

गुजरात गुजरात GUJARAT

AP 725112

No. 97338 Dated 11-02-2015
in N/O MCX Stock Exchange
Ltd
C.A.R.D. Ahmed

A
Wander, Ahmedabad GPN
Ref No. ARB/AMD-03/2014

In the matter of an Arbitration under Rules, Byelaws and Regulations of MCX Stock Exchange Ltd.

Between

Kinjal J. Doshi
304, Vasundhara Apartments,
21, Jain Society, Near PritamNagar Akhada,
Ellisbridge,
Ahmedbad-380006

...Applicant

And

Monarch Project and Finmarkets Ltd.,
Monarch House, Opp. Ishwar Bhuvan,
Navrangpura,
Ahmedbad -380009

... Respondent

Before the Sole Arbitrator

Prof. Ajay Pandey

Ajay

: 2 :

This is an arbitration reference submitted to me under the Rules, Byelaws and Regulations of the MCX Stock Exchange Limited.

1. The hearing was scheduled and the matter was heard on 02/12/2014 in which the applicant was represented by Mr. Jayesh N. Doshi. The respondent was represented by Mr. Mayukh Pandya on the basis of an authority letter from the respondent. The applicant submitted Courier Receipts, Photocopy of cheques issued by an employee of the respondent and copy of IT return of the applicant on the day of hearing. These were accepted and a copy was given to the respondent. Both the parties were heard at length and the applicant was allowed to make submissions on or before 10/12/2014. The respondent was given time to respond till 23/12/2014. In addition, the respondent was asked to submit the following-
 - a. Ledger account statement of Applicant for disputed period starting 7/03/2013.
 - b. Details on the running debit balance in the client ledger.
 - c. Reason for writing-off the amount due from applicant.
 - d. Client history of trading in other segments prior to 7/03/2013.
 - e. Clarification on the policy of sending physical contract notes across all exchange segments.
2. The respondent is a SEBI registered entity engaged in the activity of share and stock broker and is the trading member of the MCX Stock Exchange Limited (hereafter referred to as MCX-SX). The applicant is a constituent of the respondent and has executed Member Client Agreement to effect transactions in the cash, Futures and Options (F&O) and Currency segment of MCX-SX and has been allotted client code PH107 by the respondent.



: 3 :

3. The case of the applicant is -

- a. That the applicant has been operating a trading and demat account with the respondent since 2007 under client code PH107.
- b. That the applicant did not trade currency contracts in MCX-SX from 7th March 2013 and the applicant did not authorize nor was aware of any currency derivative transactions and consequently any loss on these transactions was not due from the applicant.
- c. That the applicant did not receive any bills and contract notes pertaining to the transactions carried out in the currency segment.
- d. That the applicant gave cheques between 7th March 2013 and 25th June 2013 aggregating to Rs 1,25,000/- in favour of respondent.
- e. That the respondent owe to the applicant a sum of Rs 2,50,000/- and one of the respondent's employee Mr. Pathik Choksi had given undated cheques of Rs 10,000/- each of which Rs 70,000/- have been encashed by the applicant.
- f. That the cheques issued by Mr. Pathik Choksi were on behalf of the respondent.
- g. That the client is not aware of currency derivatives contracts and challenges the respondent to provide proof that the transactions were done with the consent of the applicant.
- h. The applicant, therefore, makes a claim of Rs 1,25,000/- (Rupees One Lakh Twenty Five Thousand only) on account of unauthorized trading and loss, and interest thereon.

4. In addition, the following points were made by the applicant in IGRC:

- a. That while opening an account, the broker takes 20-25 signatures of the client and 90% of the clients do not read the form.
- b. That the applicant did not receive any SMS from the respondent.
- c. That the applicant is not conversant with the computers and hence cannot read e-mails.
- d. That the signatures on the proof of delivery documents submitted by the respondent are forged and no contract notes were received by the applicant.
- e. That the respondent carried out unauthorized trades in currency derivatives on MCX-SX in order to earn brokerage.

