



पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL

R 220248

**ARBITRATION AWARD**

**In the matter of Arbitration as per the Bye laws  
and Regulations of MCX Stock Exchange Limited  
Before Mr.Chandan Kumar Basu, Sole Arbitrator**

**Arbitration Matter No. MCX-SX/ ARB/ KOL-02/2014**

**Between**

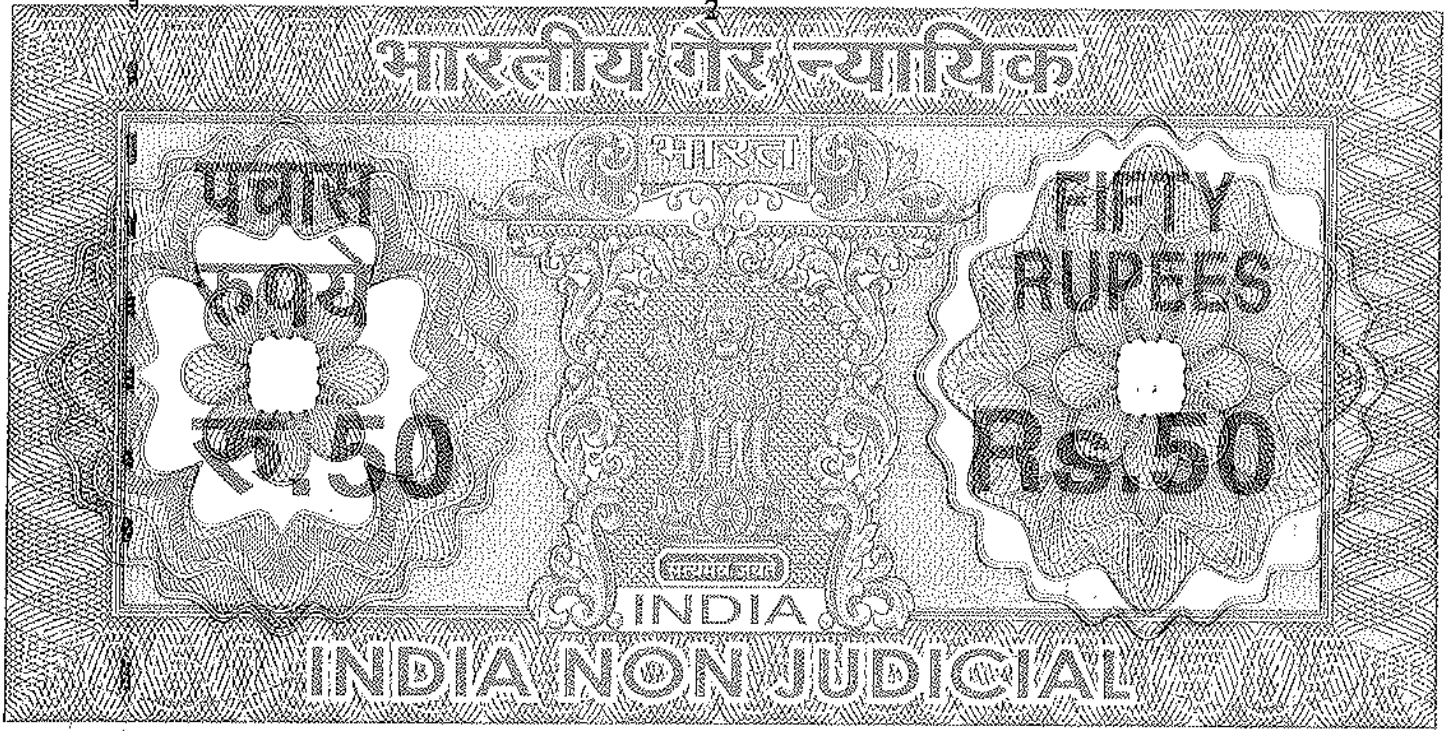
**Mr. Shib Kumar Dey (Client)**  
10/6 Motilal Gupta Road,  
P.O.-Barisha,  
Kolkata-700 008.

**Applicant**

**And**

**M/s. Achievers Equities Ltd. (TM)**  
32/1, Diamond Harbour Road,  
Sakherbazar,  
Kolkata-700 008

**Respondent**



পশ্চিমবঙ্গ পশ্চিম বঙ্গাল WEST BENGAL

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#### Statement of Case

A trading account was opened by the Applicant on **25/07/2013** but was activated for trading in NSE on **02/08/2013**.

