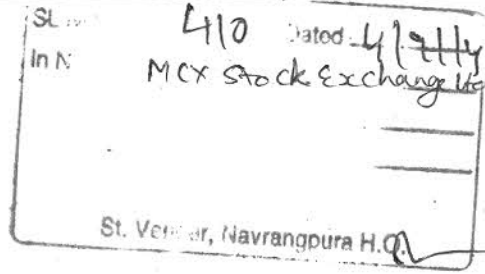




गुजरात गुजरात GUJARAT



AH 473410

Before the Sole Arbitrator Mr. Divyabhash C. Anjaria

In the Matter of Arbitration under Bye-laws, Rules and Regulations

Of MCX Stock Exchange Limited

Arbitration Matter No. AMD-01/2014

AWARD

1. Case Facts and Dimensions:


- | | |
|--------------------------------|--|
| Between | |
| a. Trading Member – Applicant: | Religare Securities Ltd.
D3, P3B, District Centre, Saket
New Delhi 110017 |
| And | |
| b. Investor – Respondent : | Mr. ROHIT Chimanlal Patel
51, Goyal Palace
Near Grand Bhagwati, Bodakdev
AHMEDABAD 380054 |

Case Facts and Dimensions: (Continued)

- c. Date of Arbitration Referral : 7th February, 2014
- d. Date of First Hearing : 20th March, 2014
- e. Date of second Hearing : 22nd April, 2014
- f. Date of Third Hearing : 30th May, 2014
- g. Date of Fourth Hearing : 19th August, 2014
- h. Accounts Maintained:
 - i. Trading Acct. With – Religare Securities Ltd.
 - ii. Unique Client ID – N103379
- i. Disputed Period of Trades : July 5 to December, 2011
- j. Amount of Claim by Applicant : Rs. 2,86,506.06
- k. Disputed Trades as per Respondent: November 1 and 2, 2011
- l. Counter Claim by Respondent : Rs. 21,37,052.87 and return of securities held as margin by the Applicant
- m. Date of Counterclaim : 19th July 2014
- n. Submissions:
 - i. Applicant – 29th April 2014, 30th May 2014, 25th July 2014, 12th August, 2014
20th August 2014
 - ii. Respondent – April 14 2014, 14th May 2014, 19th July 2014, 21st August 2014

2. Nature of Complaint by Applicant:

Applicant/trading member filed for arbitration to recover outstanding dues from the respondent/investor represented by debit balance in the Respondent's running account for currency F&O trades executed on both the MCX and NSE platforms, as per the financial ledger balance of Rs. 2,86,506.06 in the running account of the investor as on 29th of December, 2011, along with 24% p.a. interest till the date of payment.



3. The Arbitrator's Observations on the Claim and the Counterclaim

- a. **The Applicant's claim** of the cumulative amount of debit balance in the running account Rs. 2,86,506.06 would represent all the trading related entries from July 5, to December 29, 2011.

The claim amounts to considering that no outstanding dues existed before July 2011.

- b. **The Respondent's counterclaim**, however, has pointed out that
- the entries in the financial ledger from 7/2011 to 12/2011 also include brokerage amounts, and that
 - the cumulative debit balance as of 29/12/11 was arrived at by not including the amount of Rs. 11,37,052.87 as credit at the MCX SX account, although it is reflected as a debit to the NSE account on 30/09/2011, and that this amount is therefore due.
 - Finally, the counterclaim includes demand for return of Rs. 10 lakhs paid by the investor as margin money, based on the claim being bad in law, or based on consideration of trading as unauthorised.

The counterclaim was made by the investor in the last submission on 19/07/14, as earlier submissions contested the sustainability of the arbitral reference in the first place, and after receiving the Exchange confirmation that the disputed trades were put through the MCX SX platform.

Note: In normal course, the counterclaim ought to have been part of the Statement of Defence. However, considering the earlier submissions questioning the arbitration jurisdiction, the Arbitrator, in the interest of investor protection, has accepted the last submission including the counterclaim, which is in fact the first time that the investor made any substantive defence.