5. In support of this submission, the applicant provided copies of the following additional documents:

- a. Copies of the cheques issued by Mr. Pathik Choksi.
- b. Copies of the P.O.D by M/S. The Professional Couriers
- c. Copy of the IT return for the AY 2014-15

Choksi

6. The respondent, in his defence, stated that-

- a. That the applicant expressed his willingness to effect transactions through respondent by opening an account with the respondent on 12/07/2007 after completing all necessary formalities and documentation.
- b. That the respondent did the trades as per the applicant's instructions and that the applicant's trades were speculative.
- c. That the applicant has not clearly specified the disputed period and has not made any clear demand and therefore is implicitly agreeing to the amount due from her to the respondent.
- d. That the respondent is responding to the applicant's claim on the basis of her complaint to IGRC as there has been no detailed submission been made by the applicant in the arbitration process.
- e. That the applicant carried out the trades in currency derivatives and had given the confirmation in writing for trading in cash/F&O/currency derivatives in KYC documents.
- f. That the respondent informed the applicant through SMSes.
- g. That the contract notes were sent to the applicant on the e-mail id provided by the client.
- h. As far as physical copy of contract notes is concerned, the respondent is expected to only provide proof of dispatch. The respondent has provided proof of delivery.
- i. That the applicant's dealings with MrPathik Choksi are personal transactions between the applicant and Mr Choksi and the respondent is not aware of these and has not authorized Mr. Choksi to issue any cheque on the behalf of the respondent.
- j. That the claim of the applicant, therefore, should to be rejected.
- k. Instead, the respondent would like to claim Rs 1,22,000/- and interest thereon due from the applicant as the debit balance in the applicant's account prior to it being written off.

7. In support of its defence, the respondent provided a copy of the following documents-

- a. KYC form and MCA with the applicant
- b. SMS Log

8. During the hearing, the applicant was represented by her father who accepted that it was he who was trading on behalf of the applicant as her



father. He wanted to make additional submissions which was allowed. In the submission dated 10/12/2014, the applicant further stated-

- a. That the contract notes related to currency derivative transactions were received by the applicant 6-10 months later and not through the respondent but from the MCX-SX.
- b. That the respondent's claim that the applicant authorized trades in currency derivatives is false. The applicant did not communicate through phone or mail her consent for these transactions.
- c. That the KYC and other account opening forms are in English and most clients do not read these forms and sign them. Even if the permission was given by the applicant in currency derivatives, that does not imply respondent can execute the trades without the client's knowledge and the respondent is liable to carry out trades only when instructed.
- d. That the signatures on P.O.D. receipt of courier are not that of applicants' family members and are forged when compared with the signatures of the family members. That this is a criminal conspiracy in which the respondent and its employees are involved. The numbers on the receipt for courier services are too close even when the dates are apart, which seems implausible.
- e. That Mr. Pathik Choksi is a Manager level employee of the respondent who was given the money by the applicant on verbal assurance of protecting 100% of the capital. A total of Rs 2.5 lakh in two names (of which 1.25 lakh was from the applicant) was given to the respondent on these assurances.
- f. That the debit shown in the ledger was never accepted by the applicant and if the amount was truly due, then the respondent would not have made payment of over Rs 80,000/- on 3rd January 2014 on sale of shares and would not have allowed transfer of shares worth approx. Rs 3.85 lakhs.
- g. That the applicant received a call between 15th May and 16th June 2013 that there has been loss in his account on currency trades. Knowing this he went to the respondent's office but did not find Mr. Pathik. Instead, the applicant met one Gunjan bhai.
- h. Later, the applicant met Mr. Pathik and asked for money to which he replied that there has been a loss on currency trades. When threatened with a police case, Mr. Pathik took him to one Mr. Vaibhav bhai working for the respondent.
- i. Next day, Mr. Pathik approached and assured the applicant to pay Rs 1.50 lakhs in lieu of Rs. 2.5 lakhs from his salary and it is to make up this loss, the applicant had received cheques of Rs 10,000/- each seven of which have been encashed by the client. Three fresh cheques were received from Mr. Pathik on 9/12/2014.
- j. That the respondent traded in applicant's account futures contract between 01/04/2012 and 31/03/2013 but those trades were done keeping the applicant informed. Some of those trades were also without applicant's consent but the applicant was receiving physical

Ans

contract notes and hence losses on those trades were borne by the applicant.

