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**BEFORE THE SOLE ARBITRATOR MR. NATRAJ RADHAKRISHNAN**

IN THE MATTER OF ARBITRATION UNDER BYE-LAWS,  
RULES AND REGULATIONS OF MCX STOCK  
EXCHANGE LIMITED.

**Arbitration matter No. KOL-03/2014**

Between

Ms. RABIKA SULATANA MONDAL

Applicant

AND

RELIGARE SECURITIES LTD.

Respondent

*R. Natraj*

No. 64 80 r  
Name M. S. Chatterjee  
Address 44 D 4 Road  
Re **P. S. CHOWDHURY**  
**Ayker Bhowan**  
**P-7, Chowringhee Square**  
**Kolkata - 69**  
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## **1. CLAIM**

The Applicant Ms Rabika Sultana Mondal filed on 15/05/2014 a claim for Rs.1,87,018.34/- (Rupees One Lakh Eighty Seven Thousand and Eighteen and paise Thirty Four only) and a revised claim for Rs. 1,09,282.38 on 28/8/2014 (One Lakh nine thousand two hundred and eighty two and paise thirty eight only) which represents the loss suffered by her on account of unauthorized trades executed by the Respondent on her behalf.

## **2. PROCEEDINGS**

MCX Stock Exchange Limited had referred the above matter to the Sole Arbitrator on 27th May 2014 to enquire into dispute between the parties under Bye-Laws, Rules and Regulations of MCX Stock Exchange Limited. The sole arbitrator had fixed initial hearing on 21st August 2014.

## **3. HEARINGS**

The first hearing was fixed for 21st August 2014. The Applicant was present in person and was represented by Mr. Subir Chatterjee and Md. Asmat Ali Mondal.. The Respondent was represented by Mr. Sumantan Ghosh authorized representative on behalf of M/s Religare Securities Ltd.

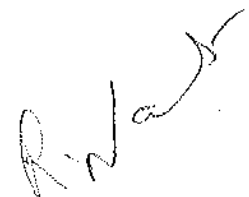
Before the date of the first hearing both the parties had submitted their written submissions to the National Stock Exchange of India, Kolkata and copies of the same were submitted to the Arbitrator by the Exchange.

The second hearing was fixed for September 4<sup>th</sup>, 2014. The Applicant appeared in person and was represented by Mr. Sudipta Biswas through legal Power of Attorney. The Respondent was represented by Mr. Sumantan Ghosh authorized representative on behalf of M/s Religare Securities Ltd.

The third hearing was fixed for September 16th, 2014. The Applicant appeared in person and was represented by Mr. Sudipta Biswas through legal Power of Attorney. The Respondent was represented by Mr. Sumantan Ghosh authorized representative on behalf of M/s Religare Securities Ltd.

## **4. STATEMENT OF THE CASE FILED BY THE APPLICANT**

The Applicant has a client account with the Respondent bearing client code number RM6413. The Applicant has also a Demat account with the respondent numbered 16926730. The Applicant claims that she had intended to trade on a delivery basis only in this account and as on 18/02/2013 the value of all holdings in this account was Rs. 4,83,278/-. The Applicant submits that the Account opening Form for the F&O/Currency Derivatives does not



bear her signature and the signature in such form is forged. The applicant also submits that she received a message in her mobile phone that there were a lot of unauthorized trades being done in her account and that she has incurred a huge loss. The applicant then came to know that her then relationship manager Mr. Amit Mishra and her Dealer Rahul Dutta were trading in her account without her permission. She immediately called the Respondent's office but found no help in this matter from the Respondent. As she was also facing the same problem in NSE she filed for Arbitration proceedings there and the Learned Arbitrator in that case had asked her to file for Arbitration in MCX Stock Exchange as well. Based on such advice the Applicant has filed for Arbitration in MCX Stock Exchange with a plea to grant her relief against unauthorized trades done in her account.

The Applicant had in a rejoinder dated 5<sup>th</sup> September 2014 further stated

- 1) The signatures in the account opening form of F&O/Currency Derivatives segment is not hers and is forged.
- 2) There are no pre-trade evidences of orders placed.
- 3) All communications are with the spouse of the Applicant and not the Applicant herself and that she has not authorized her husband to trade on her behalf.
- 4) The Email ID of the Applicant has been created by the Respondent and Applicant has no idea of the same.
- 5) The respondent has not sent any physical contract note to the Applicant.
- 6) Client Registration Form bears the mobile number of the Applicant as 8961315664 but all SMS log report shows that messages were sent to another number 9883189742. The Respondent has not produced any authorization for the same.
- 7) The financial ledger shows delayed payment charges of Rs, 6,657/- which must be reversed.

