



पश्चिम बंगाल पश्चिम बंगाल WEST BENGAL

T 654665

**ARBITRATION AWARD**

In the matter of Arbitration in terms of the Bye-laws and Regulations of  
MCX Stock Exchange Limited before Justice Arunabha Barua, Mrs. Neeloo Biswas  
and Ms. Priti Todi, Panel of Arbitrators.

**Arbitration Matter No. MCX-SX/ARB/Kol-01/2014**

Between

Mr. Shyamal Majumder  
P-140/1 Jhautala Road,  
Near Kalantar Press  
Kolkata - 700017

... Applicant

**AND**

Nirmal Bang Securities Pvt. Ltd.  
Having its Registered office at  
38-B Khatau Bldg., 2<sup>nd</sup> Floor,  
Alkash Dinesh Mody Marg,  
Fort, Mumbai - 400001.

... Respondent

052466

Neeloo B. Sanyal  
24 H-B Sanyal  
PROBATE COURT  
LICENSED CLERK  
IN THE PROBATE PLACE, SE  
100

net-1

7 1 SEP 2014

OFFICE OF THE CLERK

In accordance with the provisions of the Probate Code, the undersigned has received from the testator the following property and has thereupon filed this inventory with the court.

PROPERTY OF THE ESTATE OF NEELOO B. SANYAL

ASSETS

1. Cash on hand \$100.00  
2. Cash in bank \$50.00  
3. Total \$150.00

LIABILITIES

1. None  
2. Total \$0.00

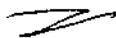
NEELOO B. SANYAL

NEELOO B. SANYAL

**Date of Hearing** : 6.05.2014 and 19.09.2014.

**Case of the Complainant (Applicant)** :-

1. In a nutshell, the case is that the Applicant had relationship with Angel Broking. on being approached by relationship manager Mr. Haldhar Prasad of the Respondent, who offered better brokerage if a portfolio of more than Rs. 5 lakh being transferred to them, the Applicant transferred a portfolio of value of about Rs. 15 lakhs to the Respondent.
2. On receiving an incomplete welcome kit, he telephonically informed the same to the Respondent.
3. The Applicants only son was hospitalised and he had to be present there 24 hours. That taking advantage, the employees of the Respondent started unauthorised trading in currency future from 27.06.11 to 30.06.11 and suddenly on 30.06.11 Applicant found a SMS of debit balance of more than Rs. 3,88,000/- in his account.
4. On his threat of complaining about unauthorised trades, Mr. Pradip Halder, B.M. visited his residence on 1.07.11 along with Mr. Haldhar Prasad, R.M. and assured the Applicant that he will settle the matter with the H.O. so that he will not have to bear the losses.  
At the request of R.M., the R.M. of the Applicant signed the power of Attorney and DIS Form.
5. On taking up the matter , since a month had elapsed, the concerned B.M., R.M. and dealer came to his residence on 02.08.11 and doubting their integrity, the Applicant made arrangements to record the discussion, where the concerned employees admitted their wrong doing and committed to make good the loss.
6. When the commitment was not fulfilled, the Applicant complained to Respondents H.O. and to SEBI.
7. The Applicant wanted the Respondent to show any evidence of his placing orders for currency trades and has challenged the post voice recording confirmations, as edited and truncated, not showing his repeatedly telling them to stop trading and that such voice recordings cannot be acceptable.
8. Complainant has sought to recover entire loss to the tune of Rs. 25,74,600/- out of which Rs. 5,21,540/- as Corporate benefits and compensation of Rs. 7,50,000/- .



**The Defence of the Respondent(Trading Member) : -**

9. Mr. Tanmoy, the dealer and Mr. Haldhar Prasad , the relationship, Manager and Mr. Punit Verma , dealers are no longer working with the Respondent.
10. There is no record of the Applicant placing any orders with the T.M. However, voice recordings show that post deal calls were made to the Applicant where no dissatisfaction was expressed anywhere.

That E.C.N's and SMS alerts were regularly sent. That there were a large number of transactions in currency futures on 8 days between 27.6.11 to 16.8.11. The losses on account of such transaction were to the tune of Rs. 15-16 lakhs.

11. That the purported video recording cannot be taken into evidence as the same is not authentic, identity of persons who are conversing are not at all revealed during most parts of the recording. That such clandestine recording is in available and has not been sent to any test lab for verification and as such without any expert comment the same is not admissible and the Applicant has violated the law of the land by such recording without notice and the act is like a sting operation making liable the person for action at law.

That the claim has no merit.

**Findings and conclusive remarks :-**

From the submission and records the following emerges :-

12. a) The Respondent had sent E.C.N., Physical Contract Notes, SMS, regularly to the Applicant.
- b) There were some discrepancies in the contract notes like physical contract notes not having any order time, being printed on N.S.E. stationery, E.C.N showing same set of order bearing the same order number punched in different times, and even rectified contract notes provided had the same problem of order time not matching with time of execution.
- c) The Respondent could not produce any records of order calls stating that it is not possible to get these order calls recorded.
- d) The Respondent produced post confirmation recordings from <sup>personal</sup> ~~personal~~ thereof it appears
- i) That while the currency trades were okayed by the Applicant, he seems to be not familiar with such trades as has been the Applicants contentions.



