



पश्चिम बंगाल पश्चिम बंगाल WEST BENGAL

N 255916

ARBITRATION AWARD

**In the matter of Arbitration as per the Bye laws
and Regulations of MCX Stock Exchange Limited
Before Shri C K Basu, Sole Arbitrator**

Arbitration Matter No.Kol-01/2012

Ms Deepanwita Chatterjee (Client)
Flat 1C, 40, Haripada Dutta Lane,
Kolkata-700 033.

.....Applicant

Vs.

M/s. SMC Global Securities Ltd. (TM)
11/6B, Shanti Chambers,
Pusa Road, New Delhi-110 002

.....Respondent

62815

No. Held to C. K.

Address..... 23 For

Date **23 NOV 2012**

Licensed Stamp Vendor
Custom House, Khar

Barce

R. N. Mukherjee Road

601-1

Statement of Case:

The Respondent does client-based trading and proprietary-account trading in National Stock Exchange of India Ltd. (NSE), Bombay Stock Exchange Ltd. (BSE), MCX Stock Exchange Ltd. (MCX'SX) and United Stock Exchange (USE).

In the year 2010 the Applicant's husband, Mr. Malay Chatterjee, had traded through the Respondent's South City branch and incurred losses amounting to Rs.10,000/-(approx.), which were made good by the then members of the Respondent's South City branch and trading on his account was discontinued. However, by thus resolving the issue amicably, South City branch gained the confidence of the Applicant's husband that in future also it would be possible for them to make good trade losses.

In the later part of 2011, the Respondent's South City branch representatives approached the Applicant and her husband with requests to again undertake trades through them. Bolstered by his past experience in the year 2010, the Applicant's husband agreed to resume and permit only low volume/profit-oriented trading in his own account through the Respondent's South City branch and was allotted the **Unique Client Code (UCC): NMV0156** to be used for executing trades/transactions and for all future references. He also encouraged the Applicant to undertake trades in the Currency Derivative Segment of MCX'SX through the Respondent. The Applicant alleges that the RM of the branch, Ms Susmita (who was aware of how the losses incurred by the Applicant's husband in 2010 were resolved to his satisfaction), requested her to start regular trading, giving assurance of average payouts of Rs.400/- per working day. Remembering that in the past her husband had suffered losses, the Applicant alleges that she was very reluctant from the outset to give her concurrence to requests for undertaking trades. However, because of her husband's encouragement, at first, she did agree to open a trading account in her name. Later, on second thoughts, she claims that when the RM called on her in November 2011 with the Client Registration form for execution to open her account for undertaking trades, among other exchanges, in MCX'SX Currency Derivative Segment, barring a few original signatures, she declined to sign at the remaining places. Thus, the 'completed' Client Registration form, comprising the KYC Application Form and Account Opening Book containing Rights & Obligations of Stock Brokers, Sub-brokers & Clients/Risk Disclosure Document for Capital Market & Derivatives Segments/Dos & Don'ts for Trading for Investors/Policies & Procedures/Voluntary Authorization when a Client Wants to Maintain a Running Account, etc., which will be relied upon at the present arbitration proceedings would certainly contain some forged signatures of the Applicant incorporated by officials/staff members of M/s. SMC Global Securities Ltd. She also denies that her consent for trades was given and alleges that she instructed the RM not to do any trade in her account. Hence, she claims that all her trades were invalid /illegal on this ground alone.

When her account was opened, the Applicant was allotted **Unique Client Code: NMV0158** by the Respondent.

At the first hearing on 18/10/2012 the Applicant alleged that unauthorized trading without her consent was undertaken in MCX'SX Currency Derivative Segment during the period **07/12/2011 to 06/02/2012**. The Applicant alleges that when she started getting contract notes, she first came to know around 15/12/2011 that she had incurred losses to the tune of around Rs.40,000/-. Many number of times the Applicant contacted the RM, Asst BM, BM, Delhi HO, Compliance Officer/'Customer Care' of the Respondent, etc. and complained about unauthorized trades. In fact, she alleged she had sent a written application dated 16/12/2011 to the branch asking that further trades be stopped forthwith. However, the branch refused to accept the application. The RM, Asst. BM and BM present at the office assured her that the losses incurred so far would be made up and advised her to have patience. After repeatedly asking the branch for account statements, the Applicant was given statements, through messenger, on 17/12/2011 and 11/01/2012 against her acknowledgements on copies of the same on which she claims to have recorded her objections regarding unauthorized trading. The Applicant claims to have registered her objections similarly on copies of all accounts statements issued by the TM from 17/12/2011 onwards.

