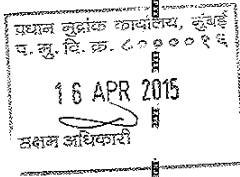


महाराष्ट्र MAHARASHTRA

2014

ML 347419

Before the Appellate Bench of Metropolitan Stock Exchange of India Ltd, Mumbai Bench
(Formerly known as MCX Stock Exchange Ltd.)



Appeal No. MCX-SX/ARB/APP/MUM-01/2015
Against award in Arbitration Reference No.MUM-03/2014

Between

श्री. वि. पां. श्री. वि. पां.
Mr. Vijay Rochlani
D/O. Parihar Niwas,
C/o Alpa Patel, 2nd Floor, 15th Road,
Khar West,
Mumbai 400 052

... Appellant
(Original Respondent)

AND
Angel Broking Pvt. Ltd.
G-1, Akruiti Trade Cebter,
MIDC Road No. 7,
Andheri East,
Mumbai 400 093

..... Respondent
(Original Applicant)

Before the Appellate Bench:

Shri Anil Shah (Presiding Arbitrator)
Shri Bharat Bhushan Sharma
Shri Jasbir Saluja

This is an appeal referred to us under the Rules, Bye-laws and Regulations of the MCX Stock Exchange Ltd. against award dated 27.12.2014 in Arbitration Reference No. MUM-03 /2014 of 2014.

AWARD APPEALED AGAINST:

Award dated 27 December 2014 of the Arbitral Tribunal in the Arbitration Reference No. MUM-03/2014 of 2014; was pronounced as under:

1. Accordingly the claim of the Applicant of ₹ 1,59,111.05(Rupees One lakh Fifty Nine Thousand One Hundred One and paise Five only) is upheld together with an interest @9 % thereon from 06 May 2014 till date of payment.
2. The counter claim raised by the Respondent is rejected.

Being aggrieved by the said award dated 27 December 2014 the Appellant has preferred the present Appeal.

The grounds of Appeal, in short, are as under:

- a. That the impugned award is contrary to law, equity and good conscience and justice.
- b. That the Appellant had provided sufficient documents to prove the loss of ₹7,00,000/- *omit*
- c. That Rules, Regulations and Bye Laws of the Stock Exchange were violated by imposing penalty of ₹70,000/- and for late payment of margin, and forced early payment of installments of ₹5,00,000/-.
- d. That the claim of the Appellant is genuine and bonafide.
- e. That the Ld. Arbitrator ought to have considered the material on record and further the impugned award is silent on the material on record.
- f. That the Ld. Arbitrator has erroneously given undue importance to the contentions of the Respondent.

PRAYER OF THE APPELLANT

That the impugned award directing the Appellant to pay ₹1,59,111.05 with interest @ 9% thereon from 06 May 2014 till date of payment be stayed and set aside and costs of this appeal be provided for.

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REPLY OF THE RESPONDENT

- a) That the Ld. Arbitrator has passed the award after considering the facts and material evidences on record and the prevailing customs/ practice. That the Ld. Arbitrator has passed the award on merits after pursuing all the relevant documents placed on records by both the parties and applying principles of fair play, equity and natural justice.
- b) That there is no infirmity, irregularity and / or illegality appearing either on the face of the award and/or on the face of the records. Therefore, the impugned award passed by the Ld. Arbitrator is just, valid, binding and enforceable one.
- c) That the Appellant is seeking re-appraisal by this Hon'ble Tribunal of the evidence placed before the Ld. Arbitrator and the present proceeding being in the nature of a first appeal is not sustainable, as at the stage of appeal, Hon'ble Tribunal cannot re-judicate the merits of the matter.
- d) That the Appellant was an online client and had access to the internet trading platform, and also to the back office website. That the Appellant had been regularly executing trades online over the internet and also used to access the back office website to view/download/save the transactions and accounts details pertaining to his account. That the Appellant could also at all time view all details like daily position, margin requirement, ledger balance, outstanding, contract notes, bills and Ledger statement on his terminal.
- e) That the Respondent had prepared issued and delivered the contract notes cum bills as well as the settlement wise bills by digital mail system to the registered mail address vrking7@gmail.com, which were received, retained and accepted by the Appellant and at no point of time the Appellant had raised any dispute of any nature whatsoever in respect of the said contract notes or bills.
- f) That the Respondent had also forwarded margin statements and daily activity statement on the said email ID vrking7@gmail.com, thereby informing the Appellant about the requirement of the margin and shortfall.
- g) That due to the margin shortfall in the account of the Appellant the Stock Exchange had levied the penalty on the Respondent as per the SEBI circular (CIR/DNPD/7/2011) dated 10th August, 2011, which laid out the rules and regulations with regards to the penalty structure to be imposed on short collection/non collection of client's margins.
- h) That on 10th June, 2013, there was open position of USDINR Qty, 2,00,000 with expiry date September 26, 2013 and Qty 2,08,000 with expiry date August 28, 2013. Further, on 10th June, 2013, as the price of the underlying asset moved against the open position standing in the account, the Appellant suffered a MTM loss of ₹-425326.80.