The Applicant alleges that the account opening form was filled in by the TM-Company's representative and was signed by the Applicant as per the instructions of the TM's representative. The email id was created by the TM and the password was forwarded to the Applicant through a mobile message but it was not possible for the Applicant to open his email by that password.

The TM has not given any hard copy of contract notes. As it has not been possible for the Applicant to open his email it has not been possible for him to get soft copies of the contract notes.

The Applicant states that his intention was to trade in the NSE equity segment only and trades in NSE equity segment were done by him sitting in the TM's office after activation of trading in NSE with effect from **02/08/2013** but he alleges that he found that without his prior consent, unauthorized trading at MCX'SX was activated with effect from **29/07/2013** and the TM transferred a sum of **Rs. 39,424.00** (out of a total Deposit of

**Rs.79,174.00**) to MCX'SX during the period **25/07/2013 to 26//08/2013**. (The MCX'SX segregated ledger shows that the first amount of Rs.15,000.00 was transferred to the MCX'SX segment on 29/07/2013). No consent (written/verbal/telephonic) was obtained by the TM for transferring funds to MCX'SX segment for any trade at MCX'SX. He admits that sometimes after close of day's trades, messages or information were sent to him by mobile. He states that everybody will appreciate that consent **before** trading and information **after** trading are not the same and information of trades after day's close cannot be considered as **prior** consent from Client.

The TM had provided snap shots as evidence of the client's presence in the TM's office for trading in MCX'SX. The Applicant states that finding no other way to defend itself against the Applicant's allegations, the Respondent by attaching some CCTV photographs of the Applicant which he alleges were snapped in the section of the TM's office where only trades in equities are executed (he claims trades in MCX-SX are executed in another place), is desperately trying to prove the presence of the Applicant during trades in MCX'SX. Moreover, the TM has forwarded photographs, which were snapped/taken from CCTV footage on 13/12/2013, 15/12/014 and 25/02/2014, but the (unauthorized) trades/transactions were executed during the period between **29/07/2013 and 26/08/2013**. Therefore, the photographs do not prove that the Applicant was present during trading in MCX'SX segment. It is strange to note that trading in MCX'SX segment was started before activation of the Applicant's trading account on **02/08/2013**.

From the above it is clear that the trades/transactions in MCX'SX for the period **29/07/2013 and 26/08/2013** are unauthorized and the trades/transactions were executed without the Applicant's consent.

The Applicant alleges that the TM directed its dealer to trade at random to gain maximum brokerage. Advance brokerage of **Rs.6,367.00 (on 31/07/2013)** was paid for trading in equity segment but unauthorized trades were done in the MCX'SX segment by the TM and separate brokerage for such trades was also realized. Advance brokerage of **Rs.5,807.00** for trading in MCX'SX was realized **on 17/8/2013**. Thus, advance brokerage of **Rs.6,307.00** for equities trading as well as illegal brokerage of **Rs.5,807.00** for unauthorized trading in the Currency Derivative segment of MCX'SX were realized by the TM



The Applicant collected his account statements from the TM. He alleges that these account statements and the ones submitted to the Exchange by the TM were different; the account statement submitted to the Exchange is inflated. As stated above the TM has not given any hard copy of contract notes and it has not been possible for the Applicant to open his email to get soft copies of the contract notes/other documents. The TM never told the Applicant the actual funds position. When funds were reducing due to losses, "the dealer used to tell that the position of some item is being held and funds position is OK". Under these circumstances the Applicant wants to know the reason for such losses and who is responsible for the losses

### **Claim**

For the above alleged unauthorized trades the Applicant has claimed a sum of **Rs.35,502.00**

#### **Brief Statement of the Claim Value is as under:**

##### **USDINR from 29/07/2013 to 07/08/2013**

Total Debits (Purchase) to Ledger Account:	<b>Rs. 13,97,707.50</b>
Total Credits (Sale) to Ledger Account:	<b><u>Rs.13,92,767.50</u></b>
Loss	<b>Rs. 4,940.00</b>

##### **EUR-INR from 30/07/2013 to 19/08/2013**

Total Debits (Purchase) to Ledger Account:	<b>Rs. 1983610.00</b>
Total Credits (Sale) to Ledger Account :	<b><u>Rs.1958855.00</u></b>
Loss	<b>Rs. 24755.00</b>

#### **Total Claim Amount**

Loss in USD-INR	<b>Rs. 4,940.00</b>
Loss in EUR-INR	<b>Rs. 24,755.00</b>
Advance Brokerage	<b><u>Rs. 5,807.00</u> (for unauthorized trades)</b>
<b>Claim Amount</b>	<b>Rs. 35,502.00</b>

**Respondent's Statement of Defence.**

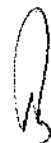
The account opening form was signed on **25/07/2013** and first cheque was also cleared on the same day, while the DP account was opened on **02/08/2013**. Currency trading in MCX'SX was activated in **end July 2013** itself.

