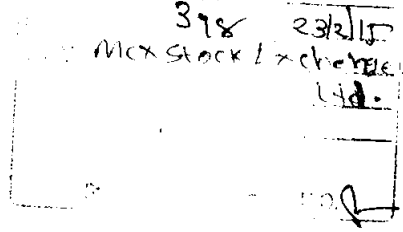




गुजरात गुजरात GUJARAT

AP 939398



In the matter of Arbitration under Bye-laws, Rules and Regulations of
MCX Stock Exchange Limited (MCX-SX)
Ref No: ARB/AMD-02/2014
BETWEEN

Mr. Jayesh N. Doshi
304-Vasundhara Appt.,
12 Jain Society, Pritamnagar,
Ahmedabad - 380006

... Applicant (Constituent)

And

M/s. Monarch Project and Finmarkets Limited
"MONARCH HOUSE",
Opp. Ishwar Bhuvan,
Nr. Commerce Six Roads, Navranpura
Ahmedabad - 380 009

... Respondent (Trading Member)

Before the Sole Arbitrator

Mr. Dharmendra Dhelariya

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BACKGROUND :

The reference in this dispute being reference No. ARB/AMD-02/2014 was entrusted to me by the MCX Stock Exchange Ltd (herein after referred to as "MCX-SX") to consider and adjudicate the dispute and difference between the Applicant and the Respondent mentioned hereinabove and to deliver the arbitration award. The Applicant is a Constituent of the Respondent who is a Trading Member and a company incorporated and registered under the Companies Act, 1956. The Respondent is also registered as trading member of the National Stock Exchange of India Limited, Bombay Stock Exchange Limited and MCX Stock Exchange Limited providing trading facilities to its client both in Cash, Derivative Segment and Currency Segment.

BINDING NATURE OF THE RULES, ETC OF MCX-SX:

Both the Applicant and the Respondent have agreed under Member and Client Agreement that they shall be bound by all the Rules, Bye-Laws and Regulations of the 'MCX-SX'.

The Hearing:

The proceeding in the arbitration matter was initiated by issuance of letter dated 17th November 2014 by the Arbitration Department of MCX-SX against the application received together with relevant documents from the applicant on 30th October 2014. The initial hearing was held on 2nd December 2014.

Appearances:

For the Applicant: Applicant himself present to represent his case.
For the Respondent: Mr. Mayukh Pandya, Authorised Representative of the Respondent to present the case of Respondent.

Case of the Applicant

Briefly the case of applicant is as under :

The applicant has filed present arbitration appeal for seeking compensation of Rs 1,25,000/- plus interest from the Respondent. The applicant had issued 4 cheques dated 7th March, 2013, 1st June 2013, 13th June 2013 & 25th June, 2013 of Rs 50,000/-, Rs 25,000/-, Rs 15,000/- & Rs 35,000 aggregating to Rs 1,25,000/-. The applicant is denying the MCX-SX currency transaction done in his account and has submitted that he doesn't know any details related to this. The Applicant further submitted that he has never received any contract note from the Respondent and he denied the signature in POD submitted by the Respondent. The Applicant submitted that the employee of Respondent, Mr. Pathik Chokshi known to him has given Cheque of Rs. 80,000/- towards amount outstanding from Respondent and he has deposited Cheque for Rs. 70,000/- and same is credited in his account. The Applicant also objected regarding the debit balance of Rs 1,22,000/- which is standing in his account as per Respondent. It is submitted by the Applicant that Mr. Pathik had told the Applicant if he wanted to earn monthly interest of 1.5 to 2% the company would like to trade in currency.

Prayer of Applicant

Pass an award in favour of the Applicant ordering the Respondent to pay sum of Rs. 1,25,000/- (Rupees One Lacs Twenty Five Thousand only) towards amount paid by him along with interest.

Respondent Reply Statement

Briefly the Reply of Respondent to the case of applicant is as under.

