

For MARATHA SAHAKARI BANK LTD.

MRS. S. S. SAWANT
Authorised Signatory

MARATHA SAHAKARI BANK LTD
196, MATUSHREE APTS. M V ROAD
ANDHERI (EAST)
MUMBAI - 400 069

D-5/STP(V)/C.R./1099/01/10/802-05/10

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INDIA STAMP DUTY MAHARASHTRA

M.C.X. STOCK EXCHANGE LIMITED

In the matter of Arbitration as per the Byelaws and Regulations of MCX'SX Ltd.

Before Justice A..S Aguiar (Retd) –Sole Arbitrator

Arbitration Matter No MUM-03/2013

Between

Mrs. Debjani Gautam Nandi,
Bldg. Santosh Towers, Flat No B 502,
Hosp.Road Bhuj, Gujarat-370001.

Applicant
(Constituent)

And

SMC Global Securities Ltd.
11/6B, Shanti Chamber, Pusa Road,
New Delhi-110005.

Respondent
(Trading Member)

Appearances:

For Applicant :Mr. Kamendu Joshi, (Company Secretary) along with Mr. Pramod Sabot (Company Secretary) of Kamendu Joshi & Associates and POA holder on behalf of the Applicant.

For Respondent: Mr. Suman Kumar (Company Secretary and Head Legal) along with Mr. Mamraj Yogi, (V.P. Operation) of the Respondent Company duly authorized.

AWARD

- 1 MCX'SX vide its letter dated 5.3.13 has assigned the matter to me for adjudication under the Rules and Byelaws of the Exchange. Only one hearing was held in the matter on 28.3.13 at the office of MCX Stock Exchange Ltd at Exchange Square, CTS No. 255, Suren Road, Chakala, Andheri (E), Mumbai 400093, when the parties were represented as above. Both parties were heard at length, the relevant documents and records perused and the matter closed for passing award.
- 2 Briefly, it is the case of the Applicant that sometime in September 2011, one Mr. Hitesh Balva, Sub-broker of the Respondent Co. M/s SMC Global Securities Ltd. enticed him to invest a sum of Rs.10 Lakhs with the Respondents with an assurance that he would receive every month a sum of Rs.10,000/- as return of 1% to 1.5% on the investment, with capital protection. Accordingly on 5.10.11, the Applicant deposited Rs.10 Lakhs with the Respondent Trading Member and as promised the Sub-broker deposited a cheque for a sum of Rs.10,000/- in the Applicants HDFC Bank Account on 1.12.11. Since no amount was paid to the Applicant in the first week of January 2012, the Applicant contacted the Sub-broker after which a sum of Rs.10,000/- in cash was deposited in the Applicants said Bank Account on 12.1.12.
- 3 Apparently the delay of a few days made the Applicant suspicious, and on persistently calling up the sub-broker, the Applicant to her dismay learnt that all her money was lost by the sub-broker in trades carried out at the BSE, NSE and MCX'SX without the consent or knowledge of the Applicant.
- 4 It is the case of the Applicant, she was not provided with information regarding the transactions carried out in her account on regular basis, and before she knew it, the whole of her investment was lost in two months.
- 5 According to the Applicant the sub-broker and the Respondent Trading Member have acted in collusion to cheat her of her investment of Rs.10 Lakhs and this is sought to be established from the following circumstances :
 - i) The digital contract notes and physical contract notes do not match indicating forgery of documents to deceive.
 - ii) Only contract notes were sent. No account balance in the trading account were provided.
 - iii) The SMSs alleged to be sent after every transaction showing the balance in the account were not received by the Applicant.
 - iv) The provision for receiving statement of account on quarterly basis was with the intention of duping the Applicant, since by the time the Applicant realized from the statement of account her trading account was fast diminishing, it was too late to do anything as by that time the entire investment had been lost.



6. The Applicant has alleged collusion between the sub-broker Hitesh Balva and the Respondents Trading Member. The Applicant has belatedly realized that she ought to have made the sub-broker a party Respondent to the arbitration proceedings and at the hearing of the reference on 28.3.13 has applied for impleading the sub-broker Hitesh Balva as party Respondent. The Applicant states that she had asked NSE Arbitration Department to join the said Balva as Respondent but the Department has failed to do so.

There is nothing to show that the Applicant had in fact applied for impleading the said Balva as party Respondent. Even Form No. 1 viz Arbitration Application refers to the dispute pending between the Applicant and the Trading Member SMC Global Securities Ltd. Nowhere has the sub-broker, Hitesh Balva been referred to. Hence the question of now joining Hitesh Balva as party Respondent does not arise. However we wish to clarify that the failure to implead Hitesh Balva sub-broker will not prevent us from considering the facts of the case involving the said Hitesh Balva which may help to adjudicate the claim of the Applicant.