4. Evidence submitted by the Applicant in support of Claim

- KYC Documents as proof of client's consent to trade on MCX SX Currency derivatives segment
- CD and Transcripts of Voice Recordings to establish validity of transactions
- Sample copies of Contract Notes with logs of contract notes and bills sent electronically
- POD of Notes/Bills/quarterly statements sent physically via NBS
- Vendor-Certified Copies of Logs of text SMSes sent daily to the client
- Consolidated ledger statement reflecting deposits made by the client – as margin – for his trading requirement – Rs. 5 lakhs on 25/8/2011 and Rs. 5 lakhs on 25/11/2011
- The standalone ledger statement for MCX SX, reflecting the debit balance and shares held as margin and their value as of the Statement of Claim date.
- Arbitrator's Award for a similar claim filed with NSE, and upheld by him.

The Applicant also submitted that the client had access to web-enabled back-office of the Trading Member – for account information, as also ODIN facility to view positions outstanding. However, there is no evidence submitted to demonstrate actual access by client.

The Applicant has also submitted that the above documents have not been disputed by the client, and noted the absence of any report of discrepancy from the client.

The Applicant noted that the client had first complained in December, 2011.

5. Hearings and Submissions

At the first hearing of the arbitration, the Applicant referred to its Statement of the Case dated February 7th, 2014, and was asked by the Arbitrator to identify and submit the details of only those trades that were executed on the MCX SX platform, since the case at MCX SX can only cover those trades.

The respondent's Authorised representative, Mr Jayesh Patel, was asked to submit the respondent's defence statement.

6. Respondent's Initial Case: MCX SX Byelaws Jurisdiction

At the second hearing, Mr Jayesh Patel, the Respondent's representative, presented his case, whereby preliminary and vital objections were raised to the very sustainability of the Trading member's arbitration referral to MCX SX under its byelaws. This matter was addressed by the arbitrator by

- Clarifying that if the arbitration referral is about disputed trades executed by the Trading Member on the MCX SX trading platform, then the Byelaws of the exchange apply and arbitration under the MCX SX Byelaws would be sustainable
- Noting that the investor had referred to deals on two dates (detailed later) in its own plea, that meant that these were the disputed trades and
- Despite the documents presented by the trading member, asking the Exchange to verify if indeed the trades in question were executed on the Currency Trading Platform of MCX SX. If, yes, the arbitration referral would be justified and
- Asking the trading member also to verify and present any relevant evidence relating to the trades in dispute.

The Applicant submitted its response on 29th April, 2014, to the Respondent's submission dated 14/4/2014.

At the third hearing, the Applicant's submission dated 29th April 2014 was discussed. Their submission dated the May 30th – the date of the Third Hearing – was just taken on record, as it was submitted on the hearing day.

The Respondent had made his submission on May 14th, 2014, and reiterated his arguments of sustainability, which were set at rest by the arbitrator who noted that the exchange had confirmed the execution of the currency trades in question on its platform.

The Respondent/Investor did not put any substantive arguments in defence of his liability for these trades.

The arbitrator again requested the investor to address the issue of whether the claim against him is justified, while accepting the recourse to arbitration by the trading member of the Exchange. Due to ill-health of the investor or other reasons, the submission for the third hearing dated 19th July was finally received by the arbitrator on 22nd.

With this submission, the investor had the opportunity to submit a defence against the investor's liability as contended by the Applicant.

The fourth and final hearing was allowed by the Arbitrator to give an opportunity to the Applicant to give an effective response to the substantive defence made by the Respondent.

7. The Respondent Investor's Case Examination

The arbitrator has examined the three submissions by the Respondent to Arbitration Application, and noted that some substantive submissions have finally been made in the last submission dated 19/07/2014. This submission has been taken on record at this late stage, considering the Respondent's pleas about his ill-health and generally because the details of the investor's liability in this submission has a direct bearing on the nature and amount of the claim by the Applicant. Accordingly, these submissions are dealt with below.

