



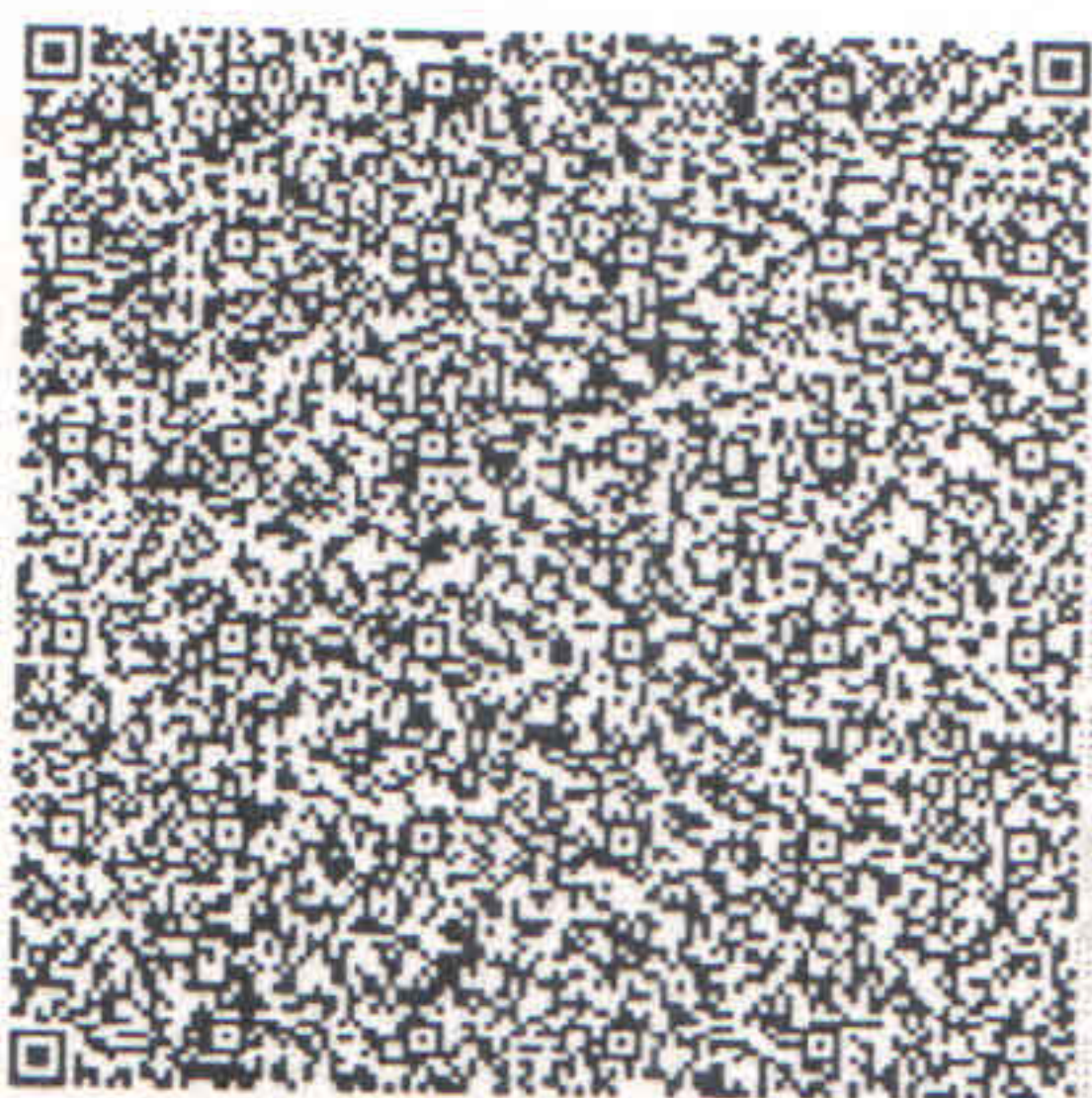
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INDIA NON JUDICIAL

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e-Stamp

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Certificate Issued Date	: 09-May-2013 11:57 AM
Account Reference	: IMPACC (PF)/ dl763913/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL76391324658398785101L
Purchased by	: MCX STOCK EXCHANGE LTD
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: MCX STOCK EXCHANGE LTD
Second Party	: NA
Stamp Duty Paid By	: MCX STOCK EXCHANGE LTD
Stamp Duty Amount(Rs.)	: 20 (Twenty only)



