

उत्तर प्रदेश UTTAR PRADESH

IN THE MATTER OF ARBITRATION UNDER THE BYE LAWS,
RULES AND REGULATIONS OF METROPOLITAN STOCK
EXCHANGE OF INDIA LIMITED (FORMERLY KNOWN AS MCX
STOCK EXCHANGE LIMITED)

AT KANPUR BEFORE THE SOLE ARBITRATOR - MR. GOVIND KRISHNA

Arbitration Matter No.: MCX-SX/ARB/KAN-01/2015)

BETWEEN

Mr. Vijendra Kumar,
Park View Eldeco Apartment,
House No. J-202, Jasmine, Sitapur Road,
Lucknow -226024 (U.P.)
PAN No. AEKPK4815R
(Constituent)

Applicant

AND

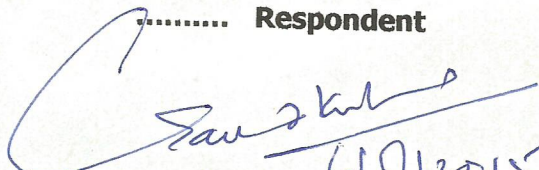
Religare Securities Limited,
Corporate Office :
Plot No. A-3/4/5, 2nd Floor, Tower A,
GYS Global, Sector-125,
Noida-201301 (U.P.)

Lucknow office :

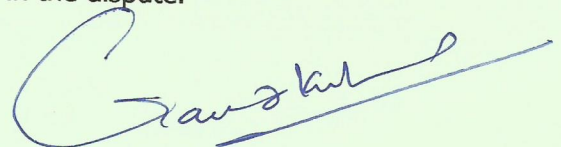
Saran Chamber, Park Road, Lucknow
(Trading member)

Respondent

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Arbitrator (8.2015)

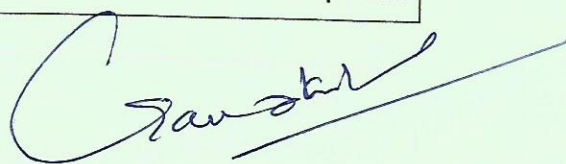

6/8/2015

1. The applicant Vijendra Kumar has filed an arbitration application before MCX Stock Exchange Limited on 16.02.2015 on the prescribed documents consisting of Form No. I, Form No. II and other requisite enclosures. The Applicant has made a claim of Rs.2,50,000/- on a ground that the transactions entered into his account during the period from 30.06.2011 to 28.12.2011 were not authorized by the applicant. In his application he has stated that applicant's trading and demat account was opened on 30.06.2011 and handed over a cheque bearing No. 391370 dated 30.06.2011 of Rs.10,000/- as initial margin money. The applicant had also transferred his shares held in his previous Demat account with India Infoline Ltd. to Demat A/c with Religare Securities Ltd. having client ID 17171908. Thereafter, the applicant was asked by the respondent to make further deposit as margin money for trading therefore the applicant had deposited further advance as margin money vide cheque bearing No. 496702 of SBI for Rs.50,000/- on 29.08.2011. The applicant has also stated in his complaint that Mr. Prasant Awasthi & others of Religare Securities Limited (Respondent) was doing trading on their own in the account of applicant by way of online transactions of buying and selling of shares without his consent. The applicant has stated that he has also lodged a complaint with Religare Securities Ltd. through mail dated 17/12/2013 in which he had raised objection on the trades executed on his behalf by the Respondent as unauthorized.
2. On the other hand the respondent vides their Reply dated 24.03.2015, raised preliminary objection on the grounds of limitation. The Respondent submitted that the trades in the Account of Applicant at the platform of MCX-SX were executed in the F.Y. 2011-12, as the first trade was executed on 30.06.2011 and the last trade was executed on 28.12.2011. But this application has been filed by the Applicant after expiry of more than three years. Hence it is time barred. The respondent further raised objections against any such claim and also denied all the allegations leveled by the applicant, with a request to reject the claim on the ground that the claim is completely devoid of merits. They also argued that the arbitration fees paid by the respondent may be refunded and exemplary cost may be imposed on the applicant. The respondent along with his Reply also filed, copies of Account Opening Form, Agreement, Copy of Ledger Account of Vijendra Kumar for the period from 30.06.2011 to 28.12.2011, records showing SMS logs having been sent between the period from 16.04.2012 to 30.04.2012, copies of various contract notes dated 30.06.2011 to 28.12.2011, copy of Compact disk containing records of telephonic conversation held between the applicant and agent of respondent on various dates, in the dispute.



