

For MARATHA SAHAKARI BANK LTD.

MRS. S. S. SHANT
Authorised Signatory

MARATHA SAHAKARI BANK LTD
196, MATUSHREE APTS. W V ROAD
ANDHERI (EAST)
MUMBAI - 400 089

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

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MCX Stock Exchange Ltd. (MCX-SX), Mumbai.

In the matter of Appeal as per the Byelaws, Rules and Regulations of MCX Stock Exchange Ltd.

Appellate Arbitration Matter No: A.A.M/MUM-02/2013

Between

Mrs. Debjani Gautam Nandi
Flat No. B-502, Bldg., Santosh Tower,
Hospital Road, Bhuj,
Gujarat - 370001.

Appellant

AND

SMC Global Securities Ltd.
11/6B, Shanti Chamber,
Pusa Road,
New Delhi - 110 005.

Respondent

Before the Appellate Bench:

Mr. Babulal Mundada
Mr. Pankaj Patel
Mr. Brijmohan L. Sarda

1. This is an Appeal arising out of an Award passed by the sole Arbitrator vide its Award dated 16-04-2013 rejecting the claim of the Appellant in Reference No. MUM-03/2013 filed with MCX Stock Exchange Ltd.
2. The Appellant is duly registered constituent of the Respondent Broker on MCX Stock Exchange Ltd. The Respondent is a broker with the MCX Stock Exchange Ltd. The present Appeal is filed under the Rules and Regulations and Bye-laws of the MCX Stock Exchange Ltd. The Appeal is filed within a stipulated time.

Sole Arbitrator Award dated 16-04-2013:

3. The sole Arbitrator rejected the claim of Appellant (Applicant therein) on the ground that the Appellant was made aware of the trades carried out in her account

from 5-10-2011 to 5-1-2012. Despite receipt of the contract notes both digitally and physically as well as the balance ledger statement, the Appellant raised no dispute as to the trades and must therefore be taken to have accepted the trades. The Appellant for the first time raised grievance on 22-8-2012 after a delay of more than one year. Hence the Appellants (Applicant therein) case of unauthorized trades carried out by the Respondent deserved to be rejected.

THE CASE OF THE APPELLANT

4. In the arbitration proceedings the following facts were not considered:-

The Appellant had requested to send her ledger statement but the same was not sent, which was a serious lapse on the part of Respondent.

There is negligence on the part of Respondent in handling the account of Appellant. The Respondent misguided the Appellant by saying that there is a long position taken in the account of Appellant.

5. There was not a single pre-trade confirmation from the Respondent which is a requirement under Regulation (Currency Derivatives Segment) under clause 3.4. The Respondent has carried the trades to earn the brokerage without caring that the Appellant was suffering losses continuously and funds in the account of Appellant account eroded regularly.
6. The mandate of SEBI regulation, code of conduct for Stock Brokers (Regulation 7) that the Trading member should exhibit due care for client's interest, is not complied.
7. In view of the above the Appellant sought the relief and requested to quash the Award and Respondent be directed to refund the money along with cost of appeal.

REPLY FROM RESPONDENT

8. The Respondent contended that the Appellant has filed false and frivolous claim and on the basis of the facts and evidence, the Hon'ble Tribunal has rejected the Arbitration Claim filed by the Appellant. The Arbitration Appeal filed by the

Appellant is devoid of any merit and does not legally sustainable. The Respondent elucidates:

9. The Appellant has executed the trade/transaction in MCX-SX segment under the Rules and Regulations from 5-10-2011 to 25-1-2012. The Appellant invested Rs. 10,00,000/- on 5-10-2011 for trading in securities market. The Appellant was well versed of trades executed. The Appellant was sent the contract notes, SMS Confirmation Report, Account Statement, therefore every opportunity has been provided to the Appellant to make vigilant. There is nothing to show that Appellant ever raised objection to the transactions recorded in the contract notes or SMS messages or statement of account, she is deemed to have accepted the correctness of the transactions recorded and she was in support of the trades and all the trades were in her knowledge.
10. For the first time the Appellant had lodged grievance with Respondent dated 22-8-2012 to which Respondent replied on 7-9-2012. The Appellant also filed Grievances in MCX on 5-9-2012 and on 15-10-2012. The Respondent replied them on 8-9-2012 and 30-10-2012.
11. It is the case of the Respondent that it has complied all the Rules and Regulation mandated by the Regulatory. The Appellant lodged the claim because she lost the money in trading and to extort the money lost in trading from the Respondent.
12. It Is further case of the Respondent that there is no merit in the Appellant submission that she was misguided by them by saying that they had taken long position in Appellant's account and there is no merit in the Appellants allegation that there was no pre-trade confirmation available with the Respondent.
13. In view of the above submission, it is prayed to dismiss the Arbitration Appeal filed by the Appellant and in the interest of justice sustain the Arbitration Award dated 16-4-2013 and also prayed that grant Rs. 2 Lac towards legal expenses incurred by Respondent.