#### **5. STATEMENT OF DEFENSE FILED BY THE RESPONDENT**

In their Statement of Response the respondent submitted that

1. There were no unauthorized trades in the applicant's account.
2. The reference to the Applicant includes her husband and authorized person on her behalf- Mr. Asmat Ali Mondal.
3. The Applicant's initial claim of Rs. 1,87,018.34 is false and incorrect. When the Applicant disowns all trades in the F&O/currency derivatives, the claim for Rs. 1,87,018.34 includes only selective trades in which losses have occurred (on 27/2/2013 and 5/3/2013) and excludes the trades in which profits have occurred.(on 26/2/2013 & 28/02/2013). This selective basis for claim is for wrongful gains and may be dismissed.



4. The Claim of the Applicant that she is only doing delivery based trades is false. The Applicant had applied for activation of F&O and currency derivatives segment on 22/2/2013 and the call recording of 25/2/2013 clearly shows the applicant talking about the currency segment, its applicable brokerage, and referring to the welcome letter that had been received by the applicant.

5. The applicant was in receipt of SMS on a daily basis for every trade executed by her on her registered mobile. If there was any unauthorized trade by the Respondent then the applicant ought to have complained in receipt of the first SMS. Rather the voice recordings clearly show that the applicant is aware of all trades in her account and is clearly shifting the onus of loss on the respondent.

6. The allegation by the Applicant that her signature is forged in the account opening form of F&O/Currency Derivatives segment is false. The Signature in the account opening form is exactly the same as the one signed in the documents submitted for hearing in the Arbitration with NSE.

7. The Respondent has also sent contract notes and other documents to the Applicant. The Proof of dispatch has been enclosed

8. The Applicant's claim that since in the NSE hearing the arbitration award went in her favour, the same may be awarded to her in this Exchange also is not tenable as each case should be decided on its merit.

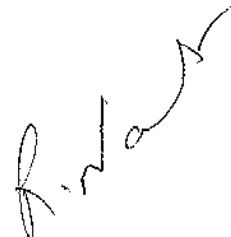
The Respondent on 24<sup>th</sup> August 2014 further submitted the voice recording regarding receipt of welcome kit by the Applicant and its transcript thereof.

#### **FINDINGS AND CONCLUSIONS**

I have carefully considered the pleadings and submissions made by both the Applicant and the Respondent.

#### **The Following were the proceedings at the first hearing.**

1. The Applicant claimed that the Account opening form for F&O , Currency Derivatives Dated 22.02.2013 had not been signed by her. Accordingly the trades done in the MCX-SX segment for dates 26.02.2013, 27.02.2013 , 05.03.2013 were not authorized by her and also she claimed delayed payment charges levied on her account on 31.03.2013.
2. From the recordings submitted by the Respondent the Applicant claims that it is not clear that what the Respondent is saying as she is not aware of segment of Currency, Futures and options.  
It is alleged that the RM used to call his Applicant and insist on saying "YES" whenever there is a call from the call logger.
3. The Applicant acknowledges the receipt of the welcome kits for the segment mentioned in point 1 but claims to have not opened it as instructed by the RM. They were verbally told that such welcome kit was only a formality and this segment would always yield profits and no losses.



4. They have learnt about the losses from SMS received and accordingly have filed their claim for losses arise from unauthorized trades.
5. The Applicant was asked to sign her signature twice before the Arbitrator for verification purposes .
6. The Applicant also stated that prior to account opening date the RM and his associate frequently called them and also visited their place to convince them to trade in this segment.

The Respondent made their submission as follows

1. The signature of the Applicant changes from time to time and the signature in the claim statement (in Bengali) is different from the signature in the original account opening form dated 11.02.2011. Thus the claim that the signature is forced the account opening form dated 22-02.2013 is not correct.
2. The Respondent stated that they have recordings as well as the transcript for the same regarding the welcome letter and discussion regarding brokerage etc. on the Currency and F&O segment.
3. The recordings regarding trades done on 25<sup>th</sup> 26<sup>th</sup> and 27<sup>th</sup> were heard to consider the conversation between Respondent and Applicant for trades done on such dates. The Respondent claimed that the Applicant have full knowledge of the trades being done.
4. The Respondent further stated that the Applicant is claiming the losses suffer on 27.02.2013 and 5.03.2013 but not considering the profits earned on 26.02.2013 and 28.02.2013. Thus the Applicant is shifting the burden of loss on the Respondent.

Applicant had been asked to submit the following

1. Proper claim statement covering all dates of dispute.
2. Copy of PAN card without signature.
3. Details of outgoing calls from their registered mobile on the dates of dispute.

The Respondent had been asked to provide the following

1. Recording and transcript of welcome letter and brokerage discussion.
2. Outgoing call logs from the RM's mobile to the Applicant on the disputed dates.