The TM states that the Client's application for arbitration is a fabricated allegation because there was no question of unauthorized trading as the TM sends each and every contract note along with the relevant margin statements to Clients within exchange-stipulated time limit. Further, TM had also sent SMS messages to the Client's registered mobile no. with all trade summary particulars along with ledger balance. The TM has annexed the email logs and SMS logs for ready reference. The TM received all trade confirmations and updated ledger balances via sms and through telephone, which has been acknowledged by him. Moreover, all Exchanges also send to investors all trade details to their designated email id and registered mobile no. on the same day of trading. The Client has signed consent letter for ECNs dated 25/07/2013. Hence, physical contract notes were not sent to him but electronic contract notes were sent. All the trades were carried out with the knowledge and consent of the Applicant as ECN and SMSs have been regularly sent to him and he never raised any objection.

The Respondent has also annexed copies of the Client's KYC, KYC-supported documents, Acknowledgement Letter, Ledger, SMS Register, etc. for ready reference.

There is no Compliance requirement to maintain voice recordings but to avoid grievances to the extent possible the TM maintains voice recordings as available in respect of placement of orders, confirmation of trades, etc. Due to scarcity of space in hard drive and cost the TM usually preserves recorded data for only 3 months for CCT and voice logger. In the instant case unfortunately the Client has lodged his complaint after six months from the dates of his disputed trades; nor has he ever brought his grievances to the notice of the TM. Hence, CCTV footage and voice recordings for the disputed period cannot be produced. However, voice recordings as available will be produced as had been directed at the hearing on 29/05/2014.

Usually, the Applicant visited the TM's office and gave orders for trades sitting beside the TM's trader; hence, no voice recording for placing orders on these occasions would be available. However, as evidence of the fact that the Applicant regularly called on the



TM for booking trades, printed copy of CCTV footage (though not for the disputed period) has been produced.

The Client alleges that the TM never informed him his funds positions but the sms logs show that he was clearly informed about his executed trade details along with his available ledger balances. Further, all the TM's clients are provided with 24 hour Back Office facility to access their ledger accounts and trade related details free of cost.

The Client continued to trade with the TM till May, 2014. It means that he did not find anything wrong with the TM in 2013, as had he found something wrong why did he not stop trading with the Respondent or raise objections or complain till as late as around February, 2014?

The TM alleges that the Applicant first executed some speculative trades in Currency Derivative segment in MCX'SX and faced a few losses. To recover his losses he started trading in equity and equity derivatives Segments in NSE. After failing to recover his losses he lodged a complaint in NSE regarding unauthorized trading.

Regarding the Client's allegation that the TM transferred **Rs.39,424.00** to Currency Derivative segment of MCX'SX without the Applicant's consent, the TM replies that the Client gave his consent in this regard, at the time of account opening, in the KYC documents where he opted for trades in all segments of NSE, BSE and MCX'SX including Currency Derivative segment.

The Applicant has alleged that the TM directed/encouraged its dealer to generate brokerage by executing random trades. It is denied that the TM instructs any of its dealers to generate revenue in this manner. The TM-Company's policy is never to share any revenue or incentive with its dealers as they are purely salary-based personnel. Hence, there is no reason for the dealers to generate brokerage through random trading.

The Applicant opted for Mega Value Plan (MVP) in equity segment; hence, there is no question of additional earnings on trades as the TM has already received Advance Brokerage of Rs.500.00 per month for unlimited trade. Later, the Applicant has also opted for MVP in Currency Segment by paying Rs.1,500.00 per month for unlimited trade. Since the TM has already booked its revenue through MVP, where is the additional benefit to be derived from random trading by it as alleged? The Client has alleged that Advance Brokerage of **Rs.6,367.00** was paid to trade in equity and equity derivatives



segment but trade was executed in currency segment. In this regard, the Applicant told the TM that he wanted to start trade in the currency derivative segment immediately after the trading account was opened and after gaining sufficient knowledge he would opt for Advance Brokerage in currency derivative segment also. He fulfilled his commitment and activated Mega Value Plan (Unlimited Trade Facility) in Currency Derivative segment with effect from **26/08/2013** by paying in a separate cheque of **Rs.5,807.00** on **17/08/2013**.

