

Before The Panel of Appellate Arbitrat Tribunal at Mumbai comprising

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|------------------------|----------------------|
| 1. Mr. Deba Prasad Roy | Presiding Arbitrator |
| 2. Mr. Deepak Shah | Co- Arbitrator |
| 3. Mr. Pradip Kedia | Co- Arbitrator |

In The Matter Of Arbitration under the Bye Laws, Rules and Regulations of MCX
Stock Exchange Limited (MCX-SX)

APPELLATE ARBITRATION MATTER NO.: A.A.M. No. MUM-01/2013

Between

Mr. Prabhakar Bhaskarrao Pawar
(Constituent) (Original Applicant)
14, Vidyavihar, Chopda,
Dist. Jalgaon,
Pin: 425107
Pan:AASPP8199D

..... Applicant

And

Angel Broking Ltd.
(Trading Member) (Original Respondent)
G-1, Akruti Trade Centre
Road No. 7, MIDC, Andheri (E)
Mumbai-400 093

..... Respondent

Appearances:

For Appellant – In person
For Respondent – Ms. Renuka Nair, Authorised Representative

APPELLATE AWARD

1. The applicant Mr. Prabhakar Bhaskarrao Pawar (constituent and the Original Applicant) has filed an appeal dated February 12, 2013 with the Exchange against the award dated January 12, 2013 herein after referred to as "Impugned award" passed by the Sole Arbitrator Justice Dr. Pratibha Upasani (Retd.) dismissing the arbitration application filed by the applicant against the respondent for payment of ₹1, 00,000/-. The Arbitration department of MCX-SX by its letter dated April 05,

2013 referred the said appeal matter to the appellate panel of arbitrators (for short "Appellate Panel") comprising Mr. Deba Prasad Roy, Mr. Deepak Shah and Mr. Pradip Kedia under the Bye-laws, Rules and Regulations of the Exchange. The Appellate Panel held its initial hearing on April 25, 2013.

2. The facts of the matter and the dispute between the parties are briefly stated as under:-

Original Applicant's (i.e. the Applicant in Appeal) Statement of case

The Appellant (Original Applicant) Mr. Prabhakar Bhaskarrao Pawar was the constituent of the Trading Member Angel Broking Limited.

The Applicant submitted that the Award was against the prescribed rules and procedures. The crux of the case was not understood and hence the wrong conclusion was arrived at. The telephone record under RTI Act is misleading, deceptive and fraudulent. It was not considered that the calls were for ½ seconds within which information of trading can't be given or confirmed. It was not considered that the respondent was not authorized to deal on behalf of the applicant and invest funds lying with them. The withdrawal of ₹5,000/- cannot be related to trading and the applicant was within his rights to withdraw his own funds.

The applicant further submitted that the text messages were not considered. There was no direction for trading on May 23, 2012. Hence the applicant is not liable for the loss of ₹37,240/-. The respondent could have traded on his behalf only under the direction of the applicant. The Respondent continuously traded unauthorisedly though there was continuous margin shortfall. The respondent should have immediately squared up the position and saved the applicant's loss. It was not considered that the signature of the applicant on the postal receipts differs from his admitted signature.

Original Respondent's (i.e. the Respondent in Appeal) Statement of reply

The Original respondent i.e. the present respondent in their statement of reply dated April 22, 2013 submitted that the applicant traded on MCX-SX Currency Derivative Segment from May 04, 2012 to May 23, 2012 after paying ₹1,00,000/-. Contract notes and bills were sent to his residential address. Trade confirmation SMSes were also sent to the designated mobile number. Quarterly ledger statement was sent under certificate of posting. The applicant placed orders telephonically and call log details from BSNL under RTI Act 2003 were furnished evidencing that the appellant was in constant touch and had complete knowledge of the trades executed in his account. A payout of Rs.5000/- was taken on May 09, 2012. The appellant, inter alia, had the following transactions in the currency derivative segment expiring on May 29, 2012.