The Applicant's husband, Mr. Malay Chatterjee was throughout interacting with the Respondent on her behalf (**NMV0158**) and also on his own behalf (**NMV0156**). Mr. Chatterjee (who was present at all hearings along with and representing his wife) claims (which is also incorporated in an e-mail dated 01/05/2012 sent to Mr. Rana Pratap Sinha, BM of South City branch) that if the

recorded telephonic conversation between him and the Respondent from the Day 1 of trading (07/12/2011) was listened to, it will be found that "it was categorically told to them (the Respondent) not to make overall losses, under any circumstances. They were advised to do the trading only when they were confident of positive result. In the event of no confidence of (i.e. absence of confidence regarding making) profit they were advised not to go for any kind of trading at all. Verbally and on telephones this was communicated to them not less than hundred times from Day 1. They were further advised to take expert guidance (for investing only for assured profit)." However, the Respondent continued trading in both the Applicant's and her husband's account despite such timely warning and caution.

Though at the first hearing on 18/10/2012 the Applicant stated that unauthorized trading without her consent was undertaken in **MCX'SX Currency Derivative Segment** during the period **07/12/2011 to 06/02/2012**, on the same date she also circulated a letter which mentioned that **the last date of trade in her account was 24/05/2012**.

The Applicant further alleges that in order to wipe out the losses, the RM and Asst. BM came to her and her husband for funds with assurance of wiping out losses caused by unauthorized trading till then. The Respondent's representatives were given further Rs.30,000/- by cheque around 29/03/2012 for the aforesaid purpose together with an e-mail dated 29/03/2012 addressed to all concerned explaining the reason for allocation of more funds. Despite this, overall losses increased because of continued trading and leading to deductions in stock holdings. Stock holdings of Coal India, JP Associates & Muthoot Finance were reduced from the Applicant and her husband's accounts on 23/03/2012. Again, on 30/04/2012 stock holdings of LITL, Shriramcit & Muthoot Finance were deducted from their holdings. The Applicant alleges that the TM sold out her stock holdings unilaterally without even asking for funds. The Respondent's RM and BM went on assuring that they would wipe out the losses of the Applicant and her husband in full and bring back their stock holdings. It is further alleged that the Respondent's aforesaid representatives also did not deposit cheque(s) given to them against stock purchase in the husband's account (NMV0156) and utilized the same for the Applicant's account (NMV0158).

The Respondent did trading in the husband's account (NMV0156) too when this was not authorized, leading to stocks getting transferred to NSE/BSE on 19/05/2012 and culminating in deductions from stock holdings through sale.

The Applicant alleges that brokerage generation by hook or by crook is the only objective at the TM's South City branch. The branch tries to show some losses and later in the name of wiping out the loss they go on doing trades to earn brokerage, further adding to the losses. Making false promises/commitments the branch thus takes advantage of clients' ignorance.

The Applicant alleges that the TM is avoiding producing all voice recordings relating to placement of trade orders. A glance at the contract notes will show that very frequently trades were conducted without consent in very large volumes, solely with the objective of unethical gains of huge amount of brokerages at the cost of the Applicant's interests. Out of around 150 trading days only 32 voice records of profit-making days are being produced by the TM and all the rest are being carefully avoided. The TM should be asked to produce **all** voice recordings relating to placement of orders and confirmation calls from **07/12/2011 until 24/05/2012** and not just the 'soft recordings' for a selected few profit-making days. This would make it crystal clear that trades continued without consent. It would be found that day after day the TM was cautioned after trade confirmations were received without there being any placement of trade orders. Moreover, e-mails registering the Applicant's protests in this regard were sent to the TM after such confirmation calls were received.

Initial Claim of the Applicant:

Initially, the claim amount of the Applicant was **Rs.78,530/-**. However, at the first hearing on 18/10/2012, she stated that this amount is admittedly based on an estimate. It was, therefore, decided that the Applicant would recalculate the claim amount on the basis of the sum total of actual losses faced by her during the disputed period.