The Client has pointed out that trading in MCX'SX segment was started before activation of the Applicant's trading account on **02/08/2013**. The Client started trade in Currency Derivative segment of MCX'SX on **29/07/2013** after the trading account was opened and started trade in equity and equity derivatives segment NSE from **02/08/2013** once the demat account was opened. As per NSE Rules and Regulations no trade in the capital market segment will be executed without a Demat account but trades can be executed without a Demat account in derivatives segment and the Client knows the Rules and Regulations very well because he is quite experienced in derivatives/capital market trades.

The Applicant alleges that the Respondent realized prepaid brokerage of **Rs.5,807.00** separately. The TM states that after signing the prepaid brokerage form the Applicant was offered that the amount be debited directly from his ledger but the Applicant stopped the Respondent from doing so and provided TM with fresh funds of **Rs.5,807.00**.

The Client also implies that the TM realized prepaid brokerage for equity trading without executing any trade. The TM states that the Applicant executed trade on the very next day after the Demat account opening date after he had confirmed over telephone his acceptance of the prepaid brokerage plan (for **Rs.6,367.00**). Voice recording evidencing such confirmation can be produced. (Voice recording dated **26/07/2013**).

The Client alleges that his email address was created by the TM. This is totally baseless and voice recording of the TM's verification call to the Client before completion of the process for opening the trading account where the Client clearly mentions his email id to the TM's representative in the account opening department, can be provided. Email id and mobile no. as per KYC submitted by him were duly acknowledged by the Client at the time of the verification call.



**Voice Recordings.**

Transcript of the Voice Recording dated **24/07/2013** pertains to Verification Call before activation of account. Salient features are: On being asked, Client confirms his address. On being asked his email id, Client says that he will first have to refer to his mobile as the email id is stored in it. After a small pause, the client confirms the email id. Thereafter, on being asked the Client confirms his mobile no. as 98748 66855. After that, Client states the documents and the amount of the first cheque he has provided for opening the account.

In the Verification call for activation of MVP Plan on **26/07/2013**, the Client confirms by saying "**O.K**" that he has opted for 1 Year MVP.

In the Verification Call before Activation of Account-MPV Renewal Intimation Call dated 21/02/2014 the Client is advised that his MVP has already expired on 25/11/2013 and if Client emails the Respondent's Customer Care the Plan can be renewed.

**Applicant's Comments on Voice Recordings**

The Applicant states that the voice recordings heard at the hearing on 09/09/2014 is related to cross checking of KYC particulars viz. name, address, PAN, email id of the client. There is no relation of the recording dated **24/07/2013** with unauthorized trading. The email id was created by the TM and sent to the Applicant by sms. That is why it was not possible for the Applicant to tell the email id without seeing the sms on his mobile.

The voice recording also does not state that the trades were done by the Applicant himself at the TM's office. Earlier the TM submitted some photographs of the Applicant, which were snapped at their office. But those photographs were taken after 27/08/2013 i.e. beyond the period of unauthorized trading. Thus, the TM failed to show any sort of evidence that the impugned trades were not unauthorized.

The Applicant never sent any email, phone, sms for executing trades on his behalf. The TM also never obtained any consent from the Applicant for trading on his behalf.

**TM's Counter Comments on Voice Recordings**

By stating that there is no relation of the recording dated **24/07/2013** with unauthorized trading but merely relates to cross checking and confirmation of KYC particulars viz.





name address, PAN, email id of the Client before the account was opened, the Applicant has indirectly acknowledged his email id and cell no. which he provided to the Respondent.

#### **Dates Fixed For Hearings during Arbitration Process**

29/05/2014, 03/07/2014 and 09/09/2014. The hearing of 03/07/2014 was adjourned.

#### **Analysis**

The allegations of the Applicant are summarized below :

- (i) A trading account with the TM was opened by the Applicant on 25/07/2013 but was activated for trading in NSE on 02/08/2013.
- (ii) The e-mail id was created by the TM and the password to open the email was forwarded to him through a mobile phone message but it was not possible for him to open his email by that password. Hence, it was not possible for him to access the soft copies of contract notes sent to him in terms of his ECN consent letter.
- (iii) The Applicant's intention was to trade only in the equities segment of NSE. Even before 02/08/2013 there were unauthorized trades in MCX'SX currency sub-segment.
- (iv) The **unauthorized** trades/transactions in the MCX'SX currency sub-segment during the period 29/07/2013 to 26/08/2013 resulted in a loss of Rs.35,502.00 (including Advance Brokerage of Rs.5,807.00 on account of unauthorized trades in MCX'SX), which is the claim amount.

