is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they draw an inference which is on face of it, untenable, resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."*

**AWARD**

(a) The Appeal is allowed and the impugned Award dated February 3, 2015 is quashed and set aside, so is the IGRP finding of admissible claim dated May 5, 2014.

(b) The respondent is directed to refund the sum of Rs 75,000/- received during the pendency of the instant Appeal within three days of receipt of this award, failing which he shall be liable to pay interest thereon @ 18% per annum until payment thereof.

(c) There will be no order as to the costs.

(d) Let the Award be made in triplicate and a copy each be made over to the appellant and respondent and one to be retained by the Exchange.

Kolkata dated the 16<sup>th</sup> July, 2015.

Arbitrators

*Anjali Agrawal*

Anjali Agrawal  
(Presiding Arbitrator)

*Anil Murarka*

Anil Murarka  
(Co-Arbitrator)

*Shashi Chandra Mishra*  
Shashi Chandra Mishra  
(Co-Arbitrator)