

# INDIA NON JUDICIAL

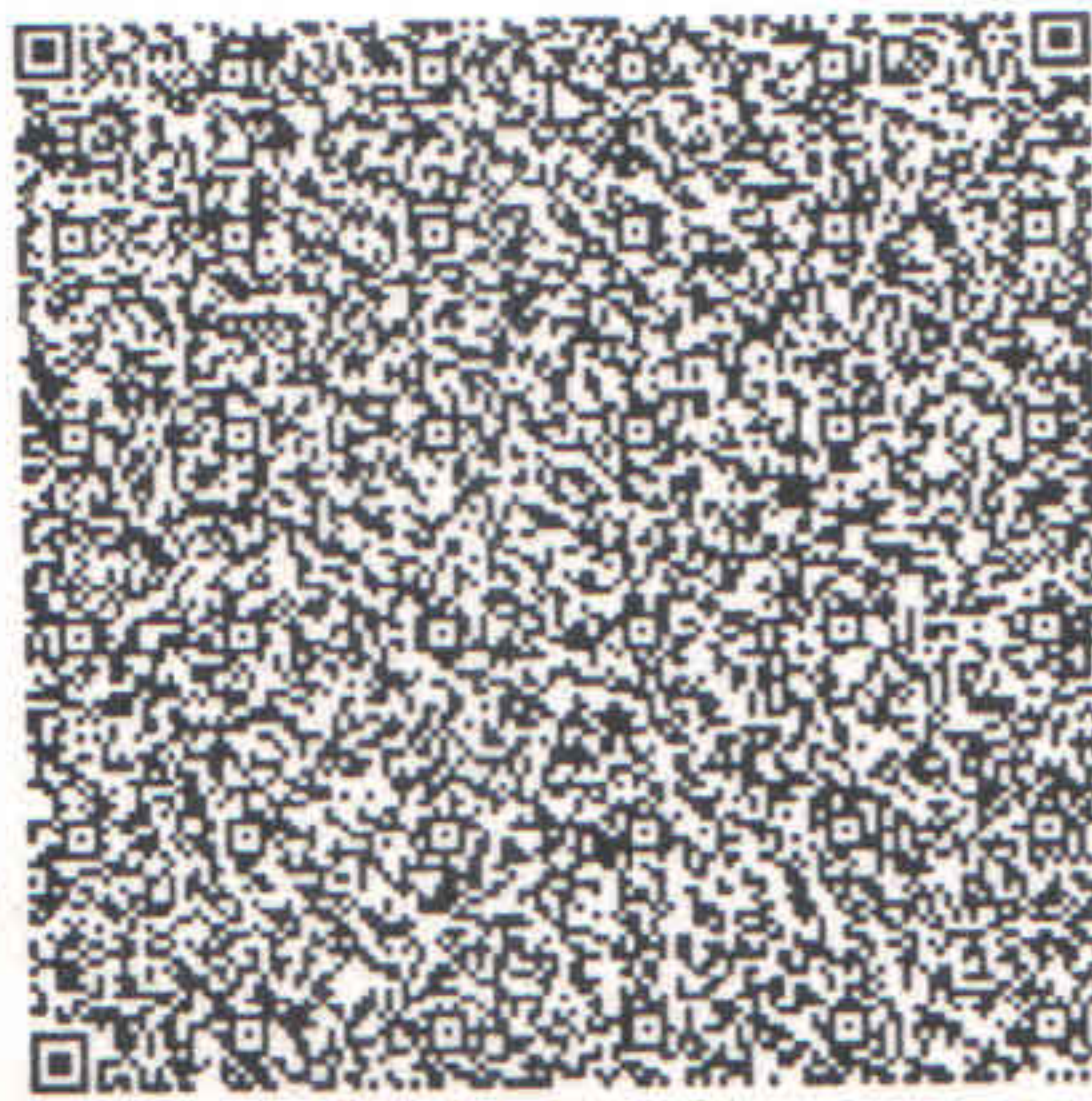
## Government of National Capital Territory of Delhi



सत्यमेव जयते

### e-Stamp

Certificate No. : IN-DL27630146239048L  
Certificate Issued Date : 24-Jun-2013 11:31 AM  
Account Reference : IMPACC (IV)/ dl740903/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL74090354392573473073L  
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.) : 20  
(Twenty only)



ORIGINAL ORIGINAL ORIGINAL ORIGINAL  
ORIGINAL ORIGINAL ORIGINAL ORIGINAL  
ORIGINAL ORIGINAL ORIGINAL ORIGINAL

Please write or type below this line.....

