



तमिलनाडु TAMILNADU

AK 417896

SP. Varkar

Sl. No. 0615 Date 19.7.12

S.P. Varkar

Name C. RANGAMANI

No. 0615 Date 19.7.12

Value Rs. 100.00

Mandate No. 0615 Date 19.7.12  
Channel - P.O. 063, Ph. 24930524

### BEFORE THE PANEL OF ARBITRATORS

Mr. A. V. HARIDASAN

Mr. C. RANGAMANI

Mr. R. RAVI

Arbitrator

Presiding Arbitrator

Arbitrator

In the matter of Arbitration Appeal under the Bye-Laws, Rules and Regulations of MCX Stock Exchange Ltd.

Arbitration Matter No. CHE/Appellate - 01/12

BETWEEN

M/s. Anand Rathi Share & Stock Brokers Ltd  
(Trading Member)

Silver Metropolis (4<sup>th</sup> floor),

Jai Coach Compound (Opp: Bimbisar Nagar),

Goregaon (E) Mumbai - 400 063.

...

Appellant

AND

Mrs. Jayasree Vijaya Kumar (Constituent)

26, Tasami Park,

Singanallur, Coimbatore - 641 005.

...

Respondent

Value Fts. 50.00

Chennai - AGO 028. Ph : 24939524

*Mr. [Signature]*




2) The Respondent herein had filed the Arbitration application, claiming an amount of Rs.10,00,000/-. It was the case of the Respondent that her husband Mr.Vijayakumar became a client of the Appellant in June 2010 to trade in cash segment of NSE. Later in November 2010 another trading account was opened in the name of the Respondent, with the same idea of trading in cash segment of NSE. The various documents given by the Appellant were signed by the Respondent without going through the details on account of the trust and confidence reposed on the officials of the Appellant's Branch office at Coimbatore. The Respondent had made a deposit of Rs.5,00,000 with the Appellant. Her husband was informed about sale of certain shares from his Demat account to meet his trading obligations in April 2011 forcing him to probe into the causes for the loss and to find that the Appellant had unauthorisedly diverted the Respondent's entire deposit of Rs.5,00,000 to trade in the currency derivatives of the MCX Stock Exchange right from November 2010. The Respondent had calculated the loss in her as well as her husband's account at Rs.10,00,000 and claimed the same from the Appellant.

3) The Appellant had resisted this claim by stating that the Respondent had, on her own volition, became a client of them to trade in the currency derivatives of the MCX Stock Exchange beside various segments of other Exchanges as well by executing a Member – Client Agreement with a deposit of Rs.5,00,000. They would add that she had also executed an authority letter in favour of the Appellant to transfer her funds from one Exchange account to the other Exchange account by the Appellant themselves. Later on the Respondent had, on her own volition, started trading in the

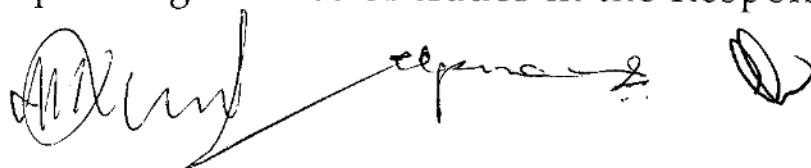
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currency Derivatives of MCX-Stock Exchange and due to that the amount of Rs.5,00,000 deposited by her, was transferred to her MCX-SX account. The Appellant would maintain that all the trades in the MCX Stock Exchange were done as per instructions and with the prior approval of the Respondent. They would add that electronic Contract Notes were sent to the email ID furnished by the Respondent and SMS confirmation of trades were sent to the mobile phone number given by her. The Appellant had prayed for dismissal of the application.

4) The Learned Arbitrator had passed the award dated 18<sup>th</sup> day of January 2012 partially allowing the claim of the Respondent. The Learned Arbitrator has framed the following two issues and answered them.

- i. Is it true that the Respondent had traded in the Currency Derivatives of the MCX Stock Exchange ?
- ii. Whether the claim of the Respondent is true and acceptable ? If so to what extent ?

5) The Learned Arbitrator, while confining his findings only to the alleged transactions in MCX-SX and to the extent of Rs.5 lacs deposited by the Respondent, had stated that the actions of the Respondent's husband would have an impact in deciding the dispute as he was only trading in the Respondent's account. By tracing to the trading activities of the Respondent's husband especially in Currency Derivatives segment as from August 2010, the Arbitrator would say that the Respondent's husband who was trading on her behalf cannot plead ignorance of trades in the Respondent's account

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as from November 2010. Moreover the Arbitrator would accept the contention of the Appellant that if the Respondent had deposited Rs.5 lacs for trading only in NSE Cash segment, she should have started trading in that segment, whereas she had not traded at all under that segment. The Appellant would maintain that it was only under the Respondent's instructions that amount was transferred to the Currency Derivatives segment of MCX-SX. If it is otherwise, the Respondent's husband who was in the know how of the trades as from August 2010 should have protested on receipt of the Contract Note for the first trade done on 24.11.2010 in the Respondent's account. But the protest had come for the first time only on 05.04.2011, allowing forty trades in between. The Arbitrator would answer issue (i) stating that the Respondent or her husband had either traded in the Currency Derivatives of the MCX-SX themselves or atleast known that such trades had taken place even during the period from November 2010 to March 2011.