- a. The Arbitrator has effectively dealt with the respondent's primary contention/preliminary objections on non-sustainability of the arbitration reference under the Byelaws of the MCX SX, based on the observation that the Applicant has confused the trades executed on all three exchanges and has not put up a clear case.
- b. And narrowed down the dispute on the respondent's liability to the two days' transactions in question, executed on MCX SX platform by the Trading member, based on the Respondent's own observation that the only transactions that the claim seems to have been based on were those executed on two days 1/11/2011 and 2/11/2011.
- c. The Respondent's last submission also reconfirms their objection to the two days' trades in question.
- d. The Respondent's observation that the Financial ledgers were separately and later prepared only to support the Applicant's case, and were otherwise combined for all Exchange transactions, and that the Applicant is not sure of the place of occurrence of the transactions, has also been dealt with by asking for and obtaining from the Applicant separate ledgers with trades executed on MCX SX platform duly identified. The Annexures given by the Applicant, which were questioned by the respondent as fabricated with the observation that the backoffice of the trading member did not have proper accounting system and maintenance of records, have been finally accepted by the Arbitrator as correct and clear as submitted by the Trading Member.
- e. The respondent's general contention that the Applicant has not provided any basis of claim has effectively been cleared with the above clarifications duly obtained from the parties and the Exchange.

8. Summary of the case by the Trading Member/Applicant

In-support of the claim, the applicant has cited the following main grounds:

1. The KYC documents signed by the investor that permitted trading on both NSE and MCX Stock exchanges
2. The trade confirmation advices sent to the investor for all deals, and

3. The absence of any investor contestation of confirmations of executed trades to buy/sell currency F&O contracts on the MCX platform
4. That the funds are due from the investor as detailed in the financial ledger separately produced for MCX deals in support of the MCX deals, as was done for NSE deals and the claim at the NSE
5. The confirmation that the financial ledgers were also sent to the investor and were not contested for long and until the filing of arbitration reference.

9. Summary of the Respondent's Final Submission on the Applicant's above basis of claim
Based on Enclosure R – 11 as part of submission on 19/07/2014

The Respondent's contentions and the Arbitrator's observations have been given below:

Issue – Validity of KYC Documents

9.1 Respondent's Submissions

- 9.1.1 KYC Documents - Annexure A do not indicate investor's preference to deal on the MCX platform.
- 9.1.2 KYC, CRA, RDA etc. documents are not as prescribed by the Exchange
- 9.1.3 Respondent has not given any authority for Electronic Contract Notes
- 9.1.4 Welcome kit after registration on MCX SX Currency Derivatives Segment was not sent to the Respondent
- 9.1.5 Applicant has annexed documents executed in 2006 as part of CA executed in 2011 (30/9/11).

9.2 Arbitrator's Observations

- 9.2.1 The Arbitrator observes that the Applicant has submitted two copies of the KYC Form, first one with the statement of the case and the second one later; and that the two forms are different, though both signed by the Respondent –
 - 9.2.1.1 In the first form the respondent has not indicated any preference of the Exchange by not ticking NSE and MCX boxes. In the second form, the box MCX has been ticked off.
 - 9.2.1.2 In view of this apparently contradictory evidence, the Arbitrator asked the Applicant to clarify, at the hearing on August 19th, 2014.
 - 9.2.1.3 The Applicant's response received on 23/08/2014 states that:
 - 9.2.1.4 The Trading Member had got the investor to sign a separate form for currency derivative trading before commencement of trading.
 - 9.2.1.5 There was a prefilled Application for Client Registration that was then signed by the investor who has ticked both Exchanges (NSE and MCX SX) boxes, and signed as required.
 - 9.2.1.6 However, a second form was also taken with the investor signature as 'a precautionary measure to avoid future problems arising at the

time of audits'. This form was signed but without tick marks against the boxes with Exchange names.

- 9.2.1.7 In the Applicant's view, the prefilled form is valid, and even on the second unticked form, the investor has signed under the Head 'Market Segment on which you wish to trade'.
- 9.2.1.8 The Arbitrator observes that, in any case, whether boxes are not ticked off at all, or MCX SX has been ticked off, the investor has either authorised or left it to the Applicant to decide which Exchange to use for currency trade execution.
- 9.2.1.9 If the investor did not intend to permit the Trading Member to trade on MCX SX platform, he had the option of crossing the box provided for the purpose; ticking it off or not ticking at all both indicate permitting the Trading Member to use both Exchange platforms.
- 9.2.1.10 The investor was also sent contract notes that indicated the trades were executed on MCX SX and he had not objected to them at the time of advice; hence questioning the KYC document now cannot be considered as valid defence, as he was aware of the trades on the MCX SX based on the contract notes. The arbitrator notes that the contract notes do indicate the Exchange name on which the trades were executed.

