



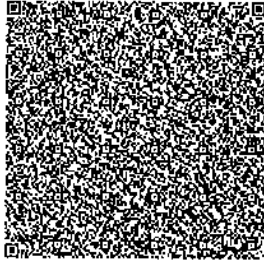
सत्यमेव जयते

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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
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Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE SHRI Ashutosh Aggarwal, SOLE ARBITRATOR

In the matter of Arbitration under the Bye Laws & Regulations of MCX Stock Exchange Limited.
AM No (DEL- 02/2014)

Between

Devraj Gupta
Constituent

Applicant

And

Kassa Finvest Private Ltd.
Trading Member

Respondent

AWARD
(Passed on 26 December 2014)

Statutory Alert:

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Mr. Devraj Gupta

Resident of 80 P Block,
Sri Ganganagar, Rajasthan 335001

----- Applicant

Kassa Finvest Private Limited,

A Company incorporated under the provisions of the Companies Act, 2013 having its registered office at H - 35 / 3, Ground Floor, Connaught Circus, New Delhi 110001 and another office at WEA 17A / 53, Gurudwara Road, Near Metro Station, Karol Bagh, New Delhi 110005 and the Member of MCX Stock Exchange Limited.

----- Respondent

Place of Arbitration:

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

AWARD

WHEREAS Mr. Devraj Gupta (hereinafter to be referred as the Applicant) had filed an application having Arbitration Matter No. DEL - 02 / 2014 before Regional Arbitration Center, Delhi, MCX Stock Exchange Limited, 3rd Floor, P - 14, 45 / 90, Outer Circle, Connaught Place, New Delhi against Kassa Finvest Private Limited (hereinafter to be referred as Respondent) under the Rules, Regulations and Byelaws of MCX Stock Exchange Limited alleging unauthorized transactions in his account maintained with the Respondent in unjust and improper manner and selling his securities without authorization which had resulted in a loss of Rs. 1,51,000/- (Rupees One lakh and fifty one thousand) and under the circumstances a difference and dispute had arisen between the above named Applicant and the Respondent within the meaning of the Rules, Regulations and Bye-laws of the MCX Stock Exchange Limited.

The Arbitral Tribunal entered into the Arbitration on November 24, 2014 on the basis of documents submitted by the Applicant and the Respondent in the presence of the Authorised Representatives of both the Applicant and the Respondent. After hearing both the parties, the Award was reserved for pronouncement.



The claim of the Applicant

1. That the Applicant had not placed any orders with the Respondent and the Respondent must provide evidence for the same either written or oral and alleged it was manipulation of accounts by the Respondent.
2. That the Respondent had not taken any prior permission for executing trades from the Applicant.
3. That the Applicant was not in India between 07.02.2013 and 28.02.2013 and still the Respondent executed several trades during this period.
4. That the Applicant had never provided Margin Money for the execution of alleged trades.
5. That the Respondent sold shares of the Applicant without giving any intimation for the same or demanding margin money or demanding payments for loss incurred in the account.
6. That the Applicant sought remedial action to redress his grievance against the unauthorized transactions made by the Respondent from several redress forums but did not get satisfactory response.
7. That there was a clear credit balance of Rs. 17,166/- as appearing in the statement of account of the Applicant on 21.08.2013 still in spite of repeated requests and complaints with various redress forums, the payment had not been made.

The claim of the Respondent

1. That the trades were executed based on valid authorization of the Applicant.
2. That the Applicant had voluntarily executed all the Account Opening Documents i.e. Client Registration Form, Member Client Agreement, Risk Disclosure Statement, Running Account Authorisation and others setting out risks involved in making investments in the Capital, F&O and Currency Derivatives Markets.
3. That the trades executed were based on the collaterals i.e. Securities of the Applicant with the Respondent.
4. That the Respondent sent confirmations for the trades, digital contract notes, bills for trades and statement of accounts to the email ID of the Applicant registered with the Respondent. Similarly, all details for trades were informed to the Applicant by way of SMS at the mobile number of the Applicant registered with the Respondent.