- 6) As regards issue (ii), the Arbitrator would observe that the Respondent did not deny the receipt of Contract Notes, SMS alerts and ledger statements. But he would question the transfer of funds from the Respondent's account from one Exchange to another as not conforming to Exchange Regulations. He would also doubt whether the letter of authority for transfer of funds over the Exchange was given by the Respondent voluntarily. As the said letter of authority taken in a printed form, the signature of the Respondent being obtained among other documents, could be considered as beneficial only to the Appellant and as such the Arbitrator was unable to recognize that document as an acceptable one.

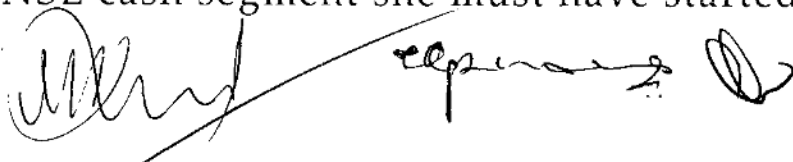


The Arbitrator had concluded that all the trades in Currency Derivatives as non est in the eyes of law and as such the amount of Rs.5 lacs transferred from the Respondent's NSE trading account to Currency Derivatives of MCX-SX account should be refunded to the Respondent. The Arbitrator had taken into account his conclusions under issue no (i) and proceeded to split the loss between the parties equally. The sole Arbitrator had passed the Award directing the Appellant to pay Rs.2,50,000 with interest @ 9% per annum from the date of award till the date of payment.

**Statement of Appeal dated 24.02.2012 by the Appellant and reply thereto dated 07.03.2012.**

7) In their statement of appeal, the Appellant would like to maintain their appeal on the following grounds.

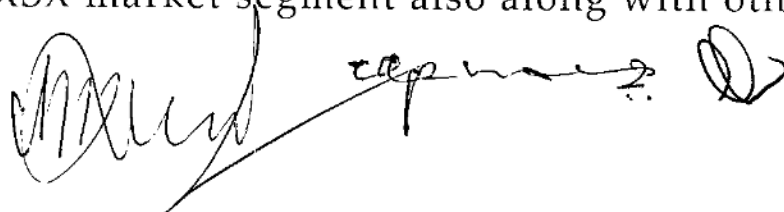
- a. The learned Arbitrator has misapprehended the framing of Rules, Regulations and Bye-laws for the trading activities taking place on the floor of Exchanges. The Arbitrator has not recorded any reason for his conclusion that transfer of funds from one Exchange to another cannot be accepted. The Appellant would rely on the provisions of SEBI circular No.CIR/DNPD/7/2011 dt 10<sup>th</sup> August 2011 and additional clarification sought on the said circular under circular No.MCX-SX/INSP/667/2011 dt 20<sup>th</sup> December 2011. They would contend that there was sufficient margin available at the time when the trades were executed.
- b. The learned Arbitrator, while appreciating the fact that if the Respondent had intended to invest a sum of Rs.5 lacs in NSE cash segment she must have started trading in

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that segment but she had not traded in that segment at all, arbitrarily has arrived at a conflicting finding that the Respondent could not have mentioned the particular account in which the amount should be credited, had she wished to trade in Currency Derivatives.

- c. The Learned Arbitrator's conclusion that the letter of authority was not signed by the Respondent voluntarily and as such it was only beneficial to the Appellant is not reasoned out properly. The Appellant would contend that the letter of authority is a voluntary agreement which was signed by the Respondent at the time of opening of account itself for getting the benefit of inter segment fund transfer, delivery of e-Contract Notes and diversion of idle funds towards margin requirement, all these things, purely for the benefit of the Respondent. They would also refer to the addendum dated 13.11.2010 signed by the Respondent in tandem with SEBI Circular No.MIRSD/SE/CIR-19/2009, dt 3.12.2009 and state that the Respondent should not be adjudged on the basis of sympathy by saying that she had signed a printed form.
- d. The Appellant would rely on the findings in SEBI adjudicating order No.VSS/AO-66/2009 dt. 04.05.2009 in their matter recognizing the transfer of funds across the different exchanges.
- e. The Appellant would like to point out that at the time of opening her account, the Respondent had selected MCXSX market segment also along with other segments.

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8) In her reply dt 07.03.2012, the Respondent had recorded her objections to the appeal preferred by the Appellant. She would reiterate her earlier stand in the arbitration proceedings alleging misappropriation of her money given only for NSE cash segment into other segments like MCX without her approval. She would add that all the documents and statements were received by her only after 07.04.2011 (in piece meal) after the misappropriation was noticed and refer to the contrast between the documents in her file with mistakes, half filled and in various hand writing and the well filled up in better hand writing post dated copies as a result of post regularization. She would peg her claim at Rs.6 lacs including the cost involved in pursuing her claim of Rs.5 lacs.