Further, as the respondent has received the electronic contract notes and has not contested the evidence relative to their despatch, it is too late to contend that he had not agreed to receive the contract notes.

- 9.2.1.11 the investor's contention that the KYC, CRA, RDA etc. documents are not as prescribed by the Exchange does not seem prima facie correct. The arbitrator recommends that the Exchange may respond to confirm the document formats are in order. For purposes of the case, they are accepted.
- 9.2.1.12 The investor complaint that the welcome kit after registration on MCX SX Currency Derivatives Segment was not sent to the Respondent also comes too late to be credible.
- 9.2.1.13 The Respondent's contention that the Applicant has annexed documents executed in 2006 as part of CA executed in 2011 (30/9/11) is not sustainable in view of the existence of two sets of KYC documents, the original and the new ones as of 2011.

Issue – Order Placement by Investor or Not

9.3 Respondent's Submission

- 9.3.1 The Respondent contends that he had not placed any orders or given instructions to execute (currency) trades on the exchange – MCX SX; thus, even if the Applicant had executed trades on the MCX SX Exchange, it

cannot form part of the arbitral reference, as the orders were not placed by the Respondent in the first place.

- 9.3.2 While disowning the trades executed on the MCX SX platform as not having been ordered by him, the investor also contends that the Applicant continued to trade "in the absence of corresponding equivalent credit in the accounts and sufficient securities to cover the margin and M & M".
- 9.3.3 That taken together, the above facts imply that the trading on MCX SX was not authorised nor covered by margin funds of investor.

9.4 The Applicant's Submission

- 9.4.1 The statement of claim does not have any reference to whether the orders were placed by the investor for deals on MCX SX Currency Segment. In fact, the SOC contains a statement in para 3. thereof that 'the Applicant had from time to time entered into various dealings/trades on behalf of the Respondent in currency segment of both MCX SX and NSE.' This statement prima facie supports the investor's claim that it was the trading Member which had selected initiated the trades and selected the exchange for placement of orders.
- 9.4.2 The Applicant has produced as evidence of legality and validity of transactions the CD and transcripts of voice recordings for some of the days of trading, that capture the conversations between the Trading Member staff and the investor or his authorised representative.

9.5 The Arbitrator's Observations

- 9.5.1 The Applicant's claim is indeed based on post-trade advices sent to the investor, and does not claim that the orders were placed by the investor. This is a major gap in the evidence, and supports the investor's position that he had not instructed the Trading Member to trade on MCX SX currency derivative segment generally thru KYC and by absence of any specific orders placed by him.
- 9.5.2 The arbitrator has taken on record the CD of voice chats but notes that it is not audible. Hence he has relied on the transcripts as provided by the Applicant in the SOC.
- 9.5.3 A reading of the voice chat transcripts confirms that the investor had not been initiating orders. However, he had been advised of the trades executed – generally the quantity and the rates but not the Exchange at which they were executed. The investor in all cases had been answering with an 'ók'. In some cases, he had asked for rate to be confirmed.
- 9.5.4 The arbitrator's conclusion from the evidence of voice chats is that the investor had left the choice of the exchange and the currency trades to the Trading member. Besides, he was aware of the trades even if after execution. The investor had not exercised his right to contest the trades at the time of the voice confirmation, unless any voice recordings are available to indicate such contestation by the investor.



- 9.5.5 All the same, following the principles of natural justice, the arbitrator has examined in depth the evidence of financial ledgers and voice recordings along with the investor's contention that the trading was not authorised.
- 9.5.6 In that connection, it would have helped if the investor had identified and contested any specific deals that he considered unauthorised.
- 9.5.7 Since the investor has contested two days' trades – 1/11 and 2/11/11, the arbitrator has reviewed the ledgers and the voice chats along with trade confirmations evidence produced by the Applicant.
- 9.5.8 The arbitrator notes that on both days, the investor was given credits of Rs. 1,68,750 and 1,76,215 that brought the debit balance in the running account down to Rs. 92,022.77/. These credits, according to the Trading member explanation, represents the mark-to-market amount – in this case receivable by the client – that is the net of all the deals done for the day and reflected on the bill and the contract note.