	<u>QTY</u>
EUR INR	15
JPY INR	10
USD INR	25

On May 22, 2012 the appellant had a credit of ₹12,550.72/- but due to Mark to

Market loss of ₹18,912.50/- the ledger showed a debit of ₹6,361.78/-. At the end of the day there was a margin shortfall of ₹1, 03,523.09/-. The respondent requested the appellant to pay the margin money but he failed to do so. This was also advised by SMS. On May 23, 2012 there was a further loss of ₹23,889.76/ resulting in a debit balance of ₹34,482.11/-. The Respondent squared off the outstanding future currency positions to reduce further losses. In retaliation the appellant disputed all the trades carried out in his account. Thereafter he filed an arbitration application claiming ₹1, 00,000/- from the Respondent.

3. Proceedings:

At the initial hearing held on April 25, 2013 the appellant submitted further pleadings by way of rejoinder dated April 23, 2013 to the respondent's statement of reply. This was taken on record by the panel of arbitrators. The main issues raised therein, which are mostly a reiteration of the statement of case are summarized below:

- a. Although trading was from May 04 to May 23, 2012 it was only on June 03, 2012 that a few bills were received.
- b. The signatures on the courier receipts are not those of the applicant.
- c. All the trades were executed without his knowledge. He likes to trade in one currency in small quantity but these instructions were not adhered to.
- d. The trades SMSes were received after the trade and the appellant was bewildered how such risk was undertaken even after the respondent was told not to do so.
- e. The call logs are not about consultation but the appellant objecting to the sub-broker taking such risks.
- f. The SMSes about margin shortfall were received with delay. There was no message about squaring up.

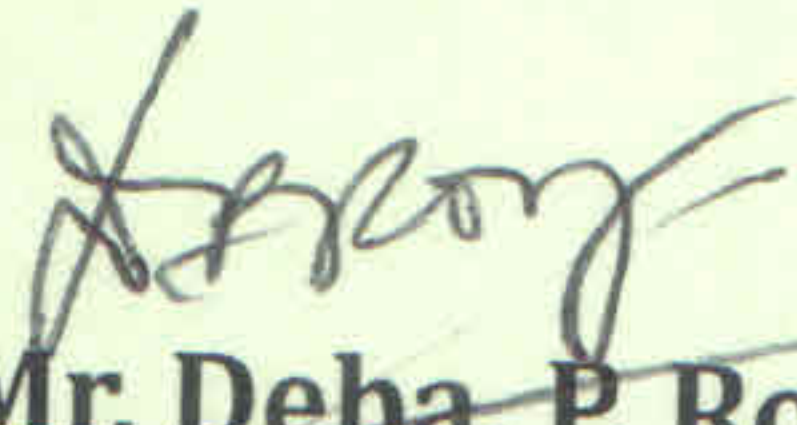
Both the parties made extensive arguments and counter arguments which were heard by the panel of arbitrators.


The appellant confirmed that SMSes were received after each transaction on the next day. The margin shortfall arose on May 24, 2012 after squaring off.


The appellate panel has gone through very carefully and exhaustively, the appeal memo filed by the appellant and the replies submitted by the respondent. It appears that the appellant disowned the transactions only when they resulted in a loss. He has owned having received the text messages which gave him a snap shot of the trades and ledger position. If indeed he had not placed any orders, he should have woken up much earlier, closed his trading account and sought refund of the initial margin money. This course of action he chose to avoid and continued to engage with the respondent. The telephone logs establish that there was an ongoing dialogue. Even if it is admitted that these conversations were about the appellant objecting to risky deals, it clearly establishes that trades were being effected but still chose not to sever connections. The respondent has submitted the basic documents required to be sent to the appellant on periodical basis.

Accordingly we pass the following Appellate Award:

- (i) The impugned award dated January 12, 2013 passed by the Sole Arbitrator is upheld and the appeal filed by the applicant is dismissed.
- (ii) Parties to bear their own cost.
- (iii) The Award is engrossed on stamp paper of Rs100/- as required under the law with three copies. MCX-SX is authorized to retain one stamped original and forward one signed copy to each of the Applicant and Respondent


Mr. Deba. P. Roy
Presiding Arbitrator


Mr. Deepak Shah
Co- Arbitrator


Mr. Pradip Kedia
Co- Arbitrator

Place: Mumbai

Date: May 28, 2013