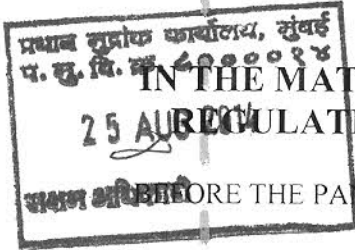




महाराष्ट्र MAHARASHTRA

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LK 885564



IN THE MATTER OF ARBITRATION UNDER BYE-LAWS, RULES AND REGULATIONS OF MCX STOCK EXCHANGE LIMITED (MCX-SX)

BEFORE THE PANEL OF APPELLATE ARBITRAL TRIBUNAL AT MUMBAI COMPRISING:

- 1 Mr S C Gupta
- 2 Mr Babulal Kisanlal Mundada
- 3 Mr Pankaj M Patel

Presiding Arbitrator  
Co - Arbitrator  
Co - Arbitrator

APPEAL ARBITRATION MATTER NO MUM- 01/2014

BETWEEN

M/S FAIRWEALTH SECURITIES LIMITED  
UG-3, SOMDATT CHAMBERS 11,  
9, BHIKAJI CAMA PLAZA,  
DELHI-110066

APPELLANT  
(ORIGINAL RESPONDENT)

AND

MR LIYAKAT ALI KHAN,  
A-1-201, AL SAFA,  
MILAT NAGAR,  
OSHIWARA, ANDHERI (WEST)  
MUMBAI-400053

RESPONDENT  
(ORIGINAL APPLICANT)

## Appearances

For Appellant

Mr Amit Gautam, AVP -Legal

For Respondent

Mr Liyakat Ali Khan- in person

## AWARD

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1. M/s. Fairwealth Securities Ltd., the Appellant (the original Respondent), has preferred an appeal dated 30<sup>th</sup> June, 2014 against the award dated 26<sup>th</sup> May, 2014 (hereinafter referred to as the impugned Award) passed by the sole arbitrator of MCX-SX (hereinafter referred to as the lower Tribunal) in favour of the original Applicant & the Respondent herein, Mr. Liyakat Ali Khan. The Arbitration Department of MCX-SX has referred the said Appeal to this appellate panel of arbitrators (for short the Appellate Panel) for adjudication under the Bye-laws, Rules and Regulations of the Exchange. The Appellate Panel held its hearing on 3<sup>rd</sup> September, 2014 when AVP - Legal, Mr. Amit Gautam appeared on behalf of the Appellant. The Respondent was present in person. As soon as the matter was taken up for hearing, Mr. Amit Gautam, the authorized representative of the Appellant fairly submitted that he was not pressing the allegations of biasness made against the sole arbitrator in the Appeal and no order is required to pass under Section 12 of the Arbitration and Conciliation Act, 1996. There after the authorized representative of the Appellant was called upon to address his arguments on merit on the appeal preferred by it. After the detailed arguments of both the parties were over, the hearing of the appeal was concluded for passing of the Award.
2. Before dealing with the Appeal, we may briefly refer to the facts of the dispute between the parties leading to the arbitral reference. It is the case of the original Applicant that he was out of India from 17<sup>th</sup> August, 2013 to 24<sup>th</sup> August, 2013. According to him, during his absence, unauthorized trades (in currency derivatives) were executed in his trading account except for the trade executed on 23<sup>rd</sup> August, 2013. He had also alleged that thousands of trades were executed in his account illegally without his consent or knowledge putting him into loss of Rs 179821/-. He had further alleged in the IGRC meeting, <sup>that</sup> the authorized representative of the Original Respondent could not provide proof of his consent in writing or audio conversation, if any, recorded in respect of placement of orders through telephone lines.
3. The original Respondent and the present Appellant in its written statement filed before the lower tribunal contended that the allegations by the Respondent were false, baseless and afterthought and transactions were executed as per his consent. On merits, it had stated that the Respondent had carried over a short position of 100 quantity of USDINRF280813 from 14<sup>th</sup> August, 2013 to 26<sup>th</sup> August, 2013 and because of this, the Applicant would have incurred a loss of Rs 302680/- in his account. It alleged that the Respondent was trying to own the profit and disown the losses in his trading account. It also stated that the Respondent had not given any basis for his claim of Rs 179821/-. It also submitted that the

*ms*  
Applicant ~~sought~~ <sup>sought</sup> relief in the lower tribunal by Respondent was based on the hypothetical loss and therefore the claim of the Respondent was liable to be dismissed. *MP*

4. The lower Tribunal, after hearing the parties at length and on the basis of the documents and other material on record, found substance in the averments made by the Original Applicant, allowed his application and passed an award dated 26<sup>th</sup> May, 2014 directing the Original Respondent to pay to the Respondent a sum of Rs 179821/-.
5. Aggrieved by the award passed by the lower Tribunal, the Appellant has preferred the present appeal and has assailed the legality of the Award of the Lower Tribunal on several grounds. It has alleged that the Lower Tribunal had passed the award without there being any evidence in support of claim and that the Award has been passed on the basis of the hypothetical claim and on the basis of contradictory evidence. It has further submitted that even though the Respondent had not given any calculation in support his claim, the Lower Tribunal still passed the award in favour of the Respondent which is contrary to facts and law. The Appellant has stated that the Lower Tribunal, inter alia, failed to adjudicate that the Respondent, at his fancy, owned the profits and disown the losses in his trading account and for that reason had not disputed the trades executed on 23<sup>rd</sup> August, 2013. The Appellant has referred to the two emails dated 29<sup>th</sup> August, 2013 and 25<sup>th</sup> September, 2013 sent by the Respondent and contended that the Respondent had narrated a false story in support of his claim to own the trades executed on 23<sup>rd</sup> August, 2013 in the mail of 25-09-2013 (contents of which is different than the contents of 29-08-2013) and disowned the others as there was a huge profit on the trades done on 23<sup>rd</sup> August, 2013. The Appellant has stated that the Lower Tribunal failed to adjudicate that the Respondent had admittedly held a short position on 100 lots from 14<sup>th</sup> August, 2013 and if the alleged trades were not executed by the Respondent from 17<sup>th</sup> August, 2013 to 24<sup>th</sup> August, 2013, there would have been a loss of Rs 302680/- in his trading account. On the basis of its submissions, the Appellant has prayed for setting aside the Award dated 26<sup>th</sup> May, 2014 passed by the Lower Tribunal as also a direction to the Respondent to pay the costs to the Appellant.
6. The Respondent, in his reply dated 25<sup>th</sup> July, 2014, has submitted that the Award dated 26<sup>th</sup> May, 2014 passed by the Lower Tribunal was made after correctly considering and analyzing all evidences, facts and arguments placed on record by the parties. He further submitted that the unauthorized trades were executed during the period 17<sup>th</sup> August, 2013 and 24<sup>th</sup> August, 2013 when he had gone out of India. He also stated that he had not given any instructions for trades done on 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> August, 2013 and he had placed order for trades executed only on 23<sup>rd</sup> August, 2013. Due to unauthorized trades, he had suffered a loss of Rs 179821/- between the period 17<sup>th</sup> August, 2013 and 24<sup>th</sup> August, 2013. He also stated that the Appellant has failed to produce any evidence to prove that the impugned transactions were instructed by him. In the premises, the Respondent has submitted that the Lower Tribunal had passed the Award after proper consideration of all relevant facts and arguments, and therefore, did not require any interference. *MP*