Reply of the Respondent:

The Respondent, being a broker, has fulfilled all its responsibilities/obligations and made the Applicant fully aware of all the trades and transactions executed under her own volition and

instructions. The Respondent strictly refutes all the allegations and averments made by the Applicant. Important points that falsify the case of the Applicant are given below:

The Applicant had shown her desire for trading in the Currency segment of MCX'SX in the month of December 2011. The Applicant filled all the necessary details in the Client Registration Form and due acknowledgement was provided by her that she has received the account opening book. She was allotted Unique Client Code: **NMV0158**. The Applicant accepted all the terms and conditions and, thereafter, carried out several trades and transactions. The Applicant has provided her husband's email id: malaychatterjee1@yahoo.co.in and **mobile no. 09007999251** at the time of registration. The Respondent has fully informed the Applicant of all trades executed by her by sending Digital Contract Notes to the registered e-mail id: malaychatterjee1@yahoo.co.in and trade summary by SMS to the registered **mobile no: 09007999251**. It is pertinent to note that all e-mails sent by the Applicant to the Respondent were from the same email id, which shows that the e-mail id belongs to the Applicant and she was made well aware of all the trades and transactions executed in her account. [The Log of sending Digital Contract Notes, Accounts Statement, Margin Report, etc. and Log of sending SMS Alerts have been enclosed]. Since Respondent fulfilled its responsibility of sending all the trade related information, it became the responsibility of the Applicant to report any discrepancy or error within the stipulated time.

In addition to sending Digital Contract Notes, **Physical** Contract Notes were also dispatched to the Applicant so that she remained aware of all trades and transactions done as per her husband's instructions over phone. [Proof of sending Physical Contract Notes has been enclosed]. Though it is mandatory for a broker to send the contract notes and other documents **either** in physical form **Or** electronically (if so opted by the Client), the Respondent sent the Contract Notes physically as well as electronically in order to safeguard the interest of the Applicant.

The Applicant was also provided online web accounting facility to enable online checking of transactions done on the account. The Applicant could access the web site for checking her transactions status online, if she wanted.

The above evidences clearly show that the Applicant knew about all the trades being executed in her account right from the beginning.

The following are replies to the Applicant's points:

The Applicant has stated that while executing the Client Registration form for opening her account, barring affixing a few original signatures, she declined to sign at the remaining places, implying that the rest of the Client Registration form, comprising the KYC Application Form and Account Opening Book, was completed in an unauthorized manner. The Form contains a plethora of details relating to the Applicant such as her father's name, PAN no., postal address, date of birth, landline/mobile number, etc. The particulars filled-in are personal details and the same could not have been correctly filled-in unless it was done at the instance of the Applicant.

The Applicant in executing the Client Registration form for opening her account, has acknowledged that she has understood the contents of the Risk Disclosure Document wherein it is clearly mentioned that there is no assurance of profits while trading in the market.

The Applicant has received all contract notes, trade summaries through SMS and has nowhere mentioned that she has not received any contract notes, SMS and other related trade confirmations. She was also enjoying the facility of accessing the web site for checking her transactions status online. Therefore, there is nothing to show that the trades were unauthorized and the Applicant is only trying to recover the losses suffered in the course of normal trading undertaken by her.

The Applicant has alleged that the letter asking to stop trading immediately was sent through messenger on 16/12/2011 but RM/Asst. BM at the branch refused to accept it. If this averment of the Applicant is true, there is nothing to show that the Applicant either followed up with the Respondent for closure of her account or sent a mail or letter to this effect. The Applicant was interested to continue trading and was well aware of her trades; she was in receipt of all trade related information on a regular basis. It is pertinent to note that the Applicant has not yet taken any action for closure of her account.

The Respondent submits that the reason for providing the funds by the Applicant reveals her interest in further trading and nothing more. She asserts that she had asked for immediate stopping

of further trades on 16/12/2011. However, the Applicant provided sizeable additional funds around 29/03/2012 claiming that it was only for "loss make-up oriented trading". In this regard, the Respondent draws attention to the fact that the Applicant's last transaction in the Currency segment of MCX'SX was on 06/02/2012 (though trades in her account continued till 24/05/2012). This act shows that she was, in fact, really interested in further trading.