Issue – Disputed Contracts and Claim Amount Details.

9.6 The Parties' Submissions – Basis of Claim and Evidence

- 9.6.1 Based on arbitrator's queries in the hearing on 19/07/2011, the Applicant has explained the amount of the claim as representing Mark to Market related debit balance in the investor's ledger as on December 29, 2011.
- 9.6.2 The Investor/ Respondent has acknowledged two contract notes only, dated 1/11/11 and 2/11/11, and contends the arbitral reference at MCX SX can only be based on Annexure C of the Statement of Claim.
- 9.6.3 The investor's above contention may be tackled quickly. The Annexure C of the Statement of Claim is a consolidated Contract Note for one day only (1/11/11). It was the 'sample' contract that the Applicant had annexed and that the investor finds incomplete – correctly. However, the Arbitrator must look at the full claim and all of related evidence.
- 9.6.4 Arbitrator's judgment has to be necessarily based on the details of the claim amount and period, thus on Annexure I.
- 9.6.5 In addition, in order to answer the concerns of the investor on his overall position at two exchanges concerned, the Arbitrator has also focused on Annexure G, as an aid to examining the counterclaim of the investor/respondent.

9.7 The Arbitrator's Observations on Claim and Counter claim

- 9.7.1 **Claim:** The Arbitrator has noted that the balance as of 28/12/11 of Rs. 2,86,506.06 represents the cumulative debit balance on the separate MCX SX financial statement from July 1, 2011, and concludes that the disputed period as a result becomes July to December 2011.
- 9.7.2 A review of the separate financial ledger for MCX SX reveals that the amount of claim represents the mark to market losses of currency futures trades

executed on MCX SX during the disputed period July to December 2011, as per the contention of the Applicant.

- 9.7.3 **Counter-claim:** In fact, the disputed period breaks down into two quarters, at the end of the first quarter, the client ledger was reflecting a debit balance of Rs. 11,37,052.87 as of 29/09/11. On 30/09/11, the Trading Member has given credit of the entire amount outstanding at MCX SX in the investor account. Thus, at the MCX SX, the investor has no further claim on the investor, a fact that the investor has also understood and accepted in the last submission of 21/08/2011. With this credit, one element of the counter-claim of the investor – Rs. 11,37,052.87 – stands resolved.
- 9.7.4 That leaves the question of the investor's demand that the margin deposits made by two cheques totalling Rs. 10 lakhs be given credit in the MCX SX financial statement. The arbitrator observes that the Trading Member has given credit for oth these amounts on the Consolidated Financial Statement on August 26th and November 25th, 2011. Since the Trading Member was monitoring the total positions and securities held as collateral and margins on a consolidated basis at the NSE and the MCX SX, the total demand for funds from the Trading Member thus would stand reduced to this extent. At the MCX SX, the Applicant has not demanded the debit balance created up to September 30th, 2011. The Applicant may explain the credit of Rs. 11,37,052.87 as to what elements are included.
- 9.7.5 As a result of 0 balance at the start of October, 2011, the daily mark to market figures as reflected on the standalone statement of MCX SX, adding up to Rs. 2,86,506.06, as explained by the Applicant, relate only to the last quarter and there are no other entries during this period.
- 9.7.6 Considering that the Exchange has confirmed, as required by the Arbitrator, that all these currency trades were executed on its platform, the mark to market loss of Rs. 2,86,506.06 becomes payable by the investor.
- 9.7.7 The investor has questioned this basic demand of Rs. 2,86,506.06 in two ways – first that it also consists of charges/brokerage besides the mark to market losses or profits.; and second, that all the trades on MCX SX may be considered unauthorised in the absence of separate and adequate margins for trading positions at the MCX SX, non-reporting of inadequate margins to the Exchange and insufficient collateral securities value.
- 9.7.8 The arbitrator must accept the total bill amounts including charges and mark to market recoveries included therein, as is normal practice. In case, any of the two elements was to be questioned, it should have been done earlier.
- 9.7.9 On the allegation of unauthorised trading, the arbitrator has found it difficult to accept, due to the post trade advices sent to the investor and their non-contestation before, and pointing out that if the trading member had not taken margins from the investor and falsely reported to the Exchange, the matter ought to be examined by the Exchange; it is not relevant to the claim of the Applicant, given the Exchange confirmation that the trades did in fact take place on its platform.