3. Datewise Synopsis of hearing

14.05.2015	<p>In the First hearing, the Applicant along with his Authorized Representative Sri Atul Chowdhary and Authorized Representative of Respondent namely Mr. Rajesh Kumar Verma and arbitrator was present and case was argued by the parties. The Applicant reiterated his stands that all the trades executed by the Respondent and also the sale of securities having been made by the Respondent are not authorized by him. On the other hand the Respondent had pleaded for rejection of claim on the preliminary ground of limitation and on merits as well, as all the transactions having been executed by the Respondent are duly authorized by the Applicant. The Applicant on being asked whether he has received copy of defense filed by the Respondent to which he denied having received any such copy. It was ordered to supply the Applicant a copy of defense, filed by the Respondent and to submit his Rejoinder against the defense Reply within seven days along with statement of computation of claim along with evidences to substantiate his claim. It was also ordered to supply the copy of Rejoinder submitted by the Applicant to the Respondent and he was directed to furnish his Reply against the Rejoinder within next 7 days. The next hearing was fixed on 12.06.2015.</p>
12.06.2015	<p>Applicant along with his Authorized Representative Sri Atul Chowdhary and Authorized Representative of Respondent namely Mr. Rajesh Kumar Verma and arbitrator were present and case was argued by the parties. During the proceedings the Respondent argued that the records of the transaction being placed now were also placed before IGRC meeting, then the Applicant did not raise any objection but now he is claiming that the records of the transactions are fabricated and therefore such an allegation can't be accepted now.</p> <p>The defendant was enquired whether he has maintained any records of call details on which orders for transactions were placed by the defendant, to which it was replied that no such record was maintained, as the SEBI has not mandated maintenance of any such record. However he is having post trade confirmation process and in this process applicant is being informed about the trades executed on particular day through SMS and confirmation calls either on the same day or next day. The defendant argued that he has placed</p>

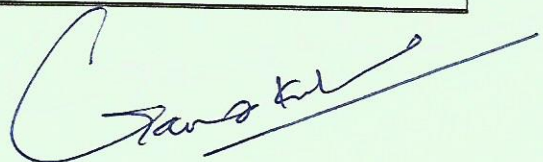


on record the SMS logs sent to the Applicant in the post confirmation of trades as well as CD containing the post confirmation calls made to the Applicant. The CD as stated to containing the post confirmation calls made to the Applicant was played in the presence of both the parties. Also the contents of the Contract notes on record were got verified from the SMS logs and facts were noted down. The Applicant was asked specifically to (i) whether he had received confirmation calls (ii) Whether the voice of the recipient of call recorded in the CD is that of applicant's voice (iii) whether trades in dispute executed by the defendant company carries his authority or confirmed by him? In reply the Applicant denied and stated that the above voice recorded in the CD is not his voice, and that the CD is fake. It was requested by the applicant that the content of the CD should be examined in the Forensic Lab so as to distinguish the reliability of the voice contained in the CD is truly his voice or not. It was asked to the defendant whether he has any objection to send the CD to forensic lab testing to which he confirmed that they have no objection.

The arbitrator then requested the Exchange to verify the procedure for the Forensic test of the voice recordings and inform him during the next hearing. He further directed initially the cost of investigation for the forensic testing shall be deposited by the applicant with the Exchange. It was also directed that the cost of investigation shall be borne by the party whose claim is found to be false as per the report obtained from the forensic lab.

The applicant further requested that he may be permitted to produce official SMS log record details from the service provider i.e. BSNL against his mobile number 9415901819 to be obtained by him. The permission is being granted and he is directed to submit it before the next hearing. The applicant has also requested to provide copies of some Contract Notes in respect of trades executed by the defendant on behalf of applicant including therein one specific Contract Note in respect of trade executed on 22.09.2011.

Defendant also offered to submit the Contract Note in CD. Hence he is being directed to submit at least 4 (four) contact notes (including contract note dated 22.09.2011) in hard copies and rest in CD. The next hearing was fixed on 03.07.2015.



