



पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL

N 255915

ARBITRATION AWARD

In the matter of Arbitration as per the Bye laws
and Regulations of MCX Stock Exchange Limited
Before Shri C K Basu, Sole Arbitrator

Arbitration Matter No.KOL-02/2012

Mr. Asoke Kumar Sinha (Client)
3/10, Poddar Nagar,
Kolkata-700 068

Applicant

Vs

M/s. IndiaNivesh Securities Pvt. Ltd.(TM)
601/602, "Sukh Sagar" N.S. Patkar Marg,
Girgaum Chowpatty
Mumbai-400 007

Respondent

62818

No. Sold to Ch

Address

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Date 23 NOV 2012

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Licensed Stamp Vendor
Custom House, Bhatia

Barua

N. Mukherjee Road

Calcutta

Client's Statement of Case

The main issues in the Statement of Case are as under:

The Applicant (Client) opened a Trading account with the Respondent, which, *inter alia*, is a Trading Member (TM) of the MCX Stock Exchange Ltd. (the "Exchange"). The Respondent is engaged in client based business as well as proprietary trading in the Cash segment of BSE and NSE, F&O segment of BSE and NSE and Currency Derivative segment of NSE and MCX Stock Exchange Ltd. (also referred to as MCX-SX). For such trades through the TM, the Client executed KYC & Client Registration Form dated 22/11/2011 and was allotted the Unique Client Code: **KSCAS15**. Since around December, 2011, the Applicant was trading through the Respondent at MCX-SX in the Currency Derivative Segment only. The Respondent maintains a single trading account only for all trades relating to the Cash, F&O and Currency Derivative segments transacted at BSE, NSE, and MCX-SX.

The Applicant claims that he deposited Rs.7,000/- initially in his account with the Respondent and gradually invested a total of Rs.2,05,000/- with the Respondent. He states that trade instructions were given by him through mobile phone only.

The Applicant alleges that taking advantage of his good faith and ignorance, the Respondent started "irregular/doubtful" trades, which came to the Applicant's notice only after about 3 months i.e. around the end of February, 2012. The Applicant alleges that the Respondent took recourse to "several unbelievable stories/wrong information" given over phone. As he had little knowledge about the matter, he asked the Respondent to close his account on 02/03/2012 and provide him with an account statement. He claims to have been provided with a statement of account on 09/03/2012 and a "statement of trade" details on 15/03/2012; he alleges that, initially, the Respondent was not informing the Applicant the balance in his account/furnishing statement of accounts for past trade transactions (i.e. since November/December, 2011).

The main point of his dispute is that since he had given no instructions/consent for the said "irregular/doubtful trades" all trades in Futures segment were unauthorized along with some transactions/trades in cash segment and currency segment. The Applicant states that he lodged a complaint to the TM's Compliance Officer on 27/03/2012. After a few days the TM's RM and Manager of the Branch (the Applicant was trading through the Respondent's Kankurgachi Branch in Kolkata) asked the Applicant over phone to visit the Branch on 17/04/2012 as they would provide and prove voice recordings of his trade instructions in respect of all trades. But they failed in this regard (they presented only 2/3 days' "fictitious" voice recordings of their employees) and he was told that shortly a detailed reply in the matter would be sent. A reply was indeed sent but it ignored/did not incorporate the above stated main point of the dispute. Hence, the Applicant had no alternative other than to lodge a complaint with the appropriate authorities.

As stated earlier, the Respondent maintains a single trading account of the Applicant for all transactions relating to all segments of **all** exchanges. As regards the transactions relating to BSE, the matter was disposed of on 24/07/2012 at BSE's end as no disputed trades were effected through them. An IGRP meeting was held by NSE regarding the transactions routed through them; no reconciliation could be arrived at and the Applicant was advised to file an arbitration application if he so desires. The present arbitration matter relates to the currency segment trades conducted at MCX-SX.

At the hearing on 18/10/2012 the Applicant stated that the basic point of his complaint at the present arbitration proceedings was that all currency transactions undertaken in the currency segment of MCX-SX during the period from around end of November, 2011 to January, 2012 were unauthorized; however, in the account statement, he is unable to pinpoint the exact transactions which are thus unauthorized because a combined account is maintained for currency and securities transactions of all the exchanges and the account statement postings show narrations relating to bills only.

The Applicant also alleges that the Respondent did not allow him to utilize the usual financial limit as per **verbally** agreed norms/terms viz. "5 times intra-day +10 times in DP". (Incidentally, the Applicant's DP a/c is also maintained with the Respondent company).

Claim

The Applicant has claimed an amount of **Rs1,53,917.00**.

Reply of Trading Member (TM) to Client's Statement of Case

Copy of Applicant's (Code:KSCAS15) KYC/Client Registration Form (executed on 22/11/2011) along with welcome letter was sent to the Client on 25/11/2011. The Applicant was trading with the Respondent since December, 2011 in the Currency Derivative segment of MCX-SX in which he was regularly placing his orders. It is pertinent to note that the Applicant himself has stated that he has given trade instructions through his mobile phone only. Proper contract notes were sent to the Applicant at his registered e-mail address (he has opted to receive contract notes digitally in his KYC form). Contract note log report was furnished by the TM.

Regular SMS messages regarding trades executed were sent to the registered mobile no. of the Client. (Although complete details of trades were not going through due to some technical snag, the closing balances were being informed to the Applicant through the SMS messages). SMS log report was furnished by the TM.

The Applicant has alleged that the Respondent took advantage of his good faith and ignorance and carried out "irregular and doubtful trades" without his consent about which he became aware only after 3 months.