Discussion and Disposal

On the basis of documents submitted by the Applicant and the Respondent in support of their respective claims, arguments had during the proceedings of Arbitration, the following issues were discussed: -

1. That the Applicant opened the trading account with the Respondent on the suggestion of the Respondent. The Applicant had not visited the office of the Respondent for opening of the account, instead the documents for opening of the account were sent to the Applicant by post for signing and the Applicant thus signed on the dotted lines to open the account with the Respondent. The signing of various documents to open a trading account does not indicate willingness on the part of the Applicant to trade in securities.
2. It is strange that the Applicant who is the resident of Sri Ganganagar, Rajasthan chose to open the account with the Respondent operating from Delhi. The opening of such account simply implies that the Applicant reposed faith in the Respondent on some representations made by the Respondent to him and was confident that his shares handed over to the Respondent will be in safe hands.
3. It was the understanding between the Applicant and the Respondent that the shares of the Applicant given in the pool account of the Respondent will not be sold without prior permission of the Applicant. The Respondent could not place any material to suggest that the Applicant was informed of the action taken for disposal of his shares.
4. The Applicant has not made any payment to the Respondent during the entire period of transactions. It is uncommon that the transactions have been carried on for such a long period without asking for any payment. The Respondent failed to provide any material to suggest that at any point of time during the period of transactions carried on by it for the Applicant, the payment was demanded from the Applicant.
5. The logs for sending SMSs and emails to the Applicant informing him the transactions carried on behalf of the Applicant as submitted by the Respondent in support of its claim is incredible for the simple reason that the Respondent failed to place any evidence of receipt of orders from the Applicant. It is also incredible that the Applicant of such an age has been placing orders from Sri Ganganagar, Rajasthan to the Respondent in Delhi and following up all those transactions with it so meticulously.
6. The Respondent's affirmation that no margin money was ever demanded from the Applicant as the shares of the Applicant lying with it was sufficient security has no merit. The Respondent is duty bound before starting first trade to call and demand for margin from the Applicant as an abundant caution and to



comply with SEBI directions in this respect. This is unfortunate that the Respondent in the first instance did not demand for margin money and in the second instance believed in simply posting M to M loss / profit directly to the account of the Applicant.

7. In spite of giving opportunity, the Respondent has failed to provide the following documents:-

- Proof of dispatch of Contract Notes and Statement of Accounts to the Applicant.
- Proof of receipt of orders from the Applicant and proof of confirmation calls made to the Applicant for executed trades.
- Proof of demands for margin money made to the Applicant.

The failure on the part of the Respondent to provide the above stated documents for scrutiny of the Arbitral Tribunal suggests lacking on the part of the Respondent.

8. The Respondent failed to settle the account of the Applicant once in a quarter as per Running Account Authorisation signed by the Applicant. The periodic settlement of account has been introduced to bring in transparency in the system of operations and provides an opportunity to both the parties to know and understand the transactions carried in the previous period. The Respondent has no explanation to offer as to its failure in settling the account periodically.

9. The onus is cast upon the Respondent to execute the trades on receipt of confirmed orders from the Applicant but the Respondent has not placed any material to suggest that the trades were executed on receipt of such confirmed orders of the Applicant.

10. It was the responsibility of the Respondent to ensure that appropriate confirmed order instructions were obtained from the Applicant before executing trades. The Respondent could not produce any orders and instructions of the Applicant in any form to substantiate its claim for receipt of orders from the Applicant excepting production of Account Opening Documents.


11. The responsibility is cast upon the Respondent to demand and call for the required Margins from the Applicant before proceeding to execute any trades on behalf of the Applicant. In the present case, the Respondent did not make any call to the Applicant demanding Margin. It is a clear case of non-observance of prescribed Regulations with respect to demand of margin.



AWARD

In view of the aforesaid discussion, this Award is pronounced in favour of the Applicant and against the Respondent. The Respondent is directed to pay a sum of Rs. 1,51,000/- (Rupees One lakh and fifty one thousand) being the value of shares claimed to the Applicant. No order as to cost.

Signed at
New Delhi on December 26, 2014


Ashutosh Aggarwal
Sole Arbitrator