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In the Matter of Appellate Arbitration as per the Bye-laws and Regulations of MCX Stock Exchange
Before the Appellate Panel of Arbitrators

Justice S.N.Kapoor(Retd.)
(Presiding Arbitrator)

Shri. R.K.Ahooja, IAS(Retd.)
(Arbitrator)

Shri.Vijai Mathur
(Arbitrator)

Appellate Arbitration Matter No. MCX-SX/ARB/DEL-Appellate-02/2013

Between

Mr. Deepak Kumar (Constituent),

Appellant

And

M/s Angel Broking Ltd. (Trading Member)

Respondent

Statutory Alert:

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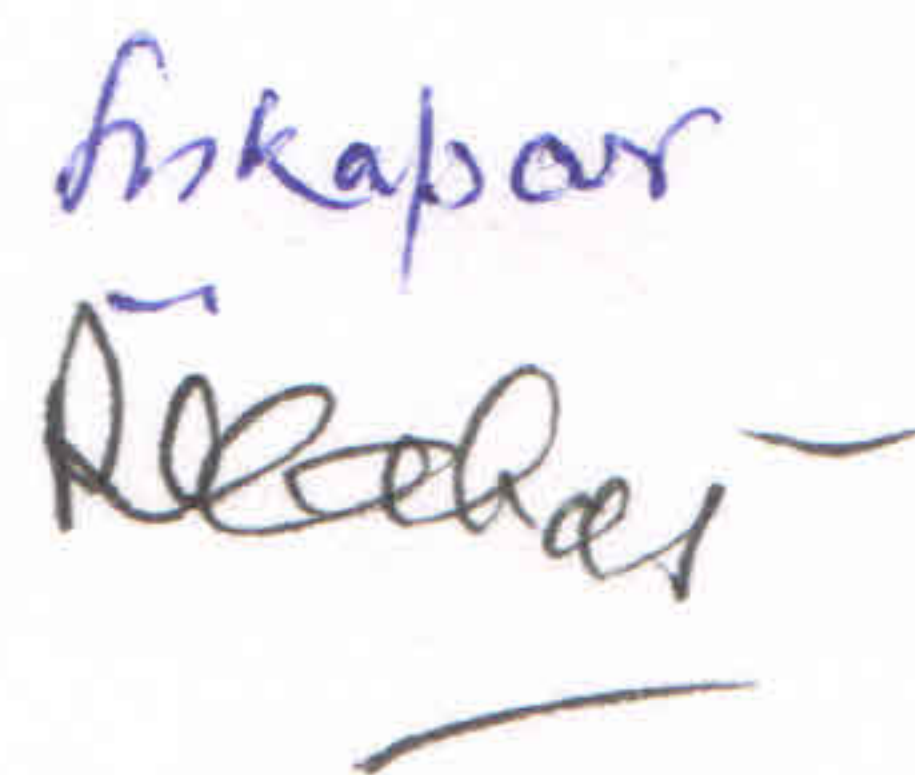
ORDER

The Appellant who had a trading account with Respondent Trading Member(TM) filed a claim for Rs. 23,369/- against the latter, on allegations of unauthorized trading and deficiency of service, which was dealt with in arbitration proceedings titled A.M. No. Del-10/2012. It was Appellant's contention therein that on 01/10/2012 at 16:58:45 an unauthorized trade was conducted in his account by the Respondent by purchasing 50 lots of FUTCUR USDINR and squaring off the same on 03/10/2012 resulting in an unwarranted loss of Rs.17,384/-. His second contention was that though he had earned a profit of Rs.5085/- on a trade conducted by him in the same segment on 03/10/2012, the said profit had not been credited to his account.

2. The allegations and the claim made by the Appellant were denied by the Respondent. According to the Respondent all the trades, including the disputed trade, were executed as per Appellant's instructions. The particulars of all the trades were conveyed to the Appellant over the phone the same evening and no objection was raised by the latter. The Respondent also contended that the trade confirmation were sent through SMS on Appellant's mobile number provided by him in his KYC and that Electronic Contract Notes/ bills/margin statement/trade confirmation were also duly sent on the registered e-mail id. As regards the second allegation that the profit made by the Appellant had not been booked in his account, the explanation of the Respondent was that it had arisen in an intra-day trade of 01/10/2012 and the same had been adjusted against the losses incurred in the other trades executed on account of the Appellant.