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- 9.7.10 Investor's contention that he did not specifically place orders for trades at the MCX SX is factually correct, but partial, in view of the evidence of the voice transcripts that record the advice by the trading member to the investor and the contract notes sent out, besides the earlier KYC documents where the investor had effectively left the choice of the Exchange to the Applicant.
- 9.7.11 The investor has eventually accepted the fact that the trades were done on MCX SX, thus the arbitration reference being valid. However, he has further claimed non-compliance with the byelaws of the Exchange with the contention that sufficient margin was not taken by the Trading Member for MCX position outstanding, that the securities given as collateral were not sufficient to cover the debit balance in investor account, and that the non-collection of margin was not reported by the Applicant to the Exchange, thereby violating the Byelaws of the Exchange, for which reason the claim of the applicant may be rejected.
- 9.7.12 The arbitrator has to necessarily break this submission of the investor down into two components:
- 9.7.12.1 Inadequate or no margin taken and violation of the Exchange byelaws by false reporting is beyond the scope and competence of the arbitrator to examine.

However, in the interest of the investor protection, the arbitrator urges the MCX SX to examine the issue of whether the reporting of their Trading Member was correct in this case or not.

- 9.7.12.2 At the same time, accepting the investor concern on the overall margins and securities on his currency position outstanding at both exchanges, the arbitrator has examined the reports as enclosed by the investor in his submission of 19/07/11. The observations in this respect follow, and it is hoped that the investor will get some clarity on the various components of the claim and his counterclaim that he is looking for. This is done only with the intention of helping the investor with more information and clarifications as desired by him.
- 9.7.13 The arbitrator has also noted that the Applicant was managing the client positions in a global manner based on the outstanding Currency Futures position on both NSE and MCX SX, providing combined financial statement to the investor reflecting both exchange related trading and settlement figures, and taking the global securities portfolio of the investor as collateral to cover the global net position of the investor in currency futures – irrespective of which exchange the trades were executed on.
- 9.7.14 For the above reason, it became inevitable to review the client's global position, collateral position, mark to market profit or loss position and relate it to the claim by the Applicant not only on MCX SX but also on the NSE.



- 9.7.15 The observations must include the following figures – provided by the investor as downloaded by him from the Trading Member's website – and thus acceptable as evidence (though not having come from the trading Member as part of the Applicant's submissions) as of 28/12/11:

Consolidated Position on Both NSE and MCX SX Exchanges -

9.7.15.1	Debit balance in the consolidated statement: Rs. 16,01,981.71
9.7.15.2	Securities held in Demat account: Rs. 27,24,139.10
9.7.15.3	Securities Held as Collateral after Haircut Rs. 2,096,806.07
9.7.15.4	Pre-settlement surplus (debit balance MINUS collateral value): Rs. 4,94,824.36
9.7.15.5	Securities retained for outstanding obligation: Rs. 26,398.15
9.7.15.6	Excess securities held as collateral: Rs. 4,68,426.21

Transactions during the period 07/11 to 12/11

9.7.15.7	Total losses on currency trading during 7/11 to 12/11: Rs. 32,25,093.79 (as worked out by the arbitrator, subject to correction)
/	(NSE – 18,01,299.25, and at MCX SX Rs. 14,23,794.54)
9.7.15.8	Collateral Securities Sold by the Applicant: Rs. 20,73,281.36
9.7.15.9	Securities bought at BSE Rs. 13,42,983.74
9.7.15.10	Net credit to investor Rs. 7,30,297.62
9.7.15.11	Additional Margin deposits made by the respondent: Rs. 10,00,000/-
9.7.15.12	Total recovered from investor Rs. 17,30,297.36
9.7.15.13	Arbitration Claim at NSE – recovery made Rs. 7,17,888.40
9.7.15.14	Total recoveries after NSE claim settlement Rs. 24,48,185.76
9.7.15.15	Total losses MINUS Recoveries – Rs. 7,76,908.03 (Rs. 32,25,093.79 - 24,48,185.76) – shortfall in ledger
9.7.15.16	Shortfall covered by Excess Securities Held Rs. 4,68,426.21 and claim made at MCX SX arbitration Rs. 2,86,506.06 – total Rs. 7,54,932.27 (small difference due to other minor entries)

Note – small amounts of credits like dividends and offsetting purchases and sales of securities on 08/11/11 have been ignored for this broad analysis.