**9) Personal Hearing on 28.05.2012.**

The personal hearing in this appeal matter was held on 28.5.2012. The Appellant was represented by their cluster Head Mr.Punit M.Sethia and the Respondent by her husband Mr.Vijaya kumar. Both the parties were heard explaining their respective stand point of the matter. The Appellant were directed to produce copies of SEBI Circular and SEBI adjudication order referred to by them in Para 3 and 4 respectively of their appeal before 11<sup>th</sup> of June 2012. Respondent was to send her comments before 21.06.2012.

As per the above directive the Appellant made their submission on 07.06.2012 enclosing the two documents and the Respondent replied on 18.06.2012. In her reply, the Respondent had not made any specific comment on the documents produced by the Appellant. She had only reiterated her earlier contention of alleged misappropriation of her funds. She would conclude that instead of taking so many signatures in a bundle of papers and then filling them up predated only when issue comes



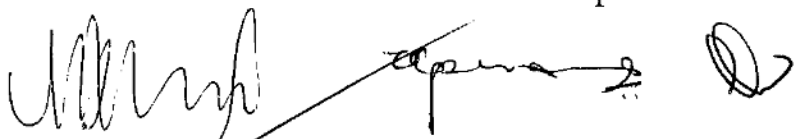


up, the client should be provided with all documents in a folder within a reasonable time so that the client could have understood the pitfalls in the system and become cautious. She would trace the root cause of all her problems to the absence of such a practice on the part of the Appellant.

10) **Conclusions and findings.**

As rightly pointed out by the Appellant, a contradiction has crept into the findings and conclusions of the Sole Arbitrator in his award. While answering issue (i) framed by him, the Arbitrator would say that the Respondent or her husband had either traded in the Currency Derivatives of the MCX-SX themselves or at least known that such trades had taken place even during the period from November 2010 to March 2011. But in dealing with the other issue, he would go to question the transfer of funds across the Exchanges accounts, refuse to accept the letter of authority as being not obtained voluntarily, declare all the transactions in the Currency Derivatives as non est in law and decide that the amount of Rs.5 lacs should be refunded back to the Respondent. The Arbitrator would bring in his findings in issue (i) and strike a compromise by splitting the amount between the parties. Naturally, Appellant had to enter into this appeal matter.

- 11) The Appellant have attempted to point out that there is no prohibition from SEBI as regards transfer of funds from the client's account across the Exchanges with the Client's authorization by referring to the SEBI Adjudication order dt. 04.05.2009. In this order, the Adjudicating Officer has recorded references made by him in the matter of transfer of funds to BSE and NSE and the replies received. BSE have

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clarified that Byelaws of BSE don't have any provision authorizing or prohibiting adjustment of client's account across different segments of an Exchange or across different Exchanges or between different Markets. NSE have informed that there is no provision in their Bye laws, Rules and Regulations as regards adjustment of dues of clients between different markets but they have added that for the purpose of this query they had examined sample of arbitral awards passed by arbitrators. Based on the same, they have observed that wherever specific consent for specific transfers / adjustments has been obtained from the parties, arbitrators have taken cognizance of the same in the award passed. Based on these clarifications, the Adjudicating officer has found merits in the submission of the Appellant.

12) The Respondent would maintain that her intention was to trade only in NSE cash segment whereas she had indicated MCX-SX also as one of the segments she would like to trade in the client Registration form while opening her account with the Appellant. As such the observations of the Arbitrator appreciating the stand of the Appellant while answering issue (i) and taking a different stand while answering issue (ii) are absolutely contradictory.

13) As regards the letter of authority, the Appellant would pray that no sympathy need be shown to the Respondent on the ground that it was only a printed form got signed from her. There is a force in their contention that it is one of the set of forms forming part of the agreement intended for the benefit of the Respondent. The Respondent and her husband were not novices to the market. As such they should have known the significance of each and every document signed by them.

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Receipt of e-Contract Notes and SMS alerts are not denied by them. These are all part of the same agreement between the Member and the client. As such the Respondent cannot selectively avoid any one document.

14) In view of the above findings, it can be concluded that the Appellant have succeeded in maintaining their appeal against the Sole Arbitrator's award on merits.

15) AWARD

In view of the conclusion in Para 14, the appeal made by the Appellant against the award of the Sole Arbitrator in A.M.No.CHE-01/2011 dt 18.1.2012 is hereby allowed and consequently the said award is set aside.

Dated at Chennai this the 10<sup>th</sup> day of August 2012.

  
**A.V.HARIDASAN**  
Arbitrator

  
**C.RANGAMANT**  
Presiding Arbitrator

  
**R.RAVI**  
Arbitrator