



दिल्ली DELHI

Before Mr. R.K.Ahooja, Sole Arbitrator

49AA 795161

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

MCX Stock Exchange Limited

Arbitration Matter No. DEL-06/2012

Between

Mr. Binod Kumar Rathi,

A-305 Prashant Vihar, Rohini,

Delhi-110085

Applicant

And

M/s Religare Securities Ltd.,

D3, P3B, District Centre, Saket,

New Delhi-110017

Respondent

AWARD

*Religare*





दिल्ली DELHI

49AA 795162

Before Mr. R.K.Ahooja, Sole Arbitrator

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

MCX Stock Exchange Limited

Arbitration Matter No. DEL-06/2012

Between

Mr. Binod Kumar Rathi,

A-305 Prashant Vihar, Rohini,

Delhi-110085

Applicant

And

M/s Religare Securities Ltd.,

D3, P3B, District Centre, Saket,

New Delhi-110017

Respondent

AWARD

*Binod*



The Applicant states that he was persuaded by Mr. Khimender Mohan, Relationship Manager (RM) and Mr. Gagnesh Gupta, Branch Manager (BM) of the Respondent to open a trading account with the Respondent with effect from 4<sup>th</sup> August, 2010. As the Applicant was not well versed with the stock/commodity market, he states that he made clear to the RM and BM that he was interested only in long term investment. On this assurance he gave various cheques amounting to Rs. 2, 24,389.35 by way of opening charges and initial deposit in his trading account. The Applicant further submits that in order to ascertain the progress and to get the information about the profits and gains he contacted the BM in March 2011 and asked for the statement of account as he was not provided with the requisite unique ID code and password through which he could access his account on line. He was, however, put off on one pretext or another and it was only in August 2011 when he visited the Branch Office of the Respondent that he came to know that huge losses had been incurred in his account through unauthorized trades the details of which he learnt only when he was able to get the password from the Respondent on 24.01.2012. The Applicant alleges that all of his investment was lost through illegal, unauthorized and speculative trades conducted by the officials of the Respondent solely with a view to earn vast amounts of brokerage and to meet their internal targets for which they were rewarded by the Respondent at the cost of immense losses to the Applicant. He now seeks, through these proceedings, the reimbursement of these losses from the Respondent.

2. In the Reply Statement, the Respondent has denied the allegations made by the Applicant and characterized them as concocted and fabricated. As per the version of the Respondent the Applicant while opening his account had opted for trading in "F&O/derivative segment" and "currency derivative segment" as well as the "cash segment"; further more he had also signed the Risk Disclosure Document for the currency derivative segment. It has also been asserted by the Respondent that the Applicant undertook trades in all the three aforementioned segments and his active participation and knowledge, it is stated, is affirmed by the various pay-ins and pay-outs made in his account at various times and intervals. As per the Respondent, contract notes as well as quarterly statements of account were punctually and regularly sent to him but no error was pointed out by the Applicant nor any dispute raised. The Respondent submits that claim of the Applicant is based on an afterthought of making good his losses by shifting the responsibility for his own trades to the Respondent.

3. I have heard the parties. It was strenuously argued on behalf of the Applicant that none of the pay-ins and pay-outs listed in the Reply Statement related to the currency derivative

Alkalay

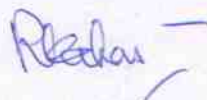


segment. The Applicant sought to establish this with reference to the Financial Statement for the Year 2010-11 attached with his Rejoinder which, it was stated, had been down loaded from the web site of the Respondent. It was pointed out that this statement which depicted the derivative trades has no mention of any pay-ins or pay-outs showed conclusively, according to the Applicant, that the money deposited by him was meant entirely for the cash segment and that these trades were not authorized by him. The Authorized Representative (AR) of the Respondent on the other hand questioned the evidentiary value of the statement since it was possible to cull out a statement to show only the trades of a particular segment without producing the complete statement of account which would have clearly brought out that pay-ins and pay-outs were related to the total trading including derivatives entered into by the Applicant.

4. Be that as it may, I find that the claim of the Applicant is nullified by his own actions. The Applicant alleges that he came to know of the losses in his account from August 2011. Yet on three occasions i.e. 25.8.2012, 1.10.2011 and 22.12.11 he deposited sizeable sums in his account. This would not be the conduct of a normally prudent person. What is more the Applicant continued to receive pay outs between 31.3.11 to 15.3.2012 amounting to no less than Rs. 7,11,296/=. However there is not a word from him as to whether these arose from cash segment or from the derivative segment. It is also undisputed that at the time of opening his account with the Respondent the Applicant had opted for the derivative segments including that for the currency. The defence that the form was filled by the officials of the Respondent does not hold water since it was the Applicant who signed the forms.

5. The argument made on behalf of the Applicant that the payins and payouts related to the cash segment is untenable. The argument implies that though the Respondent was one entity, the Applicant differentiated between the Respondent in the cash segment and Respondent in the derivative segment. And so, even having discovered his perfidy in the derivative section, he happily continued to give the Respondent money in the cash segment more so because there he was making profits and receiving pay outs. This would be a fallacious argument because there was only one Respondent and the Applicant had only one account.

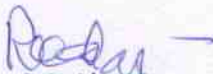
6. I might add that during the course of arguments a recording of the conversation between officials of the Respondent and the Applicant was played. This contained a reference to a trade in euro currency. The explanation given on behalf of the Applicant was that the conversation related to the account of the daughter and not of the Applicant. In any case, the



inference does arise that dealings in the currency segment were being conducted in a related account by the Applicant and that, therefore, he was not a complete stranger to derivative trade.

7. In the light of the discussion in the preceding paragraphs, I find that the claim of Applicant fails and is accordingly dismissed. The parties will however bear their own costs.

New.Delhi  
June 15, 2012

  
R.K.Ahooja  
Sole Arbitrator