The Applicant asserts that the Respondent sold out her stock holdings without asking for further funds. But, she was aware about all her trades and transactions executed and the debit balance standing from time to time in her account. She was in receipt of all contract notes digitally as well as physically, SMS alerts, Margin Reports, etc.

The Respondent contends that the present arbitration claim has been filed by the Applicant only for recovering her losses incurred in the normal course of trading done only on her instructions and volition. The Respondent points out that the trading tenure of the Applicant in MCX'SX was from 07/12/2011 to 06/02/2012 and all mails, adduced in the present arbitration proceedings, pointing out so-called "unauthorized" and "non loss wiping out trades" were sent by her after her trading in MCX'SX were complete and losses were suffered by her. This proves the Respondent's contention. The Respondent is not liable for losses of the Applicant suffered due to various risks associated with the currency and securities markets.

Since no trades executed in the Applicant's account were unauthorized, brokerage charged by the Respondent in accordance with the terms of the member-client agreement, was not a factor that drove the Respondent to undertake trades in the Applicant's account.

Since the losses incurred by the Applicant have arisen due to trading done on the Applicant's instructions, volition and with her knowledge the same has to borne by her and cannot be passed on to the Respondent under any pretext.

Counter Claim of the Respondent:

The Respondent, apart from asking for dismissal of the "frivolous" claims of the Applicant, has prayed for direction to the Applicant to pay the Respondent Rs.1,00,000.00 for framing and filing the present arbitration application against the Respondent falsely, mischievously and deliberately, with mala fide intention to harass and take undue advantage of the Respondent, in spite of the Respondent clarifying all the issues raised in the present case on many occasions, and also for attempting injury to the Goodwill of the Respondent. The total counter claim of Rs.1,00,000.00 includes Rs.50,000.00 towards falsely implicating the Respondent without any cause, basis, and evidence ; Rs.25,000.00 for the litigation expenses for hiring legal consultant to draft reply, rejoinder and replication, etc. and other ancillary services; and Rs.25,000.00 has been claimed for incurring miscellaneous administrative expenses to handle the case.

First Hearing dated 18/10/2012

At the first hearing the Applicant circulated a letter containing the following clarification:

Regarding the first day of trading (07/12/2011), the voice recording for which is available, the Applicant stated that in the morning when the Asst. BM persistently assured profit oriented trade, her husband who was talking on both her behalf and on his own behalf, permitted low volume/profit-oriented trading in his own account (NMV0156) subject to calls having been made from his end for placement of orders for purchase and sale, and not in her account (NMV0158). In the evening, the RM confirmed profit of Rs.277/-, purportedly in NMV0156, and promised to deposit the amount in SBI the very next day. She carefully and intentionally avoided giving details of having done trade worth lakhs of rupees, that too in an account where consent to trade was denied. The said two representatives of the TM thus managed to generate unethically a huge amount of brokerage on the first day itself. (This is supported by the corresponding contract note received later). Later on it was found that a loss of more than Rs.6,414/- was incurred due to unauthorized trade, and hence, contrary to the confirmation by the RM, the amount was not deposited in the bank. Without consent and without calls having been made for placement of orders/confirmation for purchase/sale, the RM and ABM went on trading worth lakhs and lakhs until the time the Applicant sent her application to the branch on 16/12/2011 asking that further trades be stopped forthwith, which the branch refused to accept.

The Applicant alleges that the reason for which unauthorized trade was undertaken in NMV0158 instead of in NMV0156 is primarily due to there being more stock holdings of the Applicant compared to very few stock holdings of her husband; it is clear that the TM was targeting NMV0158 instead of NMV0156 for more unethical gain by aiming at the larger stock holdings of the former.

Second Hearing dated 19/11/2012

Voice Recordings

At the second hearing, the Respondent was directed to submit voice recordings of **all days** of transactions in the currency segment so that the Applicant is enabled to prove that objections had been raised regarding further trades, save and except to the extent of recovering losses already incurred till 15/12/2011.

Revised Claim of the Applicant

At the second hearing the Applicant circulated a letter where she submitted a **revised claim of Rs.51,667.26** which is the debit balance in the Applicant's trading account as on 07/02/2012, immediately after the last date of her trades in the currency derivative segment of MCX'SX (06/02/2012).

