

भारतीय गैर न्यायिक

एक सौ रुपये

रु. 100



Rs. 100

ONE
HUNDRED RUPEES

भारत INDIA
INDIA NON JUDICIAL

पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL

U 409924

ARBITRATION AWARD

In the matter of Arbitration as per the Bye laws
and Regulations of MCX Stock Exchange Limited
Before Mr. Sanjay Bajoria, Sole Arbitrator

Arbitration Matter No. MCX-SX/ ARB/ KOL - 04/2014

Between

M/s Nirmal Bang Securities Pvt. Ltd.
38-B, Khatau Building, 2nd Floor,
Aikesh Dinesh Mody Marg,
Fort, Mumbai - 400001
Maharashtra

Applicant

And

Ambarish Ghose
23 Debendra Ghose Road,
Bhawanipur,
Kolkata-700025
West Bengal

Respondent

089947

Sanjay Bajaj
Bl...
kat-1

02 FEB 2015

BACKGROUND:

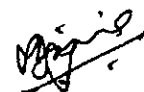
The reference in this dispute being reference No. KOL-04/2014 was entrusted to me by the MCX Stock Exchange Ltd. (hereinafter referred as "MCX^{-SX}") to consider and adjudicate the dispute and difference between the Applicant and the Respondent mentioned hereinabove and to deliver the Arbitration Award. The Applicant is a broker and member of MCX^{-SX} and the Respondent is a constituent of the Applicant. The Applicant and Respondent previously voluntarily participated in the Investor Grievance Resolution Cell (IGRC) meeting. The meeting was held on 05/05/2014. The minutes of the meeting is reproduced below:

Submission of the complainant (Mr. Ambarish Ghose)

- 1) The complainant opened a Trading Account with the Trading Member sometime in July / August, 2013 through one Mr. Pankaj Sarkar, Relationship Manager.
- 2) The RM assured that there would be substantial profit through trading, although there might be some loss occasionally.
- 3) The Complainant paid a sum of Rs. 4,05,000/- to the Trading Member while opening the Trading Account.
- 4) Prior consent of the Complainant was not taken in respect of any of the trades.
- 5) The Complainant used to get e-mails from the Trading Member but could not open the mails due to technical problems. He also used to receive SMS alerts for trade confirmations, but sometimes he could not understand the contents of those SMS alerts.
- 6) The Complainant informed that the services of RM, Mr. Pankaj Sarkar was terminated.
- 7) There was trading in securities through NSE to the tune of Rs. 37,119/-. The remaining sum of Rs. 3,67,881/- was invested in the Currency Segment of MCX-SX.
- 8) The Complainant received a sum of Rs. 1,44,955/- from the Trading Member and suffered a loss of Rs. 2,22,926/-, which he has claimed.

Response of the Trading Member:

- 1) The RM, Mr. Pankaj Sarkar left his job for different reasons.
- 2) The Trading Member denied the allegations made by the Complainant and stated that there was implied consent of the Complainant for all the trades which took place in his account.
- 3) SMS alerts and electronic Contract notes were sent to the Complainant regularly. But no



objections were raised by him in respect of any of the Trades.

- 4) The Trading Member submitted a copy of consent letter signed by the Complainant to stop confirmation of trades on phone/mobile. Through the said letter the Complainant promised to inform customer care service of the Trading Member within 24 hours of the trade in case of any errors, disputes etc. in respect of any trade.
- 5) The Trading Member failed to provide any evidence regarding pre-trade consent taken from the Complainant from any of the trades.
- 6) The Trading Member submitted voice recording of the trade confirmations.

Order:

Both Parties were given an opportunity for mutual understanding and settlement. After discussing among themselves, the Representatives of the TM did not agree to any mutual settlement. After analyzing the documentary evidences submitted by both parties and also the arguments placed by them I am of the view that the complainant's claim is genuine. I therefore admit the claim of Rs. 2,22,926/-.


CASE OF THE APPLICANT:

The applicant submits that it has been alleged by the respondent that he had not placed a single order for any of the trades executed in his account and prior consent of the respondent was not taken in respect of any of the trades. The respondent had also alleged that assurance of profit was given by the employee of the applicant company.

The applicant company has pointed out that there was an implied consent on the part of the respondent for all the trades executed in his account. The respondent had taken several payouts from his account which is duly reflected in his financial ledger. Further the respondent had given consent for receiving the contract notes in the electronic mode. All the contract notes had been duly delivered in the email id as mentioned by the respondent in the mandate and no dispute was raised immediately on its receipt. As an additional measure of client service, trade details along with resultant balance were also conveyed onto the registered number of the respondent by way of SMS.

The applicant company went on to say that if the respondent was ignorant about the currency derivative segment, he should not have opted to trade in that segment. Detailed agreement had been signed by the respondent clearly laying out the process of dealing.

The applicant also placed on record a declaration duly signed by the respondent stating that he



had agreed to tally and validate his actual data with those in the contract note received at his registered email address and in case there was any discrepancy or error or mismatch found therein, then it shall be communicated to the applicant company within 24 hours of such receipt of contract notes. The respondent had also vide the said declaration agreed not to hold the applicant company liable in case of any discrepancy occurring in his account and agreed to bear loss occurring in his account due to non confirmation of trade.