That thus at the end of the day, there was a debit balance of ₹-195883.29 lying in the account of the Appellant and there was a net margin shortfall of ₹-800905.54. That the Appellant was informed about the debits in his Account and requirements of margin vide daily client margin statement and called upon to pay the same before the starting of trading hours on 11th June, 2013.

- i) That on 11th June, 2013, as the Appellant has defaulted to make payment towards the margin requirement lying in his account. That the Appellant has himself preferred to close out all positions at his end through his online trading terminal, which resulted into a MTM loss of ₹-124335.34 in his account. Therefore, at the end of the day there was an outstanding debit balance of ₹-324432.82.
- j) That on 8th February, 2014, Appellant's account was credited with ₹167100.48 due to the intersegment fund transfer from his NSE Cash segment to MCX-SX segment, on account of which the liability was ₹-159032.54.
- k) That the Ld. Arbitrator has rightly upheld the claim of the Respondent as it is supported by valid and reliable documentary evidence and rightly rejected as afterthought the counter claim of the Respondent which did not have any basis or foundation and lacked credence. That the Ld. Arbitrator has passed the award after due application of judicial mind and after taking into consideration and examining all the relevant facts and circumstances of the case. That the award passed by the Ld. Arbitrator is legal, justified in law and equity, and within the four corners of the provisions of the Arbitration Act.

PRAYER OF THE RESPONDENT

That the appeal be dismissed with cost and that the award passed by the Ld. Arbitrator be upheld and the same be made absolute.

HEARING:

The hearing in the matter was held on 27 March 2015.

The Appellant was present in person. The Respondent was represented by Ms. Harshala Keni, Manager Legal and Compliance and Mr. Shashikant Chandak Manager Legal and Compliance.

FINDINGS & CONCLUSIONS

We are not inclined to favorably consider the oral contention of the Appellant that the Ld. Arbitrator erred and has failed to take on record his notices dated 13 April 2013 and 25 April 2013 to the Respondent and that the impugned award is silent on the material on record.

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We note that the Ld. Arbitrator has in his findings categorically observed that he has considered the available records.

The prayer of the Appellant that he had provided sufficient documents to prove the loss of ₹7,00,000/- remains unsubstantiated as there is nothing on record to corroborate the contention.

We have considered the claim that the Rules, Regulations and Bye Laws of the Stock Exchange were violated by imposing penalty of ₹70,000/- and for late payment of margin, and forced early payment of installments of ₹5,00,000/- and are not impressed by the prayer as the Member Client Agreement and the KYC documents on record are contrary to the claim as the Respondent always enjoyed the right to levy Delayed Payment Charges. Similarly the claim of forced early payments does not hold water as the Appellant has failed to substantiate the same.

We are also not inclined to accept the argument put forward by the Appellant that the claim of the Appellant is genuine and bonafide. The fact that the Appellant had himself squared off his position tantamount to tacit acceptance of trades and its consequential outcome. The Appellant has not stated any substantial ground or reason for the said square off. The only reason stated by the Appellant is that the Appellant was not in knowledge of the debit in his account statements and therefore, the Appellant was not in position to know his account. The submissions of the Appellant do not impress us as he was an online trader and had access to his accounts. The Appellant also does not dispute correctness of the statement of account produced by the Respondent for the relevant period.

After going through the award, relevant papers and proceedings and hearing the parties we conclude that the Appellant has failed to make out any case for setting aside the impugned award. We find that the impugned award is well reasoned and passed after considering all relevant material.

In view of the above, we are inclined to reject the present appeal as the impugned award does not need any interference and pass the following order.

ORDER

1. The appeal is dismissed.
2. No costs.

Mumbai, dated this 29th day of April, 2015.

Appellate Bench:

Shri Anil Shah
(Presiding Arbitrator)

Shri Bharat Bhushan Sharma
(Co-Arbitrator)

Shri Jasbir Saluja
(Co-Arbitrator)