Third Hearing dated 10/12/2012

At the second hearing held on 19/11/2012, the Respondent had been directed to submit voice recordings of **all days** of transactions in the currency segment. At the third hearing, the Respondent's representative submitted a CD, which contained conversations between the Respondent's dealer and the Applicant's representative (viz. her husband, Mr. Malay Chatterjee) on 7 dates during the disputed period of trading. The voice recordings of following 6 dates were heard: 17/01/2012, 18/01/2012, 19/01/2012, 24/01/2012, 03/04/2012 and 27/04/2012. Out of the 7 dates, the recording of 03/04/2012 did not contain any matter related in any way to orders/confirmation of trades.

Brief contents of recordings datewise:


17/01/2012 'Biraj' asked Mr. Chatterjee to sell USD for profit. Mr. Chatterjee said 'yes'. Confirmation of trades of 16/01/2012 and 17/01/2012 sought, which were confirmed by Mr. Chatterjee.

18/01/2012 The Client was asked whether the Respondent should buy USD because of the fall in USD; if the Client sold, the loss could be kept limited to 3 p at the most. Reply was: to do what the dealer felt best in order to make profit, as was committed.

19/01/2012 (There was no call for placement of orders). The Respondent's dealer tells the investor/Applicant's representative the position of "Buys" and "Sells" in respect of Euro and USD, on date. Mr. Malay Chatterjee asked whether overall position was profit or loss, which the dealer could not say from his desk. (As per Mr. Chatterjee, it was later found that the debit was Rs.1,512.46 for the day). There was no objection by the investor/Applicant's representative to the trades undertaken

The investor/Applicant's representative states that the above conversations are **post-16/12/2011**, the date on which Respondent's South City branch refused to accept the Applicant's/her representative's letter allegedly stating that the Respondent should stop trading and the branch advised **verbally** that they would trade only to make up losses. Mr. Malay Chatterjee, speaking on behalf of the investor, tacitly agreed to this proposal under the impression that the TM would trade on the aforesaid terms only in his own account (NMV0156), as the Applicant had refused to confirm further trading in her account.

24/01/2012 In the voice recording of 24/01/2012, among other things, currency trades of the investor were reported and Mr. Malay Chatterjee, on behalf of the investor, gave tacit confirmation to the trade.



The remaining voice recording heard was of a date which was after the last date of trades undertaken in the Currency Derivative Segment of MCX'SX viz. 06/02/2012.

27/04/2012 In the voice recording of 27/04/2012 the Asst Branch Manager of Respondent's South City branch rings up Mr. Malay Chatterjee, husband of the Ms. Deepanwita Chatterjee, and asks whether he will continue trading. Mr. Chatterjee replied that the Respondent has already caused incurring of a loss of around Rs.3 lakhs; the Respondent can continue trading for the purpose of wiping out the loss.

The Applicant alleged that the recordings provided were not exhaustive. The Applicant wanted to especially hear recordings of the conversation dated 07/12/11. It was, therefore decided that the Respondent would submit the recording(s) dated 07/12/11 along with transcript of its contents.

Transcript of Voice Recording of Conversation dated 07/12/2011 Provided by Respondent

Mr. Malay Chatterjee calls up Ms Susmita (RM at Respondent's South City branch) over phone. The RM states that good trading is going on and Rs.277/- is the profit. Mr. Chatterjee says that Mr. Biraj (representative of the Respondent-possibly, ABM of South City branch) called him **in the morning**. Mr. Chatterjee wants to know at the day's end what is the profit amount or what position is there. Ms Susmita says the dealer gives confirmation everyday and he will give confirmation today (07/12/2011) also. Mr. Chatterjee says even though he had asked, the dealer or Mr. Somnath did not give him any of the information that he wanted. Mr. Chatterjee goes on to ask Ms Susmita whether she will be able to deposit today's (07/12/2011) profit of Rs.277/- in State Bank. Ms. Susmita replies that not today; if possible, tomorrow (08/12/2011) she will send. Mr. Chatterjee requests Ms. Susmita to tell him everyday (the profit). She agrees.