In the circumstances aforesaid the applicant most respectfully prays:

- 1) To set aside the impugned order dated 5th May, passed by Mr N.P Sengupta, IGRC Member in the matter between the respondent and the applicant.
- 2) To release the amount of Rs. 2,22,926/- blocked by Hon'ble IGRC from the deposit if the applicant placed with the exchange ; and
- 3) Pass such other order(s) so the Hon'ble Tribunal may deem fit and proper in the interest of justice.

RESPONSE OF THE RESPONDENT:

The respondent states that that he had not placed a single order for any of the trades executed in his account and prior consent of the respondent was not taken in respect of any of the trades. The respondent had also alleged that assurance of profit was given by the employee of the applicant company. Further the respondent stated the he had never agreed to trade in currency derivative segment.

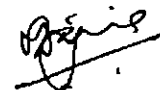
The respondent further stated that contract notes, bills, margin statement etc for all the trades/deals were sent electronically at the registered email address but he could not open the mails due paucity of time and was unable to understand the messages sent by the trading member.

The respondent said that all the payouts that were made to him by the applicant company were out of his original investment and not profits and that his claim only includes the loss from trading in currency segment and not any other losses.

HEARING:

Hearings were held on 18/12/2014 and 15/01/2015.

During the hearings, the applicant Trading Member was represented by Mr. Subrata Pal,



Assistant Manager and the investor appeared in person.

ARGUMENTS:

The Applicant's representative reiterated that all the trades were communicated to the respondent through emails and SMS. The applicant submitted the ECN and SMS logs for the same. He also produced some voice recordings to show that the respondent was informed of the trades after their execution. He refused the claim of the respondent that the trades were unauthorised. The applicant's representative also placed on record a declaration duly signed by the respondent stating that he had agreed to tally and validate his actual data with those in the contract note received at his registered email address and in case there was any discrepancy or error or mismatch found therein, then it shall be communicated to the applicant company within 24 hours of such receipt of contract notes. The fact that the respondent took no such step was reiterated by the applicant's representative.

The respondent on the other hand, was very vocal that all the trades done in his account in the currency segment were unauthorised as he never instructed the applicant to carry out trades in currency futures as he himself is totally ignorant about the same. He also stated that for his losses of Rs.37,119 in the cash segment incurred on NSE, IGRP (NSE) has accepted his claim and he has already received 50% of the said amount. The respondent also argued that all the payouts that were made to him by the applicant company were out of his original investment and not profits and that his claim only includes the loss from trading in currency segment and not any other losses.

FINDING:

The above documents were examined in detail and considered.

The respondent reiterated that all the trades done in currency segment were unauthorised as he never instructed the applicant to carry out trade in currency futures as he himself is totally ignorant about the same. The respondent made a significant statement by saying that all the payouts that were made to him by the applicant company were out of his original investment and not profits and that his claim only includes the loss from trading in currency segment only.

The representative of the applicant said that all the trades were communicated to the respondent through emails and SMS. The applicant submitted the ECN and SMS logs for the



same. He also produced some voice recordings to show that the respondent was informed of the trades after their execution.

The ECN and SMS logs as submitted by the applicant show that the respondent regularly received the trade confirmations and that no immediate complaint was made regarding any trade on receipt of such confirmations. The respondent failed to utilize the opportunity to quickly redress his complaint by not disputing the trades as soon as he received the confirmation SMSs.

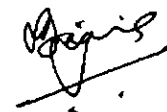
In order to verify the allegation of the respondent that the trades in the currency segment were unauthorized, the representative of the applicant was asked to provide any voice recording or documentary evidence to support his contention that the trades were not unauthorised and that the orders were placed by the respondent himself. However, he failed to produce any such evidence of placement of order by the respondent.

Clause 4.5.7 of MCX Stock Exchange (Capital Market Segment) Regulations states as follows: *"Where the Constituent requires an order to be placed or any of his orders to be modified after the order has entered the system but has not been executed, the Trading Member may, obtain order placement / modification details in writing from the Constituent. The Trading Member shall accordingly provide the Constituent with the relevant order confirmation / modification slip or copy thereof, forthwith, if so required by the Constituent. "*

Thus the trading member has clearly violated clause 4.5.7 of MCX Stock Exchange (Capital Market Segment) Regulations which spells out the requirement of the trading member to provide the constituent with the relevant order confirmation, if so required by the constituent. The transcripts of voice recordings as submitted only demonstrate that the respondent is trying to understand the trades and seems to be clueless regarding the placement and execution of such orders.

The fact that no evidence of placement of orders by the respondent was submitted by the applicant even when the same were asked for holds out the fact that these trades were executed without the consent of the respondent and were hence unauthorised. No mandate can justify such trades.

Considering the evidences put on record by both the parties and the discussion in the preceding paragraphs, the award is given as follows:



AWARD

- a) The claim of the applicant is rejected.
- b) The applicant is directed to pay Rs. 2,22,926 to the respondent.
- c) Considering the facts of the case I do not make any order as to cost or penalty.

The award is signed and issued in three originals. The MCX^{-SX} will retain one of the stamped original and forward one stamped original each to the Applicant and Respondent.

Place: Kolkata
Date: 3rd February 2015


Sanjay Bajoria
(Sole Arbitrator)