BEFORE SHRI VIJAI N. MATHUR, SOLE ARBITRATOR  
In the matter of Arbitration under the Bye Laws & Regulations of MCX Stock Exchange Limited.  
AM No DEL-14/2013

Between

Dheeraj Agarwal  
Constituent

And

Nirmal Bang Securities (P) Ltd  
Trading Member

Applicant

Respondent

AWARD  
(Passed on 26<sup>th</sup> June 2013)

#### 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.

BEFORE SHRI VIJAI N. MATHUR, SOLE ARBITRATOR  
In the matter of Arbitration under the Bye Laws & Regulations of MCX Stock Exchange Limited.  
AM No DEL-14/2013

Between

Dheeraj Agarwal  
Constituent

Applicant

And

Nirmal Bang Securities (P) Ltd  
Trading Member

Respondent

AWARD  
(Passed on 26<sup>th</sup> June 2013)



AM No DEL-14/2013

AWARD

Shri Dheeraj Agarwal (hereinafter referred as "the Applicant") has filed this Arbitration Application for recovery of Rs.13,50,000 (Rupees Thirteen lac fifty thousand only) approximately from Nirmal Bang Securities (P) Ltd, a Trading member (hereinafter referred to as the "Respondent") on account of losses suffered by him in currency derivative trading in Euro, GBP, JPY and USD.

2. The Applicant is a constituent of the Respondent. He opened a Demat account and a trading account with the Respondent for trading in NSE cash segment and BSE cash segment in 2011. This account was later shifted from Jhansi to NOIDA. Some representatives of the respondent later approached the father of the Applicant and persuaded him to start trading in currency derivatives also and took some papers from him for that purpose. He did not sign any fresh documents for this purpose. When the Applicant started getting messages on his mobile regarding some trades, he objected to the same to the representatives of the Respondent. He was assured that the same were done by mistake and these will be reversed. However the trades continued to happen in his account. On 22<sup>nd</sup> September 2012 all outstanding positions in his currency derivative segment were squared off, resulting in to a loss of approx 13.50 Lac. This loss was adjusted by sale of shares in his equity account of about Rs 12.24 Lac plus the amount lying to the credit of his account. He immediately took up the matter with the respondent but no proper response was given to him. He did not authorize any of these trades. He did not issue any Power of Attorney in favour of the Respondent. Since he did not receive any satisfactory response to his grievances, he filed the present claim.

3. The Respondent denies the claim. As a preliminary objection, the Respondent states that the present Tribunal has no jurisdiction to entertain the claim. This is due to the reason that the Applicant himself has denied opening of the currency derivative account with the Respondent or carrying out any trade in this segment. There does not exist and member-client relationship between the parties and hence lack of jurisdiction of the present Tribunal.

4. On merits the claim is denied as false, frivolous and having no merits. The applicant started trading regularly in equity segment from July 2011 onwards after opening the trading account in June 2011. He was allotted client code D7700033.



He executed a fresh client kit in September 2012 in order to start trading in the currency derivatives segment. A copy of the member Client agreement and the KYC have been filed. The Applicant put Rs. 10,67,200 in his account for trading purposes but unfortunately lost a substantial amount, as can be seen from the ledger account filed by the Respondent and placed on record. The Respondent is under no obligation to record placing of telephonic orders as the same has not been mandatorily prescribed to be kept by the Exchange. However the Respondent has been regularly making confirmatory calls and sending sms messages to the registered mobile number of the Applicant at the end of each trading day, which has not been denied by the Applicant. Transcripts of these calls have been filed and placed on record. Further information relating to the transactions in the account was regularly sent to the Applicant at the email address provided by him in the KYC. Contract notes were also sent at the same address.

5. I have gone through the documents filed by the parties and have heard the AR of the Applicant and the Respondent. At the hearing Dr. Badri Prasad Agarwal father of the Applicant appeared. He stated that he was operating the Applicant's account and was interacting with the Respondent and therefore personally aware of the facts of the case.

6. As regards the jurisdiction of the present Tribunal to conduct the present proceedings, the contention of the Respondent has no merit and has to be rejected. It is not disputed by the parties that the Applicant was a client of the Respondent since June 2011 and has been trading in the cash segment of NSE and BSE. Later on, as per the Respondent's own contention the Applicant also opted for the currency derivative trading and executed MCA and other necessary documents for this purpose. The execution of these documents is denied by the Applicant and to that extent, there is a dispute between the parties in connection with the currency derivative trading account of the Applicant. Subsequently, trading was also done in the Applicant's account under currency derivative segment. This is denied by the Applicant and to that extent, there is a dispute between the parties. The MCA executed between the parties clearly state that all contracts and transactions between the TM and the Client (Applicant in this case) shall be subject to the Rules, Bye Laws, and Regulations of the exchange and SEBI. It is further stated in the MCA that any dispute, claim or difference arising between the parties in respect of the MCA, contract and dealings etc shall be subject to the arbitration procedure as prescribed by the exchange provisions. In view of the above, I hold that that this Tribunal has the jurisdiction to conduct the present proceedings and the contention of the respondent in this regard, having no merit, is rejected.