Position on MCX SX

9.7.15.17	Debit balance in the MCX SX statement Rs. 2,86,506.06
9.7.15.18	Total losses on currency trading during 7/11 to 12/11: at MCX SX Rs. 14,23,794.54
9.7.15.19	Total credit given at MCX SX Rs. 11,37,052.87
9.7.15.20	Net client obligation at MCX SX – Rs. 2,86,741.67
9.7.15.21	Securities Held as Collateral at MCX SX Rs 3,68,619.70 as of 28/12/2011.

9.7.15.22 Shortfall or surplus (debit balance MINUS collateral value) at
MCX SX – Rs. 82,113.64

9.7.16 All of the above information has been given for the following reasons:

9.7.16.1 To help the investor understand his overall position in two
exchanges and answer some of his doubts and questions

9.7.16.2 To highlight the limited scope of arbitration at MCX SX
where the Trading Member has claimed only the mark to market
losses on currency trading at MCX SX

9.7.16.3 For the arbitrator to satisfy himself that the losses claimed
for recovery at MCX SX were not part of NSE recovery or covered by
the overall position of margins, security sales and NSE claim
settlement

9.7.16.4 To suggest that his other queries may be addressed to the
Trading Member based on the above summarised figures, and

9.7.16.5 To clarify that his other claims if any can be addressed at the
NSE Appellate Stage as the MCX SX claim is limited and all the
entries in question have impacted the investor's position at NSE, not
at MCX SX.

9.8 Additional Claim by the Applicant

9.8.1 The Arbitrator finally deals with the additional claim received by him after
July 19th, 2014 based on a two page submission – undated – from the
Applicant.

9.8.2 Apart from the claim letter being undated, the arbitrator did not receive any
attachments – financial ledgers of NSE, BSE and MCX SX mentioned in the
submission.

9.8.3 The Applicant referred the claim of Rs. 2,86,506.06 on February 7 2014, and
in July now seeks to increase the claim amount to Rs. 3,32,341.03.

9.8.4 The increase is justified as DPC charges of Rs. 45,834.97 recoverable from
the investor. They relate to the period April 2013 to January 2014 – between
reference to NSE and implementation of the NSE award. This is well after
the arbitration reference at MCX SX in February 2014.

9.8.5 The amount is said to have been debited to investor's account at MCX SX,
but no date of debit is given. Since they relate to period up to January 2014,
the debit could only have gone through after reference to the arbitrator at
the MCX SX, and thus cannot form part of the claim.

9.8.6 Accordingly the arbitrator has only considered the MCX SX financial ledger
as submitted with the Statement of Claim – for Rs. 2,86,506.06 and ignores
the last minute additional claim by the Applicant.

9.8.7 Apart from being late, the claim also appears to be an error whereby the
Applicant has credited the NSE Cash ledger when the reversal of charges was
done, instead of crediting each exchange concerned.

- 9.8.8 Even if it is not an error, it clearly demonstrates that the Applicant makes adjustments in the consolidated ledgers and then reflects them in the standalone ledgers later.
- 9.8.9 In any case, this reversal and subsequent claim has arisen after the NSE award and relates to a period after that date, and has been done into the NSE account; hence, whether erroneous or correct, any subsequent adjustments also ought to be made at the NSE ledger/account.
- 9.8.10 For the limited purpose of arbitration claim at MCX SX, it is irrelevant for all these reasons – claim relates to period after reference to MCX SX, debit to client account also after the arbitral reference at MCX SX, and adjustment is due to the Applicant's own actions – erroneous or correct – at the NSE account of the client – where the adjustments or claims due now should be made.

