

Before Mr. R.K.Ahooja, Sole Arbitrator

**In the Matter of Arbitration
under the Bye-laws, Rules & Regulations of MCX Stock Exchange Limited**

A.M. No. MCX-SX/ARB/02/2011

**Between
Mahinder Pal Gupta
2-B/139, Nehru Nagar,
Ghaziabad, Uttar Pradesh-201001.
Constituent**

Applicant

And

**Religare Securities Ltd,
D3, P3B, District Centre,
Saket, New Delhi-110017
Trading Member**

Respondent

AWARD

A.M. No. MCX-SX/ARB/02/2011

AWARD

1. The Applicant/ Constituent, who has an off-line trading account with the Respondent Trading Member, alleges that there were unauthorized trading transactions in his account on 4th January, 2011 and 5th January, 2011 consisting of sale of 15 units each of “USDINR FUT; 27/01/2011” on 4th January, 2011 and 5th January, 2011 without his consent and knowledge. The Applicant had protested to the Respondent of the unauthorized transaction on 4th January, 2011 the same evening but even so the Respondent conducted a repeat unauthorized trade the very next day. In the result, according to the Applicant the positions already held by his were closed out at a very low price of (average Rs. 45.168) compared to the price on 7th January (Rs. 46.51). There was no call for unilateral action by the Respondent to square off his positions as there was sufficient margin available in his account. Therefore, the sale of the units prematurely at a lower price resulted in a unwarranted loss to the Applicant of Rs. 40,255/-. After adding Rs. 9,745/-, the Applicant has raised a claim for Rs. 50,000/- against the Respondent.

2. The Respondent, Trading Member, refutes the allegations of the Applicant as regards the trades being without his consent and knowledge as well as the alleged losses incurred by him. The Respondent has, in its reply, stated that after the complaint of the Applicant was received on 5th January, 2011, Respondent’s Relationship Manager visited the Applicant and thereafter the trades of 4th January, 2011 and 5th January, 2011 were confirmed by the son of the Applicant, Mr. Paras Gupta, who had been authorized by the Applicant to trade for and on behalf of him. The Respondent has also enclosed copies of the e-mails in which the Mr. Gupta had admitted the confirmation of the disputed trades albeit on an assurance that the differential in prices would be re-imbursed to the Applicant.

3. Regulation 14.11 of the MCX Stock Exchange (Currency Derivatives Segment) Trading & Clearing Regulations reads as follows:

14.11 REQUIREMENT FOR HEARINGS

- a) No hearing shall be given to the parties to the dispute if the value of the claim, difference or dispute is Rs. 25,000/- or less. In such a case the arbitrator shall proceed to decide the matter on the basis of documents submitted by both the parties provided however the arbitrator for reasons to be recorded in writing may hear both the parties to the dispute.
- b) If the value of the claim, difference or dispute is more than Rs. 25,000/- the arbitrator shall offer to hear the parties to the dispute unless both parties waive their right for such hearing in writing.

4. In the present case both the parties have stated that they do not want a hearing. In view of this position when neither party has asked to be heard, and also taking into account the fact that the claim amount is only Rs. 50,000/-, I am disposing off the matter on the basis of the statements and documents submitted by the parties.

5. There is no denying, since it is admitted by the Respondent also, that the complaint was made on behalf of the Applicant on 5th January, 2011 regarding the trade on 4th January, 2011. Normally, this prompt reaction would greatly strengthen the case of the Applicant. However this is nullified by the Applicant's admission albeit a conditional one that his agent Mr. Paras Gupta had consented to a confirmation of the trades. This is clear from the copy of the e-mail (Annexure E to the Respondent's reply) dated 14th January wherein Mr. Paras Gupta writes that "Please note that I gave confirmation for these trades dated 4th Jan'11 and 5th Jan'11, on 07/01/11. After I was promised that my loss will be made good by concerned people in Religare. I was paid Rs. 15,000/- interim on 6th Jan'11 and I was told that in case of failure to give confirmation for these trades, my both ids, MG4695 & MR5171 would be blocked."

6. Now unfortunately for the Applicant there is no mention of these developments regarding the confirmation, payment of the sum of Rs.15,000 and the threat of blocking of the trading accounts in the claim statements. Leastways the Applicant should have reduced his claim by the amount already received i.e. Rs. 15,000/- The concealment of these facts bears directly and adversely on the veracity and credibility of the Applicant. The case of the Applicant would in my opinion fail on this ground alone.

7. I am strengthened in my conclusion by two other factors. Firstly the Applicant states in the e-mail of 6th January, 2011 that “these transactions are unauthorized and have been taking place from our accounts since past couple of weeks”. Yet there are no details nor are there any indication that the Applicant stopped trading with the Respondent. On the contrary it would appear that the Applicant continued to trade through the Respondent even after the dispute arose in respect of the trades mentioned in the claim here.

8. Secondly the calculations of the losses are based on hindsight. The rates in the market would fluctuate from day to day. The only logical calculation could be made on the settlement rates on the expiry date of the contract. Hence whether the Applicant would have sold on 7th January, 2011 or not is a moot point and therefore no calculation of loss or whether there was any loss had been incurred by the Applicant due to a premature sale could be made on that basis.

9. On the basis of the above discussion, I conclude that the Applicant has failed to establish his claim against the Respondent which is accordingly dismissed.

New Delhi
August 05, 2011.

(R.K.Ahooja)
Sole Arbitrator.