03.07.2015

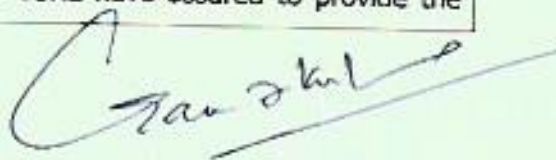
Applicant along with his Authorized Representative Sri Atul Chowdhary and authorized Representative of Respondent namely Mr. Rajesh Kumar Verma and arbitrator was present and case was argued by the parties. Also the contents of the Contract notes on record were got verified from the SMS logs and facts were noted down.

The Arbitrator informed the parties that due to non-availability of facility of voice analysis, in Uttar Pradesh, forensic investigation of voice contained in CD, comprising of conversation of recorded calls pertaining to confirmation calls made by the defendant representative to the constituent, it is not feasible to go for forensic investigation of the CD under reference. However, for the better adjudication of the issues reliance shall be made on all other evidences placed on records by the parties concerned.

During the proceeding, as per directions given in the previous hearing held on 12.06.2015, the defendant submitted 4 (Four) Contract Notes in hard copy dated 05.09.2011, 22.09.2011, 14.10.2011 and 26.12.2011 along with CD containing all contract notes claimed to have been delivered to the constituent by the defendant. Further the contents of the Contract notes in hard copies, as submitted herein above, were also got verified from the SMS logs and transcription of the conversation recorded in the CD placed on record by the defendant in their defense of claim, and the facts were noted down by the arbitrator.

The constituent further reiterated his stand that the evidences in shape of contract notes, as claimed to have been dispatched by the defendant, were not at all received by him and further SMS logs and transcription of confirmation calls made on his mobile number, as contained in CD presented by the respondent are not genuine. It was submitted by the applicant that he has moved an application dated 16.06.2015 and 30.06.2015 before the authorities of BSNL (copies submitted) to provide call details and SMS details allegedly to have been made at his mobile number +91 9415901819 by the defendant through their land line numbers stated in the transcription of the conversation placed on records by the defendant, so as to substantiate his claim before the arbitral tribunal that the contents of the CD and SMS log as placed on records are not genuine.

He further stated that the authorities of BSNL have assured to provide the



	<p>desired details within 10 days' time and therefore at least two weeks more time may please be allowed to prove his claim in the interest of justice. The request made by the constituent for grant of time is being accepted and he is being allowed to submit the authenticated details received from the office of BSNL in original along with its two copies to this office latest by 15.07.2015, out of which one copy shall be supplied to the defendant by fastest means of communications so as to offer his explanation to the Exchange on the same within one week from the date of its receipt. For all purposes hearing is closed and the date fix for award is 24.07.2015.</p>
12.07.2015	<p>The Applicant vide his submission dated 12.07.2015 informed that despite his best efforts, authorities of BSNL did not provide call details and SMS details in respect of his Mobile No. +91 9415901819, as requested, pertaining to the period in dispute. He reiterated his stand that all the evidences placed on record by the defendant are the evidences belonging to the defendant himself and no third party evidence was placed on record. He further stated that he had pointed out some fabrication in the documents submitted as evidence but due to discussion on some other points in hearing the point could not be kept in minutes of the meeting (copy enclosed as Annexure II) clearly indicating the person writing my name (Applicant's name) has written both the witnesses and signing when such a thing can happen in one record how can court rely on other documents and find them authentic to take decision on?</p>
17.07.2015	<p>The defendant vides their submission No. MCX-SX/ARB/(KAN-01/2015)/2015/20 dated 17.07.2015 has denied the allegations leveled by the Applicant and has stated that <u>except from denying these evidences verbally, the Applicant has not been able to prove any of the evidences placed on record as false.</u> The defendant has further stated that the Applicant has admittedly made two payments one of Rs. 10000/- on 30.06.2011 and another nearly after two months of Rs. 50000/- on 29.08.2011 allegedly for purchase of new shares. It would be appreciated that a reasonable person who has paid money to purchase of shares would enquire about the status of the purchased shares from his first payment before making another payment for further purchase of shares. <u>The</u></p>

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Applicant has not mentioned whether he had enquired the status of purchased shares from his first payment before making another payment and if yes why he has made second payment when no shares were purchased from his first payment.