**The Following were the proceedings at the second hearing.**

1. The proceedings began by receiving the rejoinder from Applicant against the defense reply produced by the Respondent. The contents were read out and discussed. The Applicant laid stress on the fact that calls and SMS logs by the

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Respondent was to the Applicant's husband's mobile number 9883189742 instead of the registered number 8961315664. The Applicant wanted a copy of Authorization letter received by the Respondent in this regard. Also the Applicant stated that they require proof of delivery for physical contact note for deliver to the client.

2. As directed in the first hearing the Applicant has submitted the Revised claim for loss in her account from Rs. 1,09,282.32.
3. As directed in the first hearing the Respondent has provided recording and transcript of the Welcome letter and brokerage discussion on Currency Futures and options. The recording was heard by all present wherein the Respondent explains brake even concept and brokerage foreign Currency Segment.

The following were required from Respondent

1. Letter of Authorization (original and copy) received from the Applicant authorizing her husband to trade and other related matters on her behalf.

The following were required from the Applicant

2. Proper and final claim statement and any other submission they deem fit.

**The Following were the proceedings at the third hearing.**

The Proceeding began with the Respondent submitting copies of authorization for instruction by third person and also copy of profile change request which shows the Applicant's husband mobile number 9883189742 as the authorized number for all dealings with the Respondent. The Applicant also studied such above mention forms and contented that the signature of the Applicant in the profile change request is not that of the Applicant. The Respondent has been asked to submit call logs and voice data for other transactions through MCX-SX which have been confirmed on the mobile number 9883189742.

The Applicant has made no further submissions .

From the details of proceedings of all three hearings as described above I find that the Applicant's defense is weak and lacks substance. The two sets of voice recordings provided by the Respondent clearly prove the following.

- a) From the voice recording submitted by the Respondent regarding the welcome kit received by the Applicant, it is very clear that the Applicant is

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fully aware of the Segment i.e. Currency Derivatives. The entire recording gives ample proof of the fact the Applicant is trying to understand the brokerage in this segment and is explained by the Respondent. **Therefore the Applicant's claim that she is not aware of this segment and every formality, right from account opening to trading were done without her knowledge/authorization, is totally false and baseless.**

b) From the voice recordings submitted by the Respondent with regard to trades done on 25/2/2013, 26/2/2013 & 27/2/2013 it is very clear that the Applicant is fully aware of the trades being done. The Respondent is heard telling the Applicant of the buying price before placing an order and obtaining confirmation from the Applicant before placing an order. Similarly before selling the Respondent is heard calling the Applicant and is clearly telling the Applicant of the same. In the same conversation the Applicant says that she has suffered huge losses in other broking houses and therefore the Respondent should consider this account as their own account and generate profits from trading in the account. To this, the Respondent in the voice recording of 25/02/2013 replies that the Applicant should take their calls and confirm the orders to be placed and only then will the Respondent make any trades in the account.

**c) The Following are the conclusions based on the above**

1. The Applicant had full knowledge of the trades being done in the Currency Segment and such trades were confirmed by the Applicant.
2. The Applicant had full knowledge of profits/losses earned under this segment earned during the period from 25/02/2013 till 5/3/2013.
3. The claim of the Applicant that such trades were unauthorized is false as is confirmed from the voice recordings
4. The Applicant's claim clearly shows that she wants to shift the burden of loss on the Respondent by stating that she had no knowledge of trades being done in her account.

In the absence of any record/evidence to show that the trades were unauthorized by the Respondent, the Applicant's contention that all trades done during the disputed period were unauthorized by the applicant lacks credence.

In view of the above, I pass the following award.

**AWARD**

- 1) The claim of the Applicant **RABIKA SULTANA MONDAL** for Rs.1,87,018.34/- (Rupees One Lakh Eighty Seven Thousand and Eighteen

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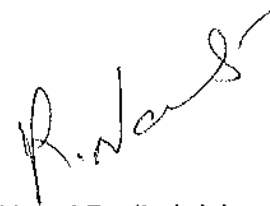


and paise Thirty Four only) and a revised claim for Rs. 1,09,282.38 on 28/8/2014 (One Lakh nine thousand two hundred and eighty two and paise thirty eight only) against the Respondent RELIGARE SECURITIES LTD. **on account of losses suffered due to unauthorized trades is DISALLOWED.**

- 2) The cost of the arbitration is to be borne per rules of the MCX Stock Exchange of India Ltd.
- 3) The award is signed and issued in three originals. The MCX Stock Exchange Limited will retain one of the stamped original and forward one stamped original each to the Applicant and Respondent.

Kolkata

Dated: 21/11/2014,



Natraj Radhakrishnan

Sole Arbitrator