2



ii) Currency trades were being done by the dealers of the Respondent on their own in the Applicants account and post confirmations were being obtained and recorded.

iii) the orders for selling the <sup>equity</sup> ~~equity~~ shares held on the account of the Applicant were being placed by the Applicant himself to reduce the debit balance in the account which had arisen as a result of dealings in currency trades. Z

e) The Applicant also produced a video recordings of the conversation alleged to have occurred on 2.8.11 between the Applicant and Prodeep Halder (BM), Tanmoy (Dealer) and Halder Prasad (R.M.) of the Respondent at Applicants residence in support of his contention that the staff of the Respondent traded unauthorisedly, without placing of orders by the Applicant, leading to huge losses and that they asked the Applicant to co-operate with them so that the losses could be recouped by further currency trading to be done by the said staff, allowing them sometime to enable them to do so.

f) The Applicant challenged the authenticity of the voice recordings produced by the Respondent before I.G.R.C. Cell in his statement of the case itself while filing this Arbitration application as being edited/trunked voice recordings and therefore not acceptable.

g) The Respondent also vehemently objected to the admissibility of the video recording purportedly done by the Applicant.

h) The Respondent has filed two affidavits of Shri Pradip Halder (B.M.) dated 11.04.14 and 02.09.14. In the 1<sup>st</sup> affidavit he has stated to have met the Applicant in 2011 at his residence at Jhautala Road and that there was no notice board displayed there that "This room is under electronic surveillance. Please put off your shoes here". Z

In the 2<sup>nd</sup> affidavit he has stated that Halder Prasad and Tanmoy are not contactable. That being aware of their voices he can say that voices recorded lack clarity and are of poor audibility. That transcript does not match with the recorded conversation and voices do not match in typical characteristics, tone and pitch etc. as those of Shri Prasad, Tanmoy and himself. That due to passage of time he does not have proper recollection of the event and as such he denies the statements and the transcripts and its content.

There is no express denial that they had not attended the residence and had conversation on the lines recorded.

i) None of the parties has produced any outside expert evidence regarding the authenticity of their recordings

*Ch*

*Rih*

j) The Applicant has produced discharge card of the hospital showing that his son aged 14 was admitted from 27.06.11 to 29.06.11 in support of his contention that he was in hospital with his son when huge currency dealings were taking place in his account without his order instructions. That he was in no position to place orders on those days.

k) The Applicant has also explained the delay in filling the Arbitration application in annexure F of his submissions filed on 5.6.14.

The Respondent could not explain why and how the trades in the account of the Applicant stopped after the month of October, 2011 as directed in the minutes of the proceeding of this Tribunal dated 6.5.14.

l) After considering all the submissions and documents and in the light of our above observations, we come to the conclusion that orders for currency trades were not placed by the Applicant. That in terms of Rules, Regulations and By-Laws of the Exchange and in terms of documents executed by and between the parties, it is obligatory that orders for such trades had to emanate from the client and trading member has to execute them. The dealers of the Respondent appears to have done unauthorised trading.

It however, also appears that the Applicant was aware of such transactions being done on his behalf, but not producing any evidence of the Applicant objecting to such dealing at the relevant time, the Applicant, in part, seems to have consented/acquiesced in such dealings.

m) In our view both the parties have acted unconscionably and should share the losses which were the result of such unauthorised action of the Respondent and its employees and the tacit consent and not protesting suitably by the Applicant at the material time.

n) It has been recorded in the IGRC meeting dated 23.11.12 that stocks worth Rs.7357.30 and 2.05 lakhs are lying in the demat account and pool account of the Applicant respectively as well as credit balance of nearly Rs. 15,000/- in his account with the Respondent constitute the property the complainant (Applicant).

o) Applicant has deposited shares worth Rs.13,03,060/- with the Respondent as claimed in his case statement. He may get an award for recouping loss of 50% of the above sum only. His further claim of corporate benefit and compensation is not entertained in the circumstances.



**AWARD**

The Applicant Mr. Shyamal Kuamr Majmuder, do get an award against the Respondent M/s Nirmal Bang Securities Pvt. Ltd. for a sum of Rs. 6,51,530/- (Rupees six lakhs fifty one thousand five hundred thirty) only.

The Respondent M/S Nirmal bang Securities Pvt. Ltd. is directed to pay the said sum of Rs.6,51,530/- ( Rupees six lakhs fifty one thousand five hundred thirty) only to the Applicant Mr. Shyamal Majumder within 30 days from the date of receipt of this Award.

It is further declared that the stocks, if any lying in the Applicants demat and pool account and credit balance if any, in the Applicants account with the Respondent above is the unencumbered property of the Applicant and Applicant is entitled to the same.

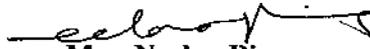
This Award is made in three originals all duly dated, signed and filed with the Exchange. The Exchange shall deliver one each to the parties and retain one with itself.

Date : 8 . 10 . 14 .

Place : Kolkata



**Justice Arunabha Barua**  
Presiding Arbitrator



**Mrs. Neeloo Biswas**  
Arbitrator



**Ms. Priti Todi**  
Arbitrator