The Respondent has further denied the allegation regarding the signature of the witness in the document Power of Attorney is highly frivolous and baseless as he never disputed/ denied his own signature on the same and it is clear that he is making such naïve allegation just for raising one issue after the other. The Respondent pleaded for rejection of claim with cost.

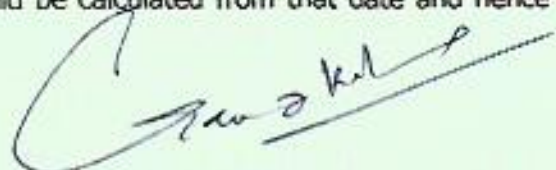
4. ISSUES

1. The First Issue in this complaint is to decide whether or not the claim of the Appellant is barred by limitation?
2. The next issue is whether the trades in dispute executed by the respondent and shares held in demat account, as security which were sold by the respondent company carries authority of applicant or not?

5. DISCUSSION OF MERITS

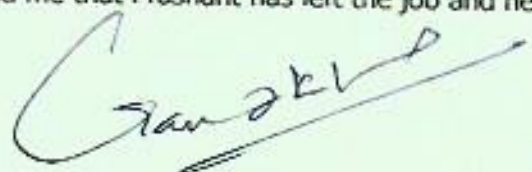
The preliminary objection raised by the Respondent is on the limitation ground that the claim of Applicant is time barred. Hence first of all the ground of limitation has to be decided on merits.

1. For deciding the issue of limitation pursuant to the provisions of Limitation Act 1963 the sequence of events be looked into and these are as under:
 - The Account with Religare Securities Ltd was opened on 30.06.2011.
 - First trade was executed on 30.06.2011
 - Last trade was executed on 28.12.2011.
 - First complaint was lodged with Respondent on 17.12.2013 and since then the Applicant has been continuously pursuing his case with separate forums including at IGRC meeting.
 - From perusal of above sequence of events, it becomes clear that the Appellant has been continuously pursuing the matter of disputes at various forums and last with the IGRC in the month of November 2014, against which order was passed on 14.01.2015. Further according to the records furnished by the Respondent, date of last transaction was on 28.12.2011 and the limitation should be calculated from that date and hence



the matter does not gets time barred even considering period of three years from that date last trade. Hence the plea of the Respondent can't be accepted.

- Further the settled position of law is that the door of the court should not be shut for a person who has been pursuing his matter from the very beginning of the dispute and some delay was caused in coming before the proper forum. In the instant case also we find that the Appellant has initiated the proceedings before IGRC much before expiry of three years from the date last trade which was on 28.12.2011. The Applicant thereafter wasted no further time and made the reference for arbitration before me.
 - For the reasons aforesaid, that the claim of Applicant is not time barred. The ground taken by the Respondent is therefore rejected.
2. The next issue arisen from the reference is whether the trading done by the Respondent on behalf of the Applicant are duly authorised by the Applicant. In this context the Applicant has been continuously stating that he did not authorise the Respondent for carrying out any activity of trading. For better understanding the case let us examine the facts narrated by the Applicant in his Written submission dated nil filed before me against the defense of claim dated 24.03.215 filed by the Respondent. The contents of submission are as under:
- i. My account was opened by Mr Prashat Awasthi, Relationship Manager Religare Securities Limited in the month of June 2011 and I was having my account with India Infoline Securities. Mr Prashant Awasthi offered me much more facilities and transferred my existing shares to Religare from India Infoline.
 - ii. As I come to know regarding the fraudulent transactions in my Account immediately somewhere in mid-December 2011 Contacted Prashant. He misguided me on phone and told me that he will come and meet myself at my residence and will sought out the matter. As I was working in Uttar Pradesh Power Corporation as chief engineer, it was very difficult for me to follow him every day because of my busy and hectic schedule.
 - iii. When I felt that Prashant is not doing anything in the matter I approached to the branch of Religare Securities. As being a normal customer I was not aware of the legal procedure, it's the first impression to contact the concerned branch manager where my account was. Mr Ankur the branch manager listen the whole case and assured me to look into the matter. Arter several days he told me that Prashant has left the job and he

