

For MARATHA SAHAKARI BANK LTD.  
MRS. S. S. SAWANT  
Authorised Signatory

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

D-5/STP(V)/C.R./1099/01/10/002-05/10

भारत 29687 SPECIAL  
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INDIA STAMP DUTY MAHARASHTRA

BEFORE THE SOLE ARBITRATOR, MR. PRADIP KEDIA  
IN THE MATTER OF ARBITRATION AS PER THE BYE LAWS, RULES AND REGULATIONS OF  
MCX STOCK EXCHANGE LTD., (MCX SX)  
REGIONAL ARBITRATION CENTRE, MUMBAI  
ARBITRATION MATTER NO.: MCX-SX/ARB/MUM-01/2012

Between

Mr. Jetho Khemani  
Constituent

Applicant

and

M/s. Religare Securities Limited  
Trading Member

Respondent

**AWARD**

1. The Applicant has filed a claim of Rs. 30,577/- (Rupees Thirty thousand five hundred seventy seven only) along with interest at 18% p.a. thereon against the Respondent. The Applicant has further claimed Rs. 20,000/- towards cost and expenses incidental to this reference.
2. The matter was placed for hearing on November 06, 2012 and November 27, 2012.
3. Applicant is represented by Mr. Arun Kumar, and Mr. Kaushal Mehta appeared for Respondent.
4. As per the statement of the case of the Applicant, he has entered into an agreement with the Respondent for trading in shares and securities. The Applicant further states that the Respondent was directed not to trade in currency segment without his knowledge and permission. The impugned loss of Rs. 30, 577/- in on account of unauthorized trade in his account in the currency segment by the Respondent. As per the reply of the Respondent, the impugned loss of Rs. 30,577/- is on account of certain transactions in the currency segment between July 13, 2011 to July 28, 2011. As per the authorised representative of the Applicant, the Respondent has not handed over the copy of contract notes giving rise to the entries in the ledger account showing loss to the Applicant. Therefore, as per the Applicant the Respondent is not entitled to recover the alleged loss and should be directed to refund the loss amount along with interest.



5. The Respondent has filed reply dated September 27, 2012 and pointed out that as per 'application for client registration', the Applicant had *inter alia* authorized Respondent to execute the trades in currency derivatives along with other trading preferences. Pursuant to the authority granted and the instruction given from time to time the transactions resulting in impugned loss were executed and copy of contract note/ Margin Report were duly served as per details of ECN logs reflected in Annexure C to the reply. He further relied upon transcript of SMS text sent to the Applicant and other clients. Further, the authorised representative for Respondent pointed out that Applicant is well versed with the operational mechanism of currency derivatives and there is no reason for the Respondent to execute the trades without the instructions of the Applicant. He further *inter-alia* pointed out that the Applicant was having access of internet back-office to view his account status as and when desired. He further relied upon certain clauses of the Memorandum of Understanding signed by the Applicant to negate his claim.
6. To appreciate the facts in perspective, it was pointedly asked by the bench to show the contract notes/Margin Report purportedly delivered to the Applicant which has resulted in alleged losses.
7. However, while seeking to justify his stance through circumstantial evidences, and inferences, the authorized representative for the Respondent drew blank to point out the Contract Note, Margin Reports, Bills etc. called for at the time of hearing.
8. Nevertheless, by subsequent letter dt. 29<sup>th</sup> November, 2012, the Respondent pointed out that by its letter dt. 20<sup>th</sup> November, 2012 relevant copies of the Contract Note have already been placed on record. The service of the contract notes and the POD is also supported by the documentary evidences placed on record.
9. The Applicant has merely contended that the trading resulting in the impugned loss has been carried out without his knowledge and is therefore unauthorized.
10. I have carefully considered the rival submissions and material placed on records.
11. It is observed that the account of the Applicant was activated in April, 2011 after execution of the documents. The Applicant has also deposited Rs. 1 lac in the account of the Respondent. It is further observed that the Applicant has also transferred shares in the account of the Respondent. It is evident from the record that Contract Notes, Bills, Margin Statement etc. have been sent regularly on the Email ID of the Applicant. The record of SMS's sent on the mobile number of the Applicant is also made available. The Applicant appears to have fairly conceded to the service of these documents. However, he is merely disputing the quantum of losses resulted from these agreed transactions. The ledger statements, demat transaction statements, logs of ECN and logs of SMS filed by the Respondent justifies the version of the Respondent. The Applicant has not submitted any cogent material to disprove the arguments of the Respondent. On the other hand, while admitting the receipts of e-mails, he has merely disputed the amounts in the ledger *qua* the email as per his rejoinder dt. 14<sup>th</sup> October, 2012. The Respondent in his reply to the aforesaid rejoinder dt. 31.10.2012 has pointed out that email for trade confirmation is only an additional value added service and the difference between the trade value and contract value are on account of non inclusion of brokerage and statutory levies which are subsequently charged at the time of raising the contract note / bills etc. The amount debited / credited in the ledger is therefore at variance. The explanation of the Respondent appears reasonable in the facts of the case.

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On the other hand, I find that the allegations of the Applicant are bald without any substantive evidence.

12. Having considered the totality of facts narrated above and service of Contract Note, Bill etc. coupled with SMS logs, I find it very difficult to accept the claim of the Applicant. So long as the transactions have been executed on behalf of the Applicant in good faith and the action is bonafide, the Respondent cannot be asked to suffer the loss incurred by Applicant.

13. In view of above I, pronounce award as under:

1) The claim of the Applicant is dismissed.

2) No award as to cost and expenses.

MCX-SX may retain the stamp original and forward one original to each of the Applicant and the Respondent.

Place: Mumbai

Date: 18 Dec'12

  
Pradip Kedia  
Sole Arbitrator

cc: MR. Jetho Khemani,  
S. NO. 174/3, Sai Sahab,  
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