



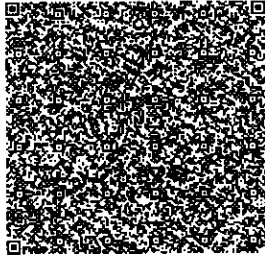
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL51455046327706M
Certificate Issued Date : 30-Dec-2014 03:42 PM
Account Reference : IMPACC (PF)/ dl763913/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL76391399824147446378M
Purchased by : MCX STOCK EXCHANGE LTD
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : MCX STOCK EXCHANGE LTD
Second Party : Not Applicable
Stamp Duty Paid By : MCX STOCK EXCHANGE LTD
Stamp Duty Amount(Rs.) : 20
(Twenty only)



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BEFORE SHRI P.K.Banerji, SOLE ARBITRATOR
In the matter of Arbitration under the Bye Laws & Regulations of MCX Stock Exchange Limited.
AM No (DEL- 01/2014)

Between

Kanta Gupta
Constituent

Applicant

And

Kassa Finvest Private Ltd.
Trading Member

Respondent

AWARD
(Passed on 5th January 2015)

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

Place of Arbitration: Regional Arbitration Center, Delhi
MCX Stock Exchange Limited
3rd Floor, P – 14, 45 / 90, Outer Circle
Connaught Place, New Delhi 110001

This is an application dated 15.09.14 filed By Ms. Kanta Gupta, constituent claiming Rs. 2.00 lakh(value of margin shares) from Trading Member, Kassa Finvest Pvt. Ltd. due to unauthorised trading done by the latter.

1. The constituent in support of her claim has stated that:-


The trades were unauthorised and post trade confirmation communications were not understood by her due to computer unawareness and reasons like old age and other physical infirmities.

2. The Trading Member in his response has countered the above by stating that:-


He followed every requirement under the agreement of keeping the client informed after execution of trades. He is however, silent about not keeping records of trading orders. I do not consider this as a major lapse as the Trading Member followed all the post trade execution requirements of keeping the client informed of trading details. Copies of relevant documents have been filed by the Trading Member in support of his claim.

3. It is worthwhile mentioning here the provisions of Para.23 of KYC which read as follows:- " The client hereby agrees that the stock broker may communicate/send information to the client like contract notes, transaction statements, order confirmations, order modifications, order executions, trade confirmation, trade modification, bills, account statements, trading/settlement cycle: delivery/payment schedules, policies, procedures, notices, FAQs and any other document/reports, using any or more of following means or method such as post/speed post/courier/registered post/ registered

A.D/facsimile/telegram/cable/e-mail/voice mails/telephone (telephone includes such devices as mobile phones etc.) including SMS on the mobile phone or any other similar device, by messaging on the computer screen of the client computer: by informing the clients through employees/agents of the stock brokers: by publishing/displaying it on the web site of the stock broker/making it available as the download from the website of stock broker: by displaying it on the notice board of the branch/office through which the clients trades or if the circumstance so require, by radio broadcast/ television broadcast/newspaper advertisements etc. or any other suitable or applicable mode or manner. The client agrees that the postal department/courier company/newspaper company and the e-mail / voicemail service provider and such other providers shall be agent of the stock broker and delivery shall be complete when communication is given to postal department/the courier company/ the e-mail/ voice mail service provider, etc. Stock broker and client agree never to challenge the same on any ground including delayed receipt / non-receipt or any other reasons whatsoever. ,Client agrees that it is his / her 'first responsibility to review any/all information communicated including but not limited to trade confirmations, contract, the bills of the statement of accounts, margin requirements etc. communicated to the client by any of the aforesaid means or modes whatsoever, immediately on their receipt and take necessary action. Client agrees to inform the member in writing about any discrepancies observed within a reasonable period of telephonic confirmation or digital or other means of communication whichever is earlier. I have read and understood the term is conditions laid out in this document and I/we agree to abide by it at all the times ~~abide by it all times.~~"

 4. Furthermore under the clause "phone broking services" in KYC document the client did not exercise her rights / obligations to seek redressal from the Trading Member on account of unauthorised trading etc. The relevant extracts are reproduced below:- "The client is aware that the member offers phone broking services for placing the securities trading orders through phone broking executives. The client can place orders through telephone by confirming his user ID allotted by the Trading Member at the time of account opening and if required may divulge his personal details as informed by the client to the Trading Member. The client shall ensure proper safeguard of the user ID allotted to him and keep his personal details confidential. The client shall

immediately notify the Trading Member in writing delivered via E-mail and registered AD, if the client becomes aware of any loss, theft or unauthorised use to client's account \ user id or any failure by the client to receive confirmation of any execution including the contract note for the same; or any receipt by client of confirmation of any order and/or execution which the client did not place: or any inaccurate information in the clients account balances, securities position, or transaction history. Member shall take immediate steps to resolve the problem. However the client shall be responsible and liable for all transaction(s) that is/are carried out while using the client's user ID and personal details. When any of the above circumstances occur, neither the member nor any of its officers, directors, employees, agents, affiliates or subsidiaries will have any responsibility or liability to the client or to any other person whose claim may arise through the client with respect to any of the circumstances described above. Client authorised Trading Member to provide daily end of the day position or any messages related to trading / analysis of stock and derivatives on his personal mobile number. Client will keep KASSA FINVEST (P) LTD informed of any change in his mobile number, and ensure that he receives a confirmation of the same. In case of any discrepancy in SMS of end of the day position client agrees to inform the company in writing within reasonable time of receiving the SMS. Client intimated that kassa create client account on its corporate website (www.kassa.in). Client shall use this account for downloading his daily reports such as contract notes/bills etc. client take full responsibility for checking /downloading the above reports on daily basis. Client shall not hold KASSA FINVEST (P) LTD. responsible if he fails on his part to check/download the reports from the website. Client takes full responsibility for preserving the secrecy of the user ID and password for accessing the account for downloading/checking the desired reports.

 Trading in exchanges is in electronic mode involves VSAT/ leased line/ ISDN/ Modem/VPN/internet /web and complex hardware and software systems communications lines, peripherals and combination of technologies to place and route orders. Client understand that there exists a possibility of communication failure or system problems or slow or delayed response from system or trading halt or any such other problem/glitch whereby he may not be able to establish access to the trading system/network and may result in delay in processing or not processing buy or sell orders either in part or in full. Client agree that he shall be fully liable and responsible for any losses caused to him

due to such problems / glitches. Client is fully aware of the risk of electronic loss/ theft and agrees to be solely liable and responsible for the same as well as for use/ misuse of the E-mail/SMS. He understands KASSA FINVEST (P) LTD & or its employees will not be anyway responsible or liable for the same.

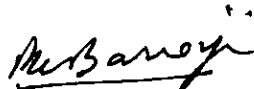
5. The Bombay High Court case filed by the applicant has no relevance here. The Hon'ble High court has held that "in view of this , the decision that the petitioner entered into the alleged transaction without Respondent's order in writing, without his consent and without his knowledge and therefore, passed the order of refund which in my view is correct."

There the parties were engaged in dialogue with each other often in writing; in our case there is no such evidence at all, so far as written dialogue is concerned. In the present case even if it is admitted that the transactions were unrecorded and thus unauthorised, they were not, as records and applicant's / T.M's submission show, without the client's knowledge.

AWARD

In consideration of the aforesaid the applicant has no case against the Trading Member as the allegations lack credibility for want of hard evidence. The claim seeking Rs.2 lakh as refund on account of wrongful / unauthorised trading is therefore rejected.

Signed at
New Delhi on January 5, 2015


P.K.Banerji
Sole Arbitrator