HEARING DATE

14. On 4-9-2013 both the parties argued extensively. The Appellant was represented by Mr. Kamendu Joshi, (Power of Attorney Holder) Mr. Jay Trivedi and Ms. Deepthy Menon both advocates. From Respondent Mr. Suman Kumar and Mr. Mamraj Yogi represented. From Appellant side arguments led by Mr. Jay Trivedi and from Respondent's side Arguments led by Mr. Suman Kumar. After extensive arguments reference was closed for Award to follow.

ARGUMENTS:

BY APPELLANT:

15. The Appellant has submitted written arguments and taken us through the same in detail. The Appellant emphasized that the Appellant was guaranteed 1.5 to 2 % return every month by the representative of Respondent. Believing the Respondent the Appellant deposited Rs. 10 Lac with Respondent on 5-10-2011. The Appellant started getting contract notes by email and by post but not getting monthly ledger statement. She got Rs 10,000/- towards the return for the month of Nov 2011 and on pursuance by her the Respondent deposited Rs 10,000/- in cash in her bank account in Jan 2012. There after the Appellant did not receive any amount. In March 2012 the Appellant demanded Rs. 10 Lac refund from the Respondent as the Respondent assured to protect the principal amount (Capital Protection). The representative of Respondent informed that Rs. 10 Lac are tied up in various long positions in the market and can be recovered in March 2012. In April 2012 the Appellant again requested Respondent to clear all position and return Rs 10 Lac as promised in March 2012. At this point of time the Appellant alleged to have informed the Respondent not to execute any trade without taking the consent of Appellant. On 30th April 2012 the Appellant got the ledger of her account from Respondent and surprised to note the balance of Rs. 860/- in her account.

16. The broker has violated the provisions of circular no SMD/Policy/IECG/1-97 Dt. 11-2-1997 since the trading member has not maintained the order book. The order book would show the time of placement and execution of order. At this time the Appellant cited the judgment of SEBI Vs VKB Capital Services Ltd Dt 17-12-2003 to

buttress her arguments of irregularities in maintaining the ordering record by Respondent.

17. The Appellant heavily emphasized that the Respondent did not have any authority to execute the trade transaction without the pre-trade consent and confirmation of client. The Respondent has violated this basic rule and executed the trade on their own whims. Since the Respondent has not maintained the pre-trade consent, the transaction carried in the account of Appellant must be treated as unauthorized. To buttress his argument the Appellant cited the SEBI order Dt 31-1-2004 in the matter of Prosoft System Ltd. In this order the SEBI has ruled that the member has not complied with the regulation if the broker has not maintained the record when the order is placed by the client.
18. The Appellant has alleged that the Respondent must take care of the client's account. The Respondent has failed to do so in this case. To support this argument the Appellant has cited the order of SEBI dated 13-12-2004 in Shri Ballabh Das Daga where the SEBI has held that broker should not encourage sales or purchases with the object of generating brokerage.
19. Finally the Appellant submits that the Respondent has failed to take care of Appellant's account when high volumes are carried in her account. The Respondent has failed to comply with the SEBI's requirement in this regard. The award dated 16-4-2013 should be set aside and the claim of Appellant should be granted.

BY RESPONDENT

20. The Respondent reiterates the contents of their reply. The Respondent argued that if the claim of Appellant is for fix return of income per month, this forum does not have jurisdiction. The Appellant confirmed to have received regularly the Contract Notes. The statement of account was sent to the Appellant on quarterly basis. The SMS confirmation was sent to the Appellant on regular basis. As such all the regulatory requirements are complied. Once the Appellants was made aware of transaction executed and the Appellant choose not to object immediately amounts

to have consented to the transaction and later on not entitled to raise the objection because the Appellant has incurred losses in the transactions. All the transactions are done with the instruction of the Appellant. The Appeal is to be dismissed.

