

INDIA NON JUDICIAL

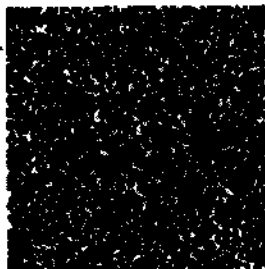
Government of National Capital Territory of Delhi



सत्यमेव जयते

e-Stamp

Certificate No. : IN-DL30359857900550K
Certificate Issued Date : 08-Oct-2012 01:51 PM
Account Reference : IMPACC (IV) 0776103/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL7610360822367117114K
Purchased by : MCX STOCK EXCHANGE LTD
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : MCX STOCK EXCHANGE LTD
Second Party : NA
Stamp Duty Paid By : MCX STOCK EXCHANGE LTD
Stamp Duty Amount(Rs.) : 10
(Ten only)



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Before Mr. R.K.Ahooja, Sole Arbitrator

In the Matter of Arbitration under the Bye-laws, Rules and Regulations of the
MCX Stock Exchange Limited Arbitration Matter No. DEL-07/2012

Between
Braham Dutt Sharma,
And
M/s Angel Broking Ltd

Applicant

Respondent

Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorized Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
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Before Mr. R.K.Ahooja, Sole Arbitrator
In the Matter of Arbitration under the Bye-laws, Rules and Regulations of the
MCX Stock Exchange Limited Arbitration Matter No. DEL-07/2012

Between

Biraham Dutt Sharma

Applicant

And

M/s Angel Broking Ltd

Respondent

AWARD

1. The Applicant's main grievance is that unauthorized trades, in currency segment, were undertaken by the officials of the Respondent in his account DARKA803 resulting in unwarranted losses to him. In addition he complains of lack of promised service by the Respondent in as much as he was not attached with the desired office of the Respondent, was not provided with physical contract notes and was not given the "Welcome Kit" which would have acquainted him with the procedures and terminology used by the Respondent while transacting the trades. The Applicant had made a deposit of Rs.1Lakh out of which he received a payout of Rs. 45,067/- leaving a balance of Rs. 57,183/-. The Applicant claims this amount plus interest totaling Rs. 69,236/-. He also attributes a theft at his house to anxiety and pre-occupations caused by the conduct of the Respondent for which he seeks a further compensation of Rs. 7,44,350/-

2. The Respondent refutes the claim and the allegations of the Applicant. Respondent's reply statement points out that the Applicant has not mentioned any specific trades which he disputes. As regards the assertion of the Applicant that he never intended to engage in trading in currency, the Respondent says that in that event why did the Applicant sign for trading on the MCX-SX platform? It is also pointed out that the Applicant undertook trading from 7.9.2011 to 19.10.2011 and if the Applicant had no intention of trading in currency he had ample opportunity during this period itself to raise an objection which he did not. The Respondent says that there is no nexus between the theft and the trading and hence this part of the claim is totally irrelevant. Finally the Respondent has raised a counter claim against the Applicant for the sum of Rs 48,916 which the Respondent says is the debit balance in the trading account of the Applicant.

3. I have heard both the parties. To begin with the claim of the Applicant for Rs 7, 44,350/- on account of theft is so baseless and devoid of any rationality that it detracts from the credibility of the Applicant. At page 17 of his claim statement the Applicant has annexed a copy of his complaint to S.H.O



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3. I have heard both the parties. To begin with the claim of the Applicant for Rs 7, 44,350/- on account of theft is so baseless and devoid of any rationality that it detracts from the credibility of the Applicant. At page 17 of his claim statement the Applicant has annexed a copy of his complaint to S.H.O and in paragraph 2 thereof he states that "At about 1600 hrs on 06/11/2011, I locked my house and joined marriage party of son of my neighbor Ex. Hav. Dharamveer to go to Rewari in Haryana" That is when the theft/robbery took place in his house. It strains one's credulity to connect this to any act of commission or omission on the part of the Respondent. Besides Chapter XIV of MCX-SX Bye-laws cited below rules out arbitration on this point:

"Reference to Arbitration

- (1) A. All claims, differences or disputes between the Trading Members inter se and between trading Members and Constituents arising out of or in relation to dealings, contracts and transactions made subject to the Bye-laws, Rules and

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Regulations of the Stock Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfillment or the rights, obligations and the liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into or not shall be submitted to arbitration in accordance with the provisions of these Bye-laws and Regulations. (Emphasis supplied).

It is clear that the occurrence of theft at Applicant's house is neither a 'dealing' nor a 'contract' nor for that matter a 'transaction' which if disputed will fall within the purview of arbitration. This is a matter for the Police and for criminal action against the perpetrators of the crime. Hence this part of the claim has no relevance here and is therefore summarily dismissed.

4. We now come to the rest of the claim which relates to the alleged unauthorized trades. It is the case of the Applicant that he had deposited the sum of Rs. 1 Lakh only for the purpose of trading in the cash segment. Here again the conduct of the Applicant does not support his version. Thus if it was his intention to trade solely in the cash segment why did he sign up for the currency trade? Secondly he himself acknowledges that he had been kept informed through out of the trades. For instance in paragraph 6 of his letter to the police dated 10.2.12(pp1 of his claim), he says that he was informed of the contract notes of these trades sent to his e-mail ID. He had thus ample time and opportunity to write to the Respondent and ask them to stop any further trades in this segment. It is no explanation that not being computer literate he was dependent on his son. During the personal hearing he also admitted that some of the trades were intimated to him on telephone as well but said that firstly these were read out so rapidly that he could not understand anything and secondly that these were post trade announcement and not pre trade conversations seeking his approval or authorizations. Even if that were so it was open to the Applicant to seek clarifications or to tell the concerned officials of the Respondent that he did not accept the trades. Having kept quiet at the relevant time under the so called pressure of the Relationship Manager he cannot make an issue now of his trades. His grievances as regards the non receipt of the "Welcome Kit" or attachment to an office of the Respondent which was not the closest to his residence have no bearing on the authenticity of the trades in his account. I therefore find no merit in his claim.

5. The Respondent, on its part, has raised a counter claim for Rs 48,916.12 with interest against the Applicant. To recover the same he seeks a lien on Applicant's BSE Account with the Respondent. In so far as the BSE Account is concerned, it does not come within the ambit of present proceedings under the MCX-SX Bye-laws. As regards the debit balance against the Applicant there is nothing beyond the bald statement. It has not been shown as to how this deficit had arisen or that at any earlier stage a demand was raised on the Applicant. The fact that the Respondent made a payout of Rs 45,067/- to the

Readers

Applicant further confuses the issue. In these circumstances I consider that the counter claim has not been established.

6. In the result the claim as well as the counter claim stand dismissed. The parties will bear their own costs.

New Delhi

October 12, 2012


(R.K.Ahooja)

Sole Arbitrator