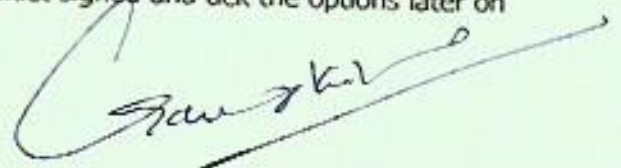


cannot take any action against him. He again told me that if I again pay Rs. 200000 he can arrange some trades to recover my money. I was so frustrated by this that I tried to approach the head office of the company regarding the aforesaid matter (copies of all the concerned emails are attached as Annexure 1.

- iv. It is clear from the mails that every time I wrote a mail I was assured that the company is looking into the matter and will resolve the matter very soon. After getting no satisfactory reply and result, I filed a online complaint with SEBI on 11.08.2014
- v. As my complaint was processed at Securities Exchange Board of India it was communicated to me by SEBI that my kind of cases are handled by MCX, I immediately approached MCX and filed my application with them.

Summary: It is very strange that the company who wasted my money and time in taking decision against the culprits making the issue of delay complaining as if the customer is on default should make the complaint on the very first day to MCX, in that type of case the justification may be that the client had to approached the Company First, As per the SEBI Law where I first approached the case can only be entrained when the company involved did not provide the solution of satisfactory reply.

- vi. The Company had provided fabricated call details showing all the confirmation and sending of sms to mobile 9415901819. I just want to raise a question "even they provide confirmation or sms to the customer, had they got the authority to buy or sell any stock or make any trade without the request of customer" if yes the when and how I made order to buy or sell, is there any call recording of that? If no then who permits to make transactions without customers permission and this is the main issue of my complaint that the transactions done in my account are UNAUTHORISED.
- vii. The point raised by the company's, I had permitted the company to use my shares as collateral For trading "In this regard I want to ask when a account is opened in any securities Depository a booklet containing a bunch of documents is being signed by the customer in the faith of the Business Relationship Manager in a normal course, no body reads the whole as it is being presumed that its and agreement between the company and the Customer. Now being cheated over this I would like to raise one question" As the Insurance companies are providing the copy of from filled along with the Insurance book do you people ever provided to your customers. As most of the times the Business Relationship Manager gets the booklet signed and tick the options later on

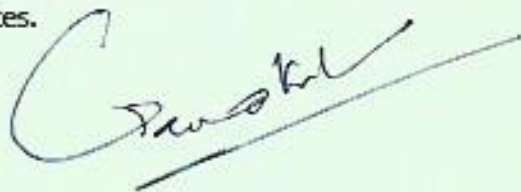


as we do not have the copy of it we can never claim that we had not given any such permission to the Company of the Business Relationship Manager.

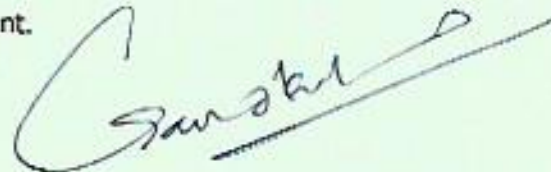
- viii. The documents shown and submitted by you showing my voice recording and the call details care all fabricated hence I totally deny over them as the Company is a big organization it can fabricate the records if required, being a normal customer I can only say the voice and the details are fabricated as the mobile number mentioned is provided by the UPPCL and it is an official phone it was busy most of the times as being a chief engineer in the corporation and looking after the generation & distribution it was not possible for me to attend every call from religare and saying hi & hello and understanding the details of so called trades which were never ordered by me to do.
- ix. The Company very well knows what exactly happened in my case but instead of punishing the culprits it is defending the persons and making false implications and preparing false and fabricated evidences to proof me wrong.
- x. I in the end just had to say that 'THIS IS A FIGHT AGAINST FRAUD AND I WONT LET ANYONE CHEAT AND TAKE AWAY MY HARD EARNED MONEY BY MISUSING THE POWER AND HURTING MY SENTIMENTS AND BELIEF' I KNOW THAT I AM RIGHT AND REQUEST THE AUTHORITIES THAT INSPITE I AM NOT ABLE TO PRESENT AS THE COMPANY DOING I WAS ACTUALLY CHEATED AND HURT BY THEM. THOUGH I AM COMMON MAN AND NOT THE KNOWLEDGEABLE PERSON OF LAW I JUST TOLD THE TRUTH WITH BEST POSSIBLE MEANS AND NOW LOOKING FORWARD A JUSTICE.