Trades in Currency Derivative sub-segment of MCX'SX started on 29/07/2013 after the trading account was opened on 25/07/2013 and trades in equity and equity derivatives segment of NSE started from 02/08/2013. Hence, merely because trades in MCX'SX preceded trades at NSE, it cannot be said that the trades at MCX'SX were unauthorized, especially, in view of the fact that at the time of account opening the Applicant opted for trades in all segments of NSE, BSE and MCX'SX including Currency Derivative sub-segment, in the KYC documents.

The Applicant has not denied, rather has admitted, that he received sms messages after the close of day's trades giving trade summary particulars as well as closing ledger



balances. Moreover, he has remained silent about the system of exchanges sending similar sms messages to registered mobile nos. and/or email messages to designated email ids regarding trades executed at the respective exchange. The Applicant has alleged that the account opening form was filled in by the TM-Company's representative and was signed by the Applicant as per the instructions of the TM's representative and the email id was created by the TM and the password for opening his email was sent to him to his mobile. But, he claims, as he could not access his email with that password, he was unable to see the ECNs sent to him as per his ECN consent letter. It is observed from his KYC Book that his email id: [shiv.dey22@gmail.com](mailto:shiv.dey22@gmail.com) and mobile no: 98748 66855 were given by the Applicant in the KYC Book which was duly signed by him, and the same email id /mobile no. were the ones to which the emails/sms messages were sent as per the email/ sms logs provided by the TM. (In the voice recording dated 24/07/2013, on being asked, the Client confirms his mobile no. as 98748 66855). The Applicant has not denied the genuineness of his signature. His claim that as per the TM's representative's instructions he signed the account opening form after it was filled in by the representative, is not sustainable. Regarding the emails and sms messages the Applicant has added that such communications do not amount to prior instructions from the investor before execution of trades. However in trading, it is the practice in the industry that trades may also be executed on the basis of oral communications for placement of orders for which there are no compulsory compliance requirement to maintain voice recordings. To minimize disputes about unauthorized trades, it is prescribed that the TM must furnish contract notes/send sms messages informing the day's trade summary within the mandated time limit and it is incumbent upon the Client to raise objections within stipulated time limits so that the dispute can be resolved. In the instant case, the Applicant did not raise any dispute till much after the stipulated period.

From what has been stated above, it cannot be said that trades/transactions that were executed in the currency segment of MCX'SX during the period between 29/07/2013 and 26/08/2013 were **unauthorized**.

Though the trades/transactions are not unauthorized it may be mentioned that the claim amount based on the assumption that the transactions are unauthorized is not strictly not correct. The claim amount of Rs.35,502.00 comprises Advance Brokerage of Rs.5,807.00



for alleged unauthorized trades, (ii) Loss in USD-INR transactions from 29/07/2013 to 07/08/2013, and (iii) Loss in EUR-INR transactions from 30/07/2013 to 19/08/2013.

As the impugned trades are not unauthorized, obviously the claim for irregularly taking advance brokerage (Rs.5,807.00) falls through.

The claims for purported losses for transactions in the currency segment of MCX'SX have been computed based on differences between Total Debits (Purchase) to Ledger Account and Total Credits (Sale) to Ledger Account in respect of USD-INR and EUR-INR transactions. Obviously MTM losses/gains, STT, Service tax, brokerage, etc. have been overlooked. As such, a true picture of the total loss has not emerged.

### **Conclusion**

In view of what has been stated by the Applicant and the Respondent and also the contents of the above analysis, the allegations of the Applicant stand "**Not Proved**" and, hence, the claim of the Applicant against the Respondent is **rejected**.


### **Award**

In view of the above Conclusion, I hereby publish the Award in three originals on 15<sup>th</sup> October, 2014. One copy is to be retained by the Exchange and the other two copies by the parties:

- (a) As the case of the Applicant is "**not proved**" and the claim is **rejected**, the Respondent shall **not** pay any sum to the Applicant.
- (b) The cost of Arbitration is to be equally shared by the Applicant and the Respondent.

**Place: Kolkata**

**Date: 15<sup>th</sup> October 2014**

  
**(Chandan Kumar Basu)**  
**Sole Arbitrator**