1. The Respondent submitted that the applicant had himself signed the confirmation letter regarding starting of dealing/ trading in Cash/FO/ Currency Derivatives segment and the same has been confirmed by the applicant.
2. The Respondent has submitted that the applicant was informed about the transactions through SMS and submitted copy of the SMS Log. The Respondent further submitted

that they have also sent physical Contract Note and submitted copy of POD as proof of dispatch.

3. The Respondent submitted that they are not aware of any amount paid by Mr. Pathik Choksi to the Applicant and its personal transaction between Mr. Pathik Choksi and Applicant. The Respondent further submitted that they have never given authority to Mr. Pathik Choksi to issued cheque in favor of Applicant on behalf of Respondent.
4. The Respondent submitted that in respect of amount of Rs. 1,22,000/- due from Applicant, the Applicant has failed to provide any documentary evidence in support of his objection to the amount due from him.

Prayer of Respondent

- a. Dismiss the appeal/claim of Applicant and pass the counter claim of Respondent of Rs. 1,22,000/-.
- b. Interest at market rate on the above amount
- c. Cost of the case
- d. Any other relief may be deemed fit.

Proceeding

At hearing held on 2nd December 2014, the parties confirmed the disputed period from 7th March 2013.

Both the parties were heard in detail. Following direction given

The Respondent was directed to submit:

- a. Quarterly Account statement duly acknowledged by the Applicant.
- b. Proof of follow up made for recovery of amount due from Applicant.
- c. Reason for written off amount due from applicant.
- d. Account Statement of Applicant for disputed period.

The Applicant submitted their rejoinder on 8th December 2014 and same is taken on record.

The Respondent has submitted his rejoinder to the Applicants rejoinder of 8th December 2014 on 22nd December 2014 and same is taken on record.

Applicant submitted his reply to the Respondent submission dated 22nd December 2014 on 5th January 2015 and same is taken on record.

Matters of disputes between the Parties are as under:-

1. The Applicant is claiming Rs 1,25,000/- paid by him to the Respondent along with interest.
2. The Applicant is denying all the trades executed between 07th March, 2013 to December'14, that were undertaken by Respondent on behalf of the Applicant.
3. The Applicant is denying receipt of Contract Note from the Respondent.
4. The employee of Respondent Mr. Pathik Choksi which is known to Applicant has given Rs. 70,000/- against amount due from Respondent.

Finding:

My findings based on the scrutiny of submissions and various documents submitted along with submissions of both the parties during the proceedings are as under:-

1. The Respondent has regularly sent the physical contract note on the registered address of the Applicant and in support of the same the respondent has submitted POD. Apart from Physical Contract note the Respondent also send SMS for trade executed in the account of Applicant on the registered mobile number of Applicant and submitted SMS Logs.
2. The Applicant also submitted that the employee of Respondent had told him that if the Applicant wanted to earn monthly interest of 1.5 to 2% company would like to trade in currency. However the applicant fails to submit any documentary evidence in support of his submission.
3. The Applicant submitted that Mr. Pathik Choksi employee of Respondent has paid Rs. 70,000/- to him towards amount outstanding from Applicant.

4. The Respondent submitted that they have sent letter for recovery to the Applicant on 20th October 2014 by speed post. However proof of delivery is not submitted by the Respondent.
5. The Respondent has made follow up for recovery of amount through sending SMS on Applicant registered Mobile number and submitted SMS Log in support of his submission.
6. The Respondent submitted that they have written off the amount due from Applicant as procedural part of merger of the Respondent Company with other company.

Reasoning:


Based on my findings I am of view that the Applicant was aware of all the transaction done in his account and the Respondent has regularly sent SMS on his registered mobile to the Applicant. The Applicant has not raised any objection to the trade executed in his account on receipt of SMS on his registered mobile number.

The Applicant is aware of all the disputed trade.

Considering arguments, all the facts and circumstances of the case, I Pass the following award:

Award

1. The Applicant claim of Rs 1,25,000/- with interest is rejected.
2. The counter claim of Respondent is rejected.
3. No order as to cost.


Mr. Dharmendra Dhejariya
(Sole Arbitrator)

Place : Ahmedabad

Date : February 24, 2015 .