3. On the other hand the Respondent has raised the objections against the claim and has put forward various arguments as under:

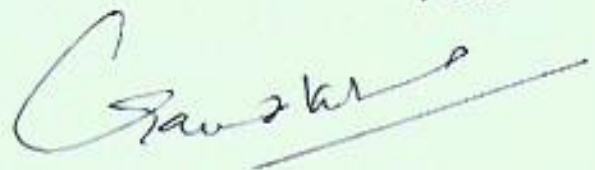
- i. The Applicant filed his first complaint with the Respondent on 17th December, 2013. As a process the Applicant's complaint was looked into by the concern department and after discussion a reply was sent to him within one month on 18th January, denying his all claims and disputes. However the Applicant has not explained why he took nearly 7 months to file his complaint with SEBI after receiving the said reply from the Respondent denying all his claims and disputes.



- ii. The Applicant has not provided any explanation for inordinate delay of nearly two and a half years (Applicant filed his first complaint on 17.12.2013) in filing his first ever complaint with us regarding the trades disputed by him now.
- iii. The Applicant has not provided any explanation why he transferred his holding of stock from his previous demat account to his demat account with the Respondent and gave Power of Attorney in favour of the Respondent to treat these holding as collateral when he allegedly wanted to trade only cash basis and that too in capital segment.
- iv. The Applicant has admittedly made two payments one of Rs.10000/- on 30.06.2011 and another nearly after two months of Rs.50000/- on 29.08.2011 allegedly for purchase of new shares. It would be appreciated that a reasonable person who has paid money to purchase of shares would have inquired about the status of purchased shares from his first payment before making another payment for further purchase of shares. The Applicant has not mentioned whether he had inquired about the status of purchased shares from his first payment before making another payment and if yes why he has made second payment when no shares were purchased from his first payment.
- v. It clearly shows that the Applicant has made these payments towards his trades which are disputed by him now and has as an afterthought alleged to have come to know about the same nearly after the end of his trading period to disown the losses incurred in his account.
- vi. The Applicant should be put to strict proof the same. Is the Applicant trying to suggest that it took him nearly two years (mid-December, 2011 he allegedly came to know trades) to write his first complaint to the Respondent on 17th December, 2013. It is pertinent to mention that all the information like registered address, e-mail address and phone number of the Respondent were provided to the Applicant at the time of opening of the account and now-a-days same are available on internet also. The Applicant already having account with another trading member and being a highly educated and qualified senior person posted at very responsible and accountable positions in government department cannot assume to take so long to escalate his matter when the same is allegedly not resolved to his satisfaction in time. The inordinate delay of filing his first complaint clearly shows that the Applicant has filed the present claim as an afterthought to disown the losses incurred in his account.