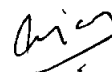
9. The applicant provided copies of the following additional documents:

- a. Statement of holding of applicant's demat account dated 07/01/2014.
- b. Account Closure Letter of applicant's demat account dated 11/01/2014.
- c. Ledger due letter written by the respondent dated 20/10/2014.
- d. Signature of family members

10. The respondent was given time to respond to the additional submissions made by the applicant. The respondent in his letter dated 24/12/2014 stated-

- a. That the applicant's claim that 30-40 bills were not received is not tenable as the respondent sends all contract notes irrespective of exchange in a single cover and the applicant has not denied receiving contract notes for transactions on other exchanges.
- b. That the applicant wanted to trade in all segments as is reflected in the KYC form. Further, the applicant made payment for margins as per the exchange requirements.
- c. That all the transactions were done by the applicant and not a single transaction was carried out by the respondent on its own.
- d. That the applicant's intentions are mala fide as she has made claims for the same amount from the respondent and one of its employees, Mr. Pathik if one were to believe the applicant's version. The respondent denies the applicant's version.
- e. That the applicant states that she gave Rs 1.25 lakhs each under client code PH1100 and PH107 as *sarafi* (loan). The exchange has no jurisdiction on such a transaction and there is nothing on record to suggest that the applicant gave a loan.
- f. That the applicant has simply denied the debit balance of Rs 1,22,932.83 without any basis and the respondent clarifies that the outstanding in the ledger is nil as this was written off by the respondent.
- g. That the respondent wrote off the outstanding in the applicant's account as a procedural part for merger of the respondent with M/S. Network Stock Broking Limited.
- h. That the respondent paid to the applicant despite outstanding in her account on sale of shares after 31/12/2013 as the regulations require that the debit balance in a client account can be adjusted across segments but not exchanges.
- i. That the demat account is outside the jurisdiction of exchange and hence the respondent is not making any comment on the closure of the applicant's demat account.

11. The respondent submitted following documents-



- a. Copy of the ledger account from 7th March 2013.
- b. Client's trading history prior to 7th March 2013.
- c. Copy of the NSE circular NSE/INSP/20638 dated 26/04/2012.

12. Observations

On a perusal of detailed submissions made by the applicant and the respondent, the following can be observed-

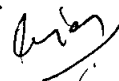
On the part of applicant-

- a. The applicant has been trading in derivative contracts prior to the disputed period and is aware of risks associated with derivative contracts.
- b. The trading history of applicant suggests several transactions in a day and activity in the account sometimes on successive days.
- c. It is not clear as to why the applicant provided e-mail id if the applicant was not conversant with the computers.
- d. The applicant has not been able to prove that she did not receive SMSs whereas the respondent has provided log.
- e. The applicant had sufficient experience to know that assurance of capital protection and interest like payoffs are not normally attainable from market transactions. It is curious as to how the applicant believed in such assurances.
- f. If the client gave loan to Mr. Pathik and he has been recovering from him, then this reference amounts to making same claim twice!
- g. The applicant states that he was sounded out about some loss on currency transactions between May and June 2013, it is curious as to why she (her father) gave a cheque on 25th June 2013.
- h. The applicant had never disputed any transactions formally even when she found losses in her account.
- i. If the applicant believes that this is case of forgery and criminal conspiracy, then the arbitration is not an appropriate forum.

On the part of respondent-

- a. The respondent has provided evidence, in form of SMS logs for the trades executed on behalf of the client.
- b. It is curious that the respondent did not raise any demand for the outstanding debit balance till 20 October 2014 from the applicant. This was done only after the applicant filed complaint in IGRC.

In view of these observations, it can be concluded that the applicant has failed to provide any evidence that the trades done by the respondent on behalf of the applicant were unauthorized and were disputed. By accepting trade confirmations without any protest, the applicant assumed the liability associated with the trades and there is nothing on record to suggest that




the respondent is responsible for trades executed on behalf of the applicant.

AWARD

The claim of the applicant is rejected. Counter-claim not admitted as the counter-claim seems an afterthought without any serious effort to recover dues from the applicant. No decision as to the costs.

Ahmedabad, dated

Before the sole Arbitrator:


12/02/2015
Prof. Ajay Pandey