Issue – Evidence validity

- 9.9 The Respondent has questioned the validity of all three forms of trade confirmations related evidence placed by the Applicant in support of the claim:
- 9.9.1 Log confirmations of contract notes by email do not contain specific details for MCX SX deals and also lists NSE contracts details;
- 9.9.2 SMS confirmations present inconsistencies between Annexure B and F, and do not substantiate the validity/legality of transactions.
- 9.9.3 Financial Ledgers submitted to the NSE arbitrators and the MCX SX arbitrator are the same, and do not give separate data for MCX SCX trade related liability if any.
- 9.9.4 The MCX SX Ledger Annexures C, I and G are not comparable.
- 9.10 The arbitrator's observation is that all of the above evidence is for the fact of despatch of documents and there is no evidence presented by the investor to suggest that the documents are not genuine.
- 9.11 Taking the investor's complaint to mean there was need to examine the validity of contracts and their execution, the arbitrator has confirmed with the Exchange, and has presented detailed financial analysis to confirm that the financial ledgers and other documents are consistent among themselves and bring out the total obligation of the investor to pay his dues.
- 9.12 The arbitrator does note, however, that, while the investor has submitted full details of the contract notes, bills and the consolidated financial ledgers, the trading member has submitted an extract of the consolidated financial ledger for NSE and MCX SX, but not the full details of relevant contract notes and bills for the disputed period in full, or two days of 1/11/11 and 2/11/11 in particular. This obliged the arbitrator to work out the amounts and present to the investor. There could be errors possible in these worked out numbers and the investor is well advised to either reconfirm or take them up as an issue at the appellate stage if he chooses to contest this award.
- 9.13 The arbitrator notes the evidence of despatch of all contract notes and bills and ledgers to the investor, and also notes that the investor has not disputed the receipt of these details. However, this evidence is for post trade confirmations.

9.14 The investor has complained about non justification of his no-dues position on MCX SX based on his explanation of the inadequate security cover for his overall net position, but the calculation therein appears to use faulty logic and numbers, and hence the arbitrator has clarified the numbers in depth as above.

9.15 In effect, the arbitrator therefore examined the question of whether the trading member was covered by the client's margin and security held, on a consolidated basis. The exercise was to confirm that the dues of client from MCX SX are correctly counted.

The important issue to examine concerned the avoidance of duplication in the amounts of margin, security and net dues from the client in the claim for MCX SX dues. For this purpose, the consolidated ledger was seen and analysed by the arbitrator. The analysis reveals that

Applicant should have but has not submitted the basis of calculation of mark to market loss to be recovered from the investor:

- Separate open position by currency at MCX SX
- Settlement rate used for daily settlement for each currency
- Total mark to market losses on MCX SX position by currency

9.16 If investor observation is correct that most of the amount of claim is accounted for by the charges/brokerage etc. then MTM losses were negligible – using investor figures – Rs 286507 minus charges. The Trading Member should account for the amounts and their reasonability.

The applicant has not given the basis of calculation even after the investor submissions and arbitrator demand except verbally and vaguely.



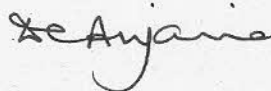
Award

1. The overall picture that emerges in this case points to investor having gone along with the trading and related consequences – margin calls and securities sales. He could have but has not protested the trades when the trade confirmations were sent to him.
2. The arbitrator has confirmed the genuineness of the deals on MCX SX platform and the relative losses on positions, not only at MCX SX but also at NSE/globally. This was to confirm that there is no duplication in the claim of losses from the applicant's side. The calculations have been presented in depth.
3. The claim of the applicant is limited to only the September to December 2011 quarter – Rs. 2,86,506.06. The Respondent owes this amount to the Applicant.
4. On the other hand, the Applicant owes the return to the investor of securities held as collateral and listed in its Statement of Claim.
5. Since the financial implication is offsetting the two mutual obligations, the Arbitrator does not consider the issue of interest or charges to be relevant.

Hence the final award is

1. For the Respondent to pay within one month of the award date the amount of Rs 2,86,506.06
2. Without any interest thereon; and
3. For the Applicant to return to the investor the securities held as collateral by releasing the pledge or as the case may be, upon the receipt of the investor's cheque or funds transfer confirmation or authority to debit a bank account or to sell any security as convenient to the investor.
4. The Applicant's later –undated claim received in July 2014 and arising after NSE award and after reference to MCX SX, Rs. 45,834.97 is not considered allowable in this award.

Mr. Divyabhash Chandrakant Anjaria



Arbitrator

PLACE: AHMEDABAD

DATE: SEPTEMBER 4TH, 2011