FINDINGS

21. Though the Appellant confirms to have received the Contract Notes through emails as well as physically, however the main objection of the Appellant is that they have not received ledger on monthly basis. The requirement of sending the ledger is on quarterly basis and the Respondent has proved that the ledger was sent to the Appellant on quarterly basis. If the Appellant wanted the ledger on monthly basis she should have put specific request for the same which the Appellant did not do. There is inconsistent statement made by Appellant that she has received ledger in March, 2012. Sometimes the Appellant says that she has received the ledger in April, 2012. There is an email dated 16-1-2012 on the record of Arbitration proceedings, sent from the email account of the Appellant confirming to have received ledger up to December, 2011. At this point the Appellant was aware that in her account there is a credit balance of Rs. 4,994/- only. There is no reference in this email that the transactions are unauthorized, though there is a reference of guarantee capital protection and request to return the capital amount back. This email was addressed to Mr. Hitesh and not to the Respondent and as such the Respondent did not get a chance to reply. The said email was not within the knowledge of the Respondent. This email dispels the argument of Appellant that she has not received the copy of ledger to know the transaction. Once she confirm to have received the ledger in January, 2011, the Appellant failed to justify why she has lodged the objection only on 22-8-2012 by legal notice to the Respondent through her Advocate.

22. In the argument, the Appellant has referred to objections raised from time to time with the Respondent without any supporting document in respect thereof. As such the case made by Appellant of unauthorized transactions cannot be accepted and we assume that the transactions have been done with the consent of the Appellant.



23. With regard to protection of capital and fix return assured by the Respondent as alleged by the Appellant, we are of the view that no broker can offer such kind of schemes with regard to derivative transactions. The derivative transactions are always subject to market risks and cannot be guaranteed with any fixed return. Also Rs. 10,000/- received by the Appellant towards alleged return is not matching with the assured return of 1.5 to 2.00 % per month of Rs. 10 Lac. The same should have been at least Rs. 15,000 to 20,000/- which is not the case here and also Appellant did not raise objection for less receipt of amount towards fixed assured return. As such it cannot be believed that Appellant has invested the amount on the basis of fixed return assurance at all.

24. When the Respondent has sent regular Contract Notes in electronic mode as well as in physical form and also established to have sent confirmatory SMS for all the transactions done and also sent ledger on quarterly basis, the Respondent cannot be said to have acted carelessly. In derivative market, the risk is always of the constituent. The loss or profit belongs to the constituent. The negligence of broker can only be said when the constituent had inform the broker to square off or buy or sell the transaction and the broker has not acted on the constituent's instructions in time. In this case, there is no such argument has been advanced that broker has not acted on the instructions in time.

25. The Appellant has referred to the circular of SEBI bearing no. SMD/Policy/IECG/1-97 dated 11-2-1997 where it is obligatory on the broker to maintain the order book which would show the time of placement and execution of the order. In this regard, the Respondent has drawn our attention to the Contract Notes where all the details are provided for time and date of placement of order and execution of time and date. In such view we are satisfied that the Respondent has complied with the requirement of SEBI circular dated 11-2-1997 referred above. The Appellant has not disputed the trade when she received contract notes and hence no fault can be found in the present case with the act of the Respondent.