Respondent's Comments on the Voice Recording dated 07/12/2011

On 07/12/2011 trade in currency segment in the code of Ms. Deepanwita Chatterjee (UCC NMV0158) was executed wherein the MTM profit of Rs.277/- was booked which the client agreed to receive but after deducting the brokerage and other statutory charges the account was debited to the tune of Rs.6,414.49 and thereby the Client could not get Rs.277/- in his/her bank account.

It is worth mentioning that on 07/12/2011 the currency trade was executed by the Client and Mr. Chatterjee was having full knowledge about this trade. Moreover, in the evening SMS message was received, containing the contract amount of CDX (MCX) and net ledger amount as on 07/12/2011. The information received over phone coupled with the information received via SMS made Mr. Chatterjee aware about the trades executed in the currency segment. When the Applicant says she has not opened the trading account, how is it possible for Mr. Chatterjee to expect to receive profit of the trade that has not been authorized.

Analysis:

Based on the above statements and counter-statements regarding the case by the Applicant and Respondent, the following salient points emerge:

The Applicant submitted her revised claim of Rs.51,667.26, which is the debit balance in her trading account as on 07/02/2012 immediately after the last date of her trades (06/02/2012) in the currency derivative segment of MCX'SX that extended over the period 07/12/2011 to 06/02/2012. Obviously, the Applicant's claim would be justified had all her trades over this period been unauthorized because these were undertaken without her knowledge and consent, as claimed by the Applicant.

The Applicant claims that when the RM of the Respondent's South City branch called on her with the Client Registration form/Account Opening Book for signatures, she declined to sign at all the required places and affixed only a few original signatures. Thus, the Client Registration form and Account Opening Book would contain some forged signatures of the Applicant incorporated by officials/staff members of M/s. SMC Global Securities Ltd. She also denies that her consent for trades was given and alleges that she instructed the RM not to do any trade in her account. Hence, all her trades were invalid/illegal on this ground alone. However, the normal reaction on her part

when she finally decided not to undertake trades after all, should have been to destroy the partially signed documents or, in any case, she should not have returned the so-called partially signed forms to the Respondent's representative. Nowhere has she mentioned that she took up this issue with the Respondent when she came to know around 15/12/2011 that she had incurred losses of around Rs.40,000/-. Moreover, no hard evidence has been adduced that she did not give her consent for trades or that she instructed the RM not to do any trade in her account, as claimed. On the other hand, in spite of being aware about the alleged forged signatures on the documents on the basis of which her trading account was opened/operated and allotted a Unique Client Code, she tacitly agreed to the Respondent's so-called proposal that thenceforth only "loss wiping out trades" would be undertaken. In this regard, it is to be noted that she claims that around 29/03/2012 she gave the Respondent further Rs.30,000.00 for this very purpose.

Regarding the Applicant's claim that she registered her objections about the trades undertaken on the acknowledgement copies of the account statements before returning these to the South City branch personnel, the Respondent's representative stated during the hearings that even if she did submit her objections to the transactions in the aforesaid manner, since recording of objections regarding transactions on copies of statements is not a usual procedure, cognizance would not have been given in the ordinary course to the objections so recorded. In the arbitration proceedings also, the Applicant has not produced any evidence supporting her claim, such as, photocopies of the objections stated by her to have been registered.

The Applicant's husband who was throughout interacting with the Respondent on her behalf and also on his own behalf, claims that if the recorded telephone conversations were listened to it would be found that the Respondent was told not to make overall losses and unless the Respondent was confident of making profits, no trades should be done at all.

At the third hearing the voice recordings of following 6 dates were heard: 17/01/2012, 18/01/2012, 19/01/2012, 24/01/2012, 03/04/2012 and 27/04/2012.

From the above voice recordings it is not clear whether Mr. Malay Chatterjee was talking on behalf of his wife or whether he was indeed talking on his own behalf.

From the 4 voice recordings for the period 17/01/2011 to 06/02/2012 heard during the alleged period of unauthorized trades, it emerges that:

Contrary to the Applicant's contention that no trade orders were placed with the TM or authorized, the voice recordings reveal that Mr. Chatterjee did not object to the trades but agreed to the dealer undertaking any trade suggested by the dealer provided overall profits were made, or left the decision to undertake trades to the dealer provided overall profit was made, "as agreed" In fact, in case of trades of 16/01/2012 and 17/01/2012 he directly confirmed the trades reported to him and in other cases he gave tacit confirmation to trades undertaken.