7. On Merits, the statement of account of the Applicant filed by the Respondent shows that since June 2011, the Applicant was continuously trading in his account. He made payments in his account before the start of the trading and during the period. As regards the execution of fresh set of documents for trading in currency



derivative segments, it will be extremely difficult to believe the contention of the Applicant that he did not take any action in this regard and that the entire set of documents executed for this purpose have not been signed by him. He has however admitted in his claim statement that some representatives of the Respondent met him and tried to convince him to start trading in the currency derivative segment. The Applicant also gave them documents required for opening the currency derivative trading account, which were given by the father of the Applicant with the approval of the Applicant. Thereafter he was also aware of some trades carried out in this segment in his trading account. He at that time did not take any action to lodge his protest or to stop future trades and there is no document on record that he objected to these trades or execution of the documents. He himself states that he got convinced when these employees informed that these transactions were done by mistake and will be later reversed or adjusted. He was also aware of the subsequent transactions in this account and also that some of the transactions were squared off due to shortage of margin. The ledger account of the Applicant in the books of the Respondent has been filed and shows several transactions in the currency derivative segment from 24<sup>th</sup> September 2012 onwards.. These transactions continued till 19<sup>th</sup> October 2012. Thereafter although no new position was created, Mark to market entries was being made for all outstanding open positions.

8. During the period from the opening of the currency derivative account, the Applicant was sent contract notes at the email address provided by him in the KYC. This is the same email address given by him at the time of opening the account in June 2011. The Applicant did not raise any objection on receipt of these contracts notes, within the stipulated time period. Copies of the log record for dispatch of the contract notes have been filed and placed on record. The Applicant has not denied receipt of the same. He has also not produced any document to show that he objected to these trades on receipt of the contract notes.

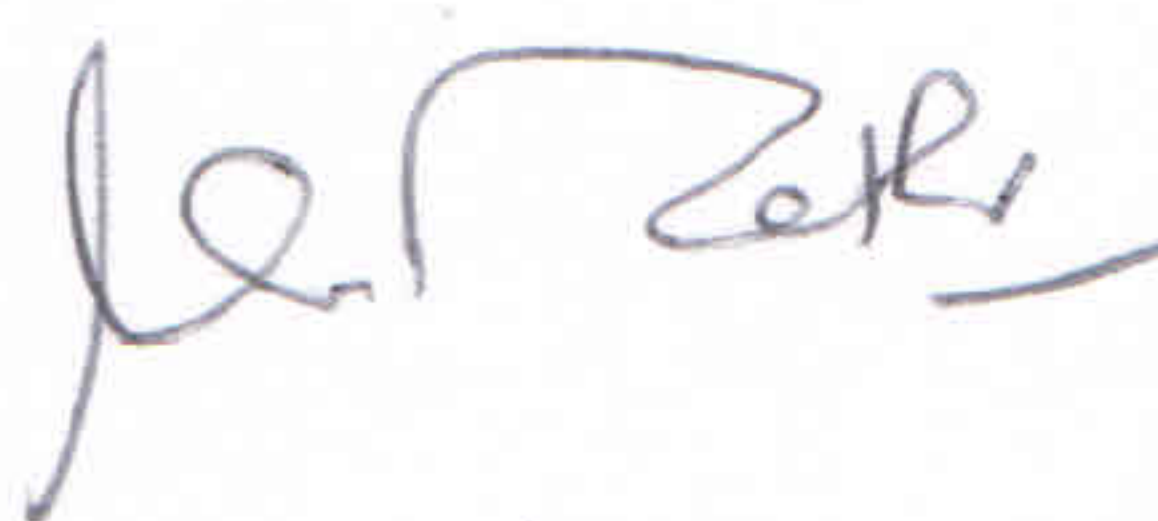
9. The Respondent has also stated that as per practice, his office was making confirmation calls at the end of each trading day, confirming the transactions made during the day. Transcripts of the calls have been filed. These clearly show that the details of the trades carried out during the day were duly conveyed to the Applicant. The calls also show that he was made to understand the transactions, he got some clarifications which he agreed but never made any objection to any of the said transactions. The transcripts of the calls made in October 2012 at Pages between 111 and 113 of the Reply clearly show that the bald denial of the trades by the Applicant cannot be accepted. As a prudent person, he should have taken several steps to deny the trades, but he failed to do so even after becoming aware of the same. The respondent was also sending sms messages regularly to the applicant. Log records of the same have been filed. The Applicant has not denied the receipt of these messages or that he objected to the trading on receipt of these messages.