When the Respondent's Regional Head played the recordings to the Applicant, he ridiculously alleged that the voice did not belong to him and the same had been manipulated/doctored by the Respondent through dubious software. The Respondent most emphatically asserts that the voice recordings provided by it, containing verbal exchanges between the Client and the Respondent culminating in trade instructions by the former, are genuine, and asks the Applicant to provide strict proof of his statement about the recordings being manipulated/doctored. The recordings establish the fact that the Applicant was regularly trading in all exchanges through the Respondent and used to have regular interactions with the dealer of the Respondent through recorded calls made to/from the Applicant's designated mobile no.

The plea taken by the Applicant about possessing little knowledge about trading in Capital, Derivatives and Currency segments is weak in the light of his trading in these segments and, in fact, is not sustainable as the Applicant is expected to read the 'Dos & Don'ts' attached with the KYC Form and Risk Disclosure Document for Capital Market and Derivatives Segments. The Applicant had declared in the KYC Form that he had read

and understood the contents of all mandatory and voluntary documents attached with the KYC form which includes Rights and Obligations, Risk Disclosure Document, policies and procedures, etc.

The Applicant has also stated that he was not allowed to utilize his financial limit. It is quite evident that he was in the know about the trades that were executed; otherwise, he would not have been requesting for additional limits.

Moreover, the Respondent had always been prompt in dispatching the contract notes/bills to the Applicant to his designated email id through electronic mode (vide contract note log report that was furnished); hence, the Applicant is not stating the correct facts when he says that he came to know about his trading account transactions only after 3 months.

The Applicant has claimed an amount of **Rs.1,53,917.00**. He has explained at the hearing on 19/11/2012, that this is based on the **Applicant's** calculation of the alleged **total loss (including** the brokerage amount as calculated by the **Applicant**) incurred on his calculated **total** trades amounting to **Rs.2,84,13,271.00** in Futures & Options, Currency and Cash/Capital segments, which were **all** routed through his combined trading account maintained by the Respondent. On verification of its record the Respondent finds that the aforesaid figures are **wrong**. The matter relates to MCX-SX Currency segment only. The Applicant traded an amount of only **Rs.39,50,810.089** and incurred a **net trading loss** of only **Rs.3,012.59** during the period of his trading from 16/12/2011 to 12/01/2012 in the MCX-SX Currency segment. (The Respondent has furnished Profit & Loss statement of the Applicant's trades in the MCX-SX Currency segment).

Though the Applicant has claimed that he deposited Rs.7,000/- initially in his account with the Respondent and gradually invested a total of Rs.2,05,000/-, records of Respondent reveal that the Applicant had deposited a total Rs.1,95,00.00 only on various dates. (The Applicant has explained that his total investment was Rs.1,95,000.00 plus Rs.10,000.00, being the value of shares transferred from another share trading company from where two persons-a Relationship Manger and an Asst. Manager- later on joined the Respondent's office at Kankurgachi).

Hearing Held On 18/10/2012

At the hearing held on 18/10/2012, the Respondent was, *inter alia*, directed to furnish the segregated ledger account in respect of currency segment transactions in MCX-SX since inception till date along with the complete details of the bills posted. (On 30/10/2012 the Respondent submitted the ledger statement of the Applicant consisting details of only MCX-SX trades along with electronic log proving the delivery of contract notes/bills to the registered email id of the Applicant). Regarding the point that the Applicant was called to the Respondent's office as late as on 17/04/2012 to listen to the voice recordings of his placement of orders, the Respondent's representative stated that the Applicant rang up the Respondent in March-April, 2012 i.e. after three months of the disputed period, and wanted to listen to the recordings as authentic proof of his having placed the disputed orders.

Hearing Held On 19/11/2012

At the hearing, *inter alia*, it emerged that the difference between the **total loss** calculation which forms the basis of the Applicant's claim (even for only his Currency segment trades in MCX-SX) and the **net trading loss** calculation of the Applicant made by the

Respondent for the Applicant's trades in the Currency segment of MCX-SX, mainly arose because the Applicant had included his estimate of brokerage as a part of his **total loss** whereas the Respondent had arrived at its figure **net** of brokerage, etc., which is the correct approach.

The Applicant alleged that trading statement, ledger, etc. were received by him three months late. The Trading Member's representative stated that as per rules, the TM was supposed to provide Daily Contract Notes, Daily Margin Statements and Ledgers quarterly; these were duly sent to the Applicant.

A sample of the voice recordings provided by the Trading Member was heard at the hearing on 19/11/2012.

Analysis

The basic point of the Applicant's complaint/allegations at the present arbitration proceedings is that all currency transactions undertaken in the currency segment of MCX-SX during the period from around end of November, 2011 to January, 2012 were unauthorized.

As stated above, a sample of the voice recordings (provided by the Respondent) on a few dates during the disputed period was heard. The voice recordings contain verbal exchanges between the Client and the Respondent's dealer that culminate in trade instructions by the former. No proof has been provided that the recordings are "doctored".

Contract note log report provided show that electronic contract notes were sent to the Applicant at his registered e-mail id. SMS log report furnished by the Respondent show that regular SMS messages informing, at least, the closing balances after execution of trades were sent to the registered mobile no. of the Client.

In the circumstances, the allegations of the Applicant that all currency transactions undertaken in the currency segment of MCX-SX during the disputed period were unauthorized could not be proved. **Hence, the claim of the Applicant is dismissed**

Award

In view of the contents of the above Analysis, I hereby publish the Award in three originals on **13/12/2012**. One copy is to be retained by the Exchange and the other two copies by the parties:

- (a) As the Claim of the Applicant is dismissed, the Respondent shall **not** pay any sum to the Applicant.
- (b) The cost of Arbitration is to be equally shared by the Applicant and the Respondent.

Date: 13/12/2012

Place: Kolkata


(C.K.Basu)

Sole Arbitrator