3. The learned Arbitrator, after examining the respective versions of the parties, in his award dated 14.02.2013, held the claim of the Appellant to be untenable and rejected the same. Aggrieved by this decision the Appellant has filed the present appeal.

4. We have heard the parties at length and have also perused the record. In his arguments before us the Appellant has laid stress on three points. Firstly he sought to show that no timely intimation regarding the disputed trade was given to him as had been asserted by the Respondent and had been mistakenly accepted by the learned Arbitrator. The Appellant submitted that the mobile number mentioned by the Respondent on which the trade confirmation SMS were said to have been sent was not the registered mobile number of the Appellant. As for the contract notes the same were received by the Appellant after a delay of 45 days and therefore there could be no question of his raising an objection to the disputed trade within 24 hours. The second argument related to the offer of a compensation of Rs. 8000/- made by the officials of the Respondent to the Appellant with a view to settle the dispute. This according to the Appellant showed that the Respondent accepted its culpability. The third argument related to the KYC form in which, according to the Appellant, many changes were made fraudulently by the Respondent and even the signatures of the Appellant were in places forged. By way of an example, the Appellant high-lighted the entry relating to his mother who had been shown as his wife. The Appellant contended that such actions reflected adversely on the credibility and honesty of the Respondent whose version could not therefore be trusted.



5. We are not convinced by any of these points and arguments raised by the Appellant. As regards his argument relating to the wrong telephone number and the late receipt of contract notes, Appellants own statement in his appeal itself belies his contention. Thus in the concluding paragraph he says that "Trade on that particular day till 04:40 PM were in my knowledge so please credit that amount also." When this statement is read with his statement in the 2nd paragraph wherein he says that "Actually in MCX-SX segment dealer of Angel Broking was always putting the order, I never did it." it is clear that he was in receipt of the confirmatory SMS as otherwise he would not have known also about the trades till 4:40 PM. The learned Arbitrator has also observed in his award, paragraph 14, that the Appellant had not denied the SMS log, the e-mail log and the recording of the conversation showing the intimation of the purchase of the second lot on 01.10.2012. We therefore find no reason to doubt the statement of the Respondent that they had sent all confirmatory alerts to the Appellant on his registered mobile no. 9711012209 and that the mention of mobile no.8587800996 in their letter dated November 1, 2012 addressed to the Appellant was a typographical error.

6. As regards the second argument that the willingness of the Respondent to settle the dispute by payment of Rs.8000/- tantamounts to an admission of guilt, we fail to see any merit therein. The offer of the Respondent was made in the course of investor grievance removal proceedings held by the Exchange officials. Such offers are made quite often, without prejudice, to avoid litigation which is more costly for the Trading Member. It is not possible to draw any inference regarding the merits of the present case on the basis of any conciliation proceedings held earlier.

7. The third argument pressed by the Appellants in respect of changes made in the KYC is, in our view, not relevant to the merits of the present case. We also find that the objection regarding entries in the KYC was not taken by the Appellant in the original arbitration proceedings and cannot now be added at the appeal stage. In any case if the Appellant had chosen to put his signatures on a blank form, then he cannot turn around now and blame the Respondent for what was filled in later on.

8. Before concluding we may take note of two other aspects. First is the Appellant's statement referred to above that he never put the orders him-self. That being the case he has to accept the losses as much as the profits accruing on account of the orders placed by those who acted on his behalf. Secondly, the Appellant has not been consistent in his statements; thus, for example he laid a claim for Rs 23,369/- before the learned Sole Arbitrator while before us he has come up with a figure of Rs. 13420/- Such inconsistencies further detract from the merits of his case which, even otherwise, in our view, has little to commend itself.

9. In the result the Appeal is dismissed. There will, however, be no order as to costs.

New Delhi

21,
May, 2013


Justice (Retd) S.N. Kapoor

(Presiding Arbitrator)


Vijai Mathur
(Arbitrator)

R.K. AHUJA (Arbitrator)