10. The Applicant had also contended that he did not sign any of the documents for opening the currency derivative account with the Respondent. As per the Applicant all the signatures appearing in these documents are not his and have been forged. However he has not placed any evidence or document on record to show that the signatures on the documents filed by the Respondent are not his. A bald denial of all the signatures on the documents therefore cannot be accepted and has to be rejected. The Applicant also made a feeble attempt to show some other minor discrepancies/ variations in the KYC forms executed for the currency derivative trading with the earlier forms. Without going through the details of the same, it is extremely difficult to take a view that these variations have any impact on the enforceability of the MCA or make the documents void. Further the parties have acted on these agreements and the Applicant had never raised any objection to the same, except in the present proceedings.

11. It is also pertinent to note that the Applicant continued to trade in his account in spite of his dispute with the respondent in respect of certain trades in the currency derivative segment. The action of the applicant cannot be seen to be justified as any prudent person in his position would have stopped dealing with the Trading member immediately on arising of any dispute till the same is resolved to his/her satisfaction. In fact the Applicant is still holding shares in his DP account with the Respondent, which fact was not disclosed by him in the Claim statement. A copy of the holding statement has been filed by the Respondent. This further shows that while one hand, the applicant was disputing the trades in his account, on the other hand he had given a Power of Attorney to the respondent to operate his DP account and was still keeping some shares therein, which is not expected from a person of normal prudence.

12. In view of the above facts and circumstances and the documents on record, the Applicant has not been able to establish that he was unaware or had been kept in dark about the currency derivative trading transactions done in his account from time to time or was totally ignorant of the status of his account with the Respondent. He has not denied the receipt of the contract notes and other documents from the Respondent. He did not object to the trades on receipt of the contract notes, confirmation calls and SMS from the respondent. He also took pay outs from time to time from the account without any protest and is still keeping some shares with the Respondent's DP account. He is therefore fully liable for losses if any, suffered by him on account of these trades and cannot shift the same on to the Respondent



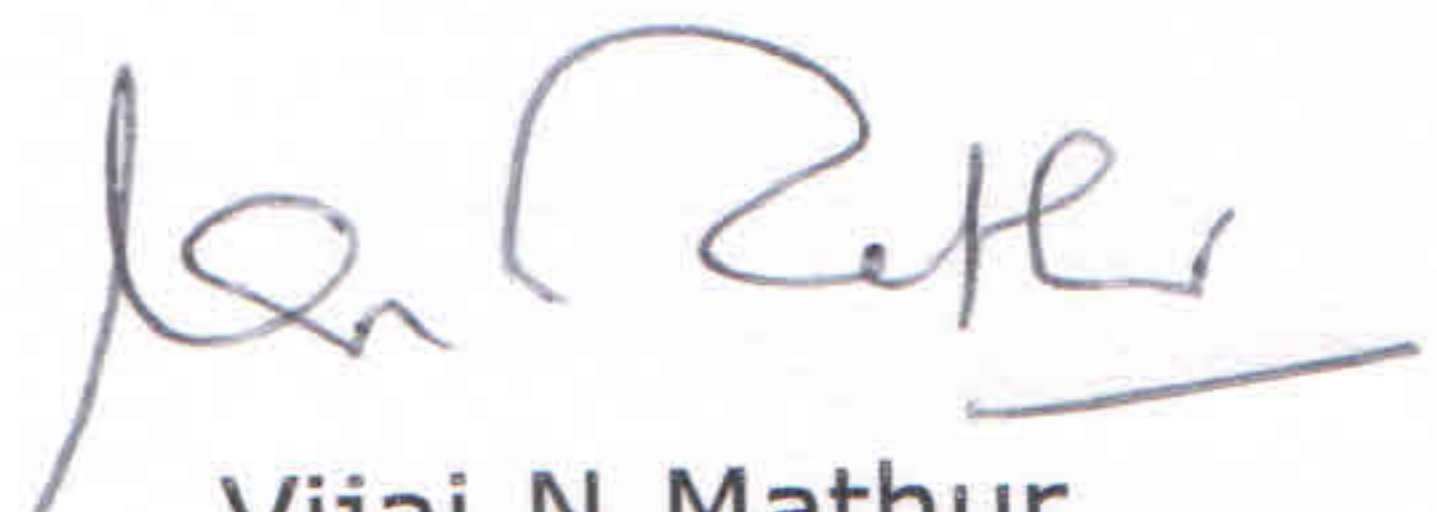
13. In view of the facts and circumstances mentioned above, the Applicant has not been able to establish his case. The case of the Applicant has no merit and is therefore rejected.

In view of the above, the following award is passed.

Award

The claim of the Applicant is rejected. Parties to bear their own cost.

New Delhi  
26<sup>th</sup> June 2013

  
Vijai N Mathur  
Sole Arbitrator