The Applicant claims that in the morning of the first day of trading (07/12/2011), the Asst. BM persistently assured profit oriented trade, over phone and her husband who was talking on both her behalf and on his own behalf, permitted low volume/profit-oriented trading in his own account (NMV0156) subject to calls having been made from his end for placement of orders for purchase and sale, and not in her account (NMV0158). From the transcript of the recording dated 07/12/2012 with Ms. Susmita-the RM of South City branch-that was produced and heard, it is observed that though there is a reference in the conversation to another telephone conversation held with the Applicant's husband by one 'Biraj' on the morning of 07/12/2011, the heard recorded conversation itself does not contain any assurance of 'profit-oriented trade'. Ms. Susmita does say that the day's (07/01/2012) trading profit is Rs.277/-, but does not confirm the 'profit' or otherwise in the overall position at the end of the day, saying that everyday it is the dealer who gives confirmation about the end of day overall position. Mr. Chatterjee asks whether Ms. Susmita will be able to deposit today's (trading) profit of Rs.277/- in the State Bank. Ms. Susmita replies "No not today, if possible tomorrow I will send".

From the voice recordings heard, it is not evident that during the period that trades took place in the currency segment of MCX'SX and after the Applicant/her husband realized that "unauthorized" trades were taking place, voice objections had been raised against further trades save and except to the extent of recovering losses already incurred. It was only much later on 27/04/2012 that Mr. Chatterjee tells the ABM of TM's South City branch that the Respondent has

already incurred a loss of around Rs.3 lakhs; the Respondent can continue trading for the purpose of wiping out the loss.

It emerges that the underlying mandate given to the TM by the investor that Mr. Chatterjee would like the arbitral tribunal to believe is that: the TM could carry out trades so long as no overall losses were made with a view to wiping out past losses and unless the Respondent was confident of making profits, no trades should be done at all. Mr. Chatterjee claims that an assurance of making such profits through trading was given by the South City branch of the Respondent. But, as pointed out by the Respondent, the investor has acknowledged that she comprehended the contents of the Risk Disclosure Document wherein it is mentioned that there can be no assurance of profits while trading in the market.

The Respondent has sent Digital Contract Notes to the Applicant's registered e-mail id. and trade summaries by SMS to her registered mobile no. The log of sending Digital Contract Notes, Accounts Statement, Margin Reports, etc. and log of sending SMS Alerts have been furnished by the Respondent. In addition to sending Digital Contract Notes, Physical Contract Notes were also dispatched to the Applicant so that she remained aware of all trades and transactions done as per her husband's instructions over phone. Proof of sending Physical Contract Notes has also been furnished. The Applicant was thus fully informed of all trades executed in her account. Incidentally, the log of sending SMS alerts reveals that between 07/12/2011 and 15/12/2011 alerts were sent regularly to the Applicant; therefore, no trades were executed behind her back, even during this period.

There were no unauthorized trades without the Applicant's knowledge and consent in the MCX'SX Currency Derivative segment during the period 07/12/2011 to 06/02/2012. **Hence, the Applicant's final claim of Rs.51,667.26 is dismissed.**

The Respondent's counter claim of Rs.1,00,000.00 comprises Rs.50,000.00 essentially for attempting injury to Goodwill of the Respondent without cause, basis, and evidence; Rs.25,000.00 for litigation expenses for hiring legal consultant to draft reply, rejoinder, replication, etc. and other ancillary services; and Rs.25,000.00 for incurring miscellaneous administrative expenses to handle the case. The components of the counter claim have not been backed by evidentiary justification and seem to be a counter-offensive against the Applicant's move. **Hence, the Respondent's counter claim of Rs.1,00,000.00 is also not entertained.**

Award:

In view of the contents of the above Analysis, I hereby publish the Award in three originals on 10/01/2013. One copy is to be retained by the Exchange and the other two copies by the parties:

- (a) As the Claim of the Applicant is dismissed, the Respondent shall **not** pay any sum to the Applicant. Also, the Applicant shall **not** pay any amount to the Respondent as the latter's counter claim.
- (b) The cost of Arbitration is to be equally shared by the Applicant and the Respondent.

Date: 10/01/2013
Place: Kolkata


(C.K. Basu)
Sole Arbitrator