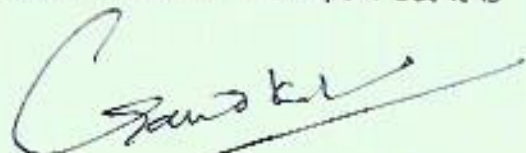


- vii. The Respondent has placed on record numerous proofs of dispatch of contract notes/statement of account issued by Postal Department, Govt. of India. Besides many confirmation/debit call recordings and sms log relating to Applicant trading activities has also been placed on record.
- viii. The Applicant has raised baseless and infructuous demand in order to unnecessarily drag the matter. It is submitted that the Respondent have submitted numerous impeccable evidences each one of them sufficient to nail the allegations and claim made by the Applicant. It is pertinent to note that except from denying these evidences verbally, the Applicant has not been able to controvert any of the evidences placed on record. After failing to counter the evidences, the Applicant has as a deliberate ploy raised another frivolous demand to divert the attention and mislead the Hon'ble Tribunal and drag the matter unnecessarily. In view of above it is submitted that the matter may be adjudicated basis documents already placed on record.
- ix. The Respondent have submitted numerous impeccable evidences each one of them sufficient to nail the allegations and claim made by the Applicant. It is pertinent to note that except from denying these evidences verbally, the Applicant has not been able to controvert any of the evidences placed on record as false. It is important of note that along with these documentary evidences the Respondent has also shown the conduct of the Applicant during the disputed period which also clearly shows that he has made the allegations and claim as an afterthought to disown the losses incurred in his account. Some of these conducts are reproduced herein below for reference.
- x. The Applicant is deliberately trying to falsify evidences he has no defense against the same.
4. I have examined the case and have perused the material placed on record by both the parties and have also discussed the issues during the proceedings of hearing. I find that the Applicant has been vehemently arguing that all the trades executed by the Respondent are unauthorized and as a result of recovering the losses incurred during alleged unauthorized trade, his shares held in Demat A/c with the Respondent were sold are also unauthorized. In this process he has argued that the evidences in shape of contract notes, SMS logs and conversations in shape of confirmation calls made to the Applicant, recorded in the CD placed



on record are fabricated and fake as the allegedly voice recorded in the CD is not his voice. But keeping in view the fact due to non-availability of facility, of Forensic investigation of voice analysis contained in CD, comprising of conversation of recorded calls pertaining to confirmation calls made by the defendant representative to the constituent, in Uttar Pradesh, it is not feasible to go for forensic investigation of the CD under reference. Therefore, for the better adjudication of the issues reliance shall be made on all other evidences placed on records by parties concerned. Hence even if the evidence of conversation recorded in CD is not considered, the Applicant could not produce any credible evidence to substantiate his claim that the other evidences like evidences of dispatch of contract notes, evidence of SMS logs evidencing numerous SMS having been sent on the Mobile No. 919415901819, which is in his possession and registered Mobile No. with the Respondent, are not genuine. Despite having been given ample opportunity to produce the call details and SMS details on the above mobile no. from the office of BSNL in order to substantiate his claim, the same could not be produced. The Applicant cannot shift his onus of his duty to substantiate his claim on the shoulders of Respondent. Whereas on the other hand I do not find any reason to disbelief on the other evidences namely proof of dispatch of Contract Notes from time to time, SMS logs and Copy of financial statement recording therein the receipt of funds in the Applicant's A/c etc., put forward by the Respondent.

5. Further I also find force in the argument of the Respondent that The Applicant has admittedly made two payments one of Rs.10000/- on 30.06.2011 and another nearly after two months of Rs.50000/- on 29.08.2011 allegedly for purchase of new shares. It would be appreciated that a reasonable person who has paid money to purchase of shares would have inquired about the status of purchased shares from his first payment before making another payment for further purchase of shares. The Applicant has not mentioned whether he had inquired about the status of purchased shares from his first payment before making another payment and if yes why he has made second payment when no shares were purchased from his first payment. Thus leading to conclusion that the trades executed in his account were in his knowledge.
6. Further the Applicant is a qualified person and he should be aware that if he is entering into a contract with one person, he has to understand the pros & cons of the contract. Therefore if he acts in a manner that the other person treats his silence as his acceptance of transaction, he cannot disown the resultant outcomes of such transaction. In case the Applicant had reacted immediately after the receipt of SMS on his phone or after receipt of contract note about the transactions and had he lodged the complaint that the trades are unauthorized at that point of time, his arguments could have been relied upon. But it is



admitted fact that the Applicant has taken action of making complaint with the Respondent after lapse of more than 2 years therefore he cannot shift his burden of facing consequences on others.

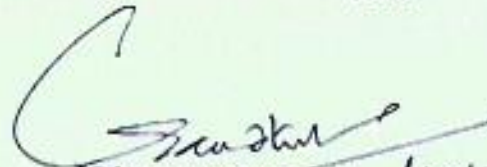
7. On the grounds discussed herein above I do not find merits in the Claim of Applicant that the trades executed by the Respondent in his account are unauthorized and therefore his claim is not acceptable accordingly same is hereby rejected.

AWARD

The claim of the applicant filed on Form No. I amounting to Rs. 2,50,000/- is being not acceptable hence rejected in view of the discussions here in above. The Parties to bear their own costs.

Place: Kanpur

Dated: 06 August, 2015


(GOVIND KRISHNA) 6/8/2015
SOLE ARBITRATOR