7. The Respondent Trading Member has filed its Reply/Written Statement dated 15.2.13 stating that the Applicant, with the intention of entering the securities market, approached the Respondent Company for opening a trading account on 30.9.11 and executed the Member Client Agreement and other relevant documents whereupon he was allotted UCC No. KXR0003 and was furnished the Welcome Kit containing the KYC and supporting documents dated 3.10.11. The Respondent did not receive any communication objecting to any details/information mentioned in the KYC and other documents. The Applicant thereafter on 5.10.12 invested a sum of Rs.10 Lakhs for trading in the securities market.
8. It is the case of the Respondents that the Applicant was informed of each and every trade/transaction by various modes required of the Trading Member. Account statements and contract notes were sent on the Applicants registered e-mail ID gautamnandi_cal@yahoo.com Both digital and physical trade confirmations were also sent on the Applicants designated mobile No.9712240501. The Respondent refers to and rely upon the contract notes of trades executed at Annexure III, SMS confirmation Report at Annexure IV, e-logs of digital contract notes and quarterly account statement at Annexure V, Account statements at Annexure VI and proof of physical contract notes sent are at Annexure VII of their Reply.
9. The Respondents submit that they have provided ample opportunity to the Applicant to make her aware of the position of her trading account and to bring any discrepancy or wrongs done to the Respondents notice. However, the Applicant despite receipt of all the above never raised any objection to any of the transaction effected in her account. The

Applicant is therefore deemed to have accepted the correctness of the transactions recorded in her account.

10. From the pleadings and after hearing the parties, it is clear that the Applicant's case is untenable, if not contradictory. The Applicant has alleged that the Respondents sub-broker Hitesh Balva, enticed her to invest Rs.10 Lakhs with the Respondent Company with the assurance of capital protection and handsome returns of 1% to 1.5% . At the same time Applicant admits signing the MCA RDD KYC and other documents relevant for trading in securities. Clearly no trader can guarantee either capital protection or assured return. Trading in securities by its very nature entails an element of risk of which the Applicant was very well aware. The Applicant is an educated person and admittedly had some experience of securities market as she was associated with Religare and Angel Broking firms.

11. On behalf of the Applicant it was contended that the payment of Rs.10,000/- into the Applicants Bank Account with HDFC Bank by cheque dated 1.12.11 as well as a sum of Rs.10,000/- paid in cash into the Applicants said Bank Account on 12.1.12 were payments made towards the promised assured returns. These amounts according to the Respondent were paid into the Applicants account out of the credit lying in the account ledger of the Applicant from her trading account. The Applicant has referred to and relied upon some writing at Annexure 1 of the application allegedly given to her by the said Hitesh Balva. according to which the Applicant would receive a return of 2% to 4% monthly. If that was the case, the Applicant should have received payments of sums of Rs.20,000/- to 40,000/- each month instead of only Rs.10,000/-. Further the plan at Annexure 1 mentions "currency option Hedging" which obviates any assured return or capital protection. Clearly the Applicant's case is self contradictory. While the Applicant has alleged unauthorized trading, the relief claimed is for recovery of the alleged secured amount of Rs.10 Lakhs.

Thus the Applicant's story that she invested the sum of Rs.10,000/- lakhs with the Respondent on the promise of handsome annual returns and capital protection is far-fetched. Even if the Applicant was so enticed to invest her money with the Respondent Company, it would be her own greed to earn huge profits that caused her to enter into some sort of arrangement with the said sub-broker Hitesh Balva for which she cannot hold the Respondents responsible

12. From the documents referred to by the Respondent in the Annexure to their Reply, it is established beyond a shadow of doubt that the Applicant had invested Rs.10 Lakhs for the purpose of trading and had voluntarily executed all the required documents for the said purpose and the Applicant was fully aware of all the trades carried out in her account but did not object to any of them within the stipulated time. It is pertinent to note that although the account was opened in September 2011 and Rs.10 Lakhs was paid on

9

5.10.11, the Applicant for the first time raised a grievance on 22.8.12 after a delay of more than one year.

13. The Respondents have taken us through the list of log reports, smses sent after each transaction at Annexure IV which shows almost all the sms' were successfully delivered. The sms clearly show the gradual reduction of the ledger balance ending with the last transaction on 25.1.12 when the credit balance was only Rs.860.51. The account was opened on 17.9.11. The sum of Rs.10 Lakhs was deposited in the account on 5.10.11, On the same day an sms was sent showing a ledger balance of Rs.6,62,206.10 after a debit entry of Rs.3,37,793.90 and again a ledger balance of Rs.6,10,622.92 on 7.10.11 after another transaction on 5.10.11 of Rs.51,583.18. Thus the Applicant was made aware of the trades carried out in her account from 5.10.11 till the reduction of her ledger balance to Rs.860.51 on 5.1.12. The log reports mention the same e-mail ID as in digital contracts notes and margin reports and quarterly account statement to which they were sent viz. gautamnandi_cal@yahoo.com

Despite receipt of the contract notes both digitally and physically as well as the ledger balance statements, the Applicant raised no dispute as to the trades and must therefore be taken to have accepted the same. Hence the Applicant's case of unauthorized trades carried out by the Respondent in her account deserves to be rejected.

14. The Respondents have filed a counter claim against the Applicant claiming a sum of Rs.9,50,000/- as compensation for filing a false claim against them and damaging their reputation. The Respondents have not argued the counter claim before us and must therefore be taken to have given up their claim. Even otherwise, there is no substance in the counterclaim of the Respondents and the same cannot be the subject matter of arbitration. Hence the Respondents counterclaim deserves to be dismissed.

AWARD

- (i) Both Claim Application and Respondents Counterclaim dismissed.
- (ii) No order as to costs.
- (iii) MCX SX is directed to file one copy of the Award which is engrossed in triplicate with requisite non-judicial stamp and forward one copy each to the Applicant and Respondents and one copy to be retained with MCX SX for record.

Mumbai,

Dated this 16th day of ~~February~~ ^{April} 2013.



(Justice A.S. Aguiar)
Former Judge Bombay High Court
Sole Arbitrator