26. In support of the argument that the broker has violated the compliance provision of SEBI and failed to maintain proper record, the Appellant cited the judgment of SEBI V/s. VKB Capital Services Ltd. dated 17-12-2003 where it was held that the irregularities found in issuance of Contract Notes pertaining to pre-printed serial nos. not found on the Contract Notes and order time not mentioned on the Contract Notes. In such situation it was held that there is a violation of the SEBI circular dated 5-8-1996 as well as circular dated 11-2-1997. In the present case, there is no such violation in the Contract Note issued by the Respondent. As there is a pre-printed nos. as well as the placements order time and execution time is provided in the Contract Note and as such this judgment cited by the Appellant does not support the Appellant that there is irregularity in maintaining and issuing Contract Notes on the part of Respondent. According to the Appellant the Respondent has violated mandatory compliance for not maintaining the record of pre-trade consent and confirmation of the client record. In this regard the Respondent submitted that it is not practically possible to maintain the pre-consent record and as such they have not maintained. However, the Respondent submitted that when regular Contract Notes are sent, SMS confirmation are sent, statement of account are sent and No Objection is received from the Appellant in reasonable time deemed to have given consent by the Appellant for the transactions executed. We agree with the argument of the Respondent in this regard that with only non-production of pre-trade consent and confirmation of the client does not make the executed transaction as unauthorized transaction. We need to take the view in totality of the circumstances and we are of the considerate view that the transactions executed by the Respondent are done with instructions of the Appellant.

27. The Appellant submitted the copy of the SEBI circular dated 17-3-2010 with regard to the inspection of members by Stock Exchange particularly with regard to unauthorized trading activities carried out in clients account. We found the same circular irrelevant for the purpose of subject matter. The Appellant also cited SEBI circular dated 14-3-1995 with regard to time stamping of orders where the broker should maintain the record of time when the client has placed the order and reflect the same in the Contract Note along with the time of execution of the order. We

found that the Respondent in the Contract Note has recorded the time of placement of order and the time of execution of the order and as such complied with the requirement of the circular.

28. The Appellant also argued that the stock broker shall act with due skill, care and diligence in conduct of all his business. In this regard we do not find anything to establish that the Respondent has not acted with due skill, care and diligence in their conduct. The argument of Appellant when the balance in her account was regularly eroding, the broker should have taken care of not eroding the capital. In derivative market the risk is always belong to the client and as such broker cannot held responsible for incurring the loss by the client and the broker cannot be held as having misconduct and gross negligence on that account.
29. The Appellant also cited the judgment of SEBI order dated 30-1-2004 in Prosoft Systems Ltd. where the SEBI has held that if the broker has not maintained and not mentioned the record of time when the client has placed the order, the broker has not complied with the circular of SEBI dated 11-2-1997. To this, we are of the view that, we are not dealing a case whether the proper records are maintained by the Respondent and complied with the regulations of SEBI. We are taking a view considering the totality of circumstantial evidence available before us whether the transactions are done with the instructions of the client or not. On the basis of the circumstantial evidence where regularly Contract Notes, SMS confirmation, Statement of account is sent by the Respondent, we are of the view that Respondent has carried the transactions with the instructions and consent of the Appellant in spite of not maintaining the record or not producing the record for pre-trade consent and confirmation of the client.
30. Considering the above, we have not observed any contradiction in the finding of the Award dated 16-4-2013 and as such no interference is required.
31. With regard to the counter claim of the Respondent for Rs. 2 Lac we found no justification and as such rejected the same.



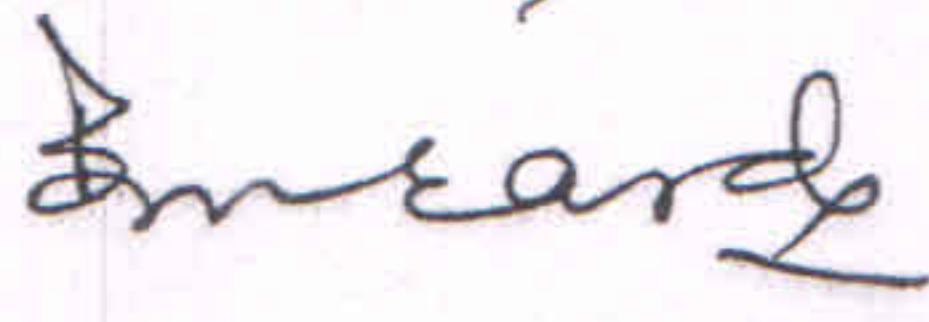
AWARD

The Appeal is dismissed.

The counter claim of the Respondent towards legal expenses is also rejected.

No order as to cost.

Appellate Arbitral Tribunal

- | <u>Name</u> | <u>Signature</u> |
|-----------------------|---|
| 1. Babulal Mundada |  |
| 2. Pankaj Patel |  |
| 3. Brijmohan L. Sarda |  |

Place: Mumbai

Date: September 24, 2013