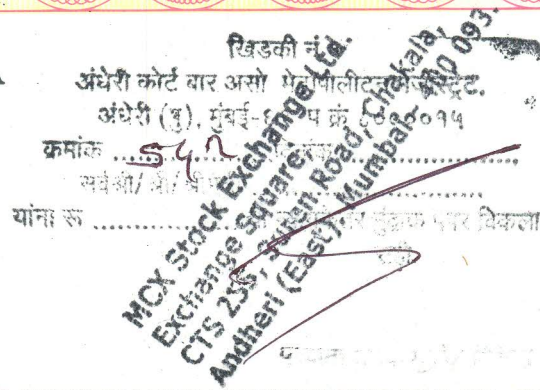
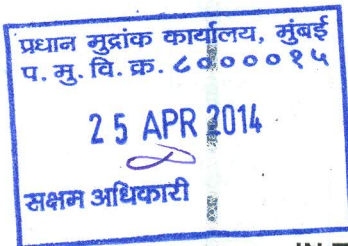


महाराष्ट्र MAHARASHTRA

KY 447096



30 APR 2014

मा. विनोद नंदा
IN THE MATTER OF ARBITRATION UNDER THE RULES, BYE-LAWS AND REGULATIONS OF MCX STOCK EXCHANGE LIMITED (MCX-SX)

BEFORE THE SOLE ARBITRATOR: SHRI. NARENDRA MEHTA

ARBITRATION MATTER NO.: MUM-01/2014

Mr. Liyakat Ali Khan

: ...Applicant

A-1-201, Al Safa,
Milat Nagar,
Oshiwara, Andheri (West),
Mumbai – 400 053

And

M/S. Fairwealth Securities Ltd.

: ...Respondent

UG-3, Somdatt Chambers II,
9, Bhikaji Cama Plaza,
Delhi – 110 066

STATEMENT OF CASE OF THE APPLICANT

1. This is an Arbitration reference submitted to me under the Rules, Bye-laws and Regulations of the MCX Stock Exchange Limited (referred to hereinafter for the sake of brevity as 'MCX-SX').
2. The Applicant is a constituent of the Respondent and respondent is a Trading Member of the 'MCX-SX'

Hearings:

3. The hearing of the reference took place on March 24, 2014, April 21, 2014 & April 28, 2014. The Applicant attended in person in all the hearings and respondent was represented by Mr. Sachin Ambre VP-Sales on first and third hearing and Mr. Amit Gautam AVP-Legal in second hearing.
4. On the first hearing on March 24, 2014 both parties requested for an adjournment as applicant was not ready with the details of claim and the respondent was not having any knowledge about the case as he claimed that he is from sales and he does not have any knowledge about the case. Hence both the parties were directed to submit further documents as they could not argue the case and the respondent was directed to come with person from compliance. The matter was adjourned for final hearing on April 21, 2014 by giving parties sufficient time to prepare themselves for arguments and also to submit the necessary documents. On April 21, 2014 the applicant submitted the statement of claim which was different than the original claim filed by him. Whereas the respondent was represented by another person namely Mr. Amit Gautam AVP-Legal who did not have the details as sought in earlier hearing except order logs. The respondent was not accompanied by Mr. Sachin Ambre VP-Sales; who attended the first hearing. Mr Amit Gautam AVP-Legal was not aware about the first meeting except the minutes. Mr. Amit Gautam AVP-Legal was asked to explain the order log; which he was not aware and hence requested the Arbitrator; for allowing him to speak to head office at Delhi. The Hon. Arbitrator allowed him for the same with an intention to conclude the hearing as per earlier minutes. The respondent after discussing with Head office also could not explain the order logs; hence the matter was finally adjourned to April 28, 2014 under the principles of natural justice.

5. On April 28, 2014 the applicant submitted the claim papers; which differs from statement of case and submitted in last meeting. While the respondent was represented by Mr. Sachin Ambre VP-Sales and pleaded that he has been instructed to appear as Mr. Amit Gautam AVP-Legal was busy elsewhere. Respondent did not offer it's comment on their letter dated April 23, 2014 and further stated that he does not have to state anything in the matter. Finally case was discussed and closed for award.

The applicant in his statement of case, briefly, submitted and stated that:

6. I was out of India from 17th to 24th Aug, 2013. Unauthorized trade was executed in INR in my account MUM166 except for the trade done on 23rd Aug, 2013. Thousands of contracts in INR were done illegally without my consent & knowledge putting me into loss of Rs. 179,821/-.
7. It is stated that respondent have failed in providing the call logs and or any proof and hence the loss due to unauthorized transactions is claimed by me.
8. As per claim sheet, I claim Rs.179,821/- due to loss on account of unauthorized trades in my account.

The respondents in their statement of defense, briefly, submitted and stated that:

9. The applicant has got no cause of action as alleged and the statement of case is false, baseless and concocted. The applicant has not disclosed true and material facts to the Hon. Arbitrator.
10. The applicant had entered into Members client agreement and was allotted UCC MUM166 and disputed the transactions executed during the period when he was out of India.
11. The applicant has taken payout of Rs.100,000/- on 21st August 13 and addition to that the applicant has not bought any evidence to prove that He was out of India during the period from 17th August 13 to 24th August 13.

12. That we have regularly sent the contract notes to the applicant on his registered email and also physical contact notes at his registered address, which has been confirmed by the applicant.
13. The applicant has carried forward his position in USDINRF280813 from 14th August till 26th August, 2013 and has incurred loss of Rs.302,680/-. This loss is attributable to him only for his own decision.
14. The applicant is trying owning the profit and disowning the losses accrued to him in his trading account and for that reason he is not contesting the trade executed on August 23, 2013. It is also stated without admission that in case the applicant would not have traded between 17th August 13 and 24th August 13 than there would have been a profit of Rs.25,000./-
15. The applicant has not given any basis of the claim of losses incurred by him but has claimed the amount hypothetically and hence the claim of the applicant be set a side.
16. Under the above circumstances we pry to the Hon. Arbitrator that:
- The claim of the applicant be dismissed;
 - Arbitration fees paid by the respondent may be refunded;
 - Exemplary cost may be imposed on the applicant; and
 - Any such other relief as the Hon. Arbitrator may deem fit in the interest of justice.
17. It is further stated that the call logs sought by the Hon. Arbitrator are not available due to technical failure in recording system of Mumbai Branch. It is further stated that data for the period of July and August 13 **pertains to the applicant** of Mumbai Branch got corrupted and therefore we are not able to provide the call logs as directed by the Hon. Arbitrator.
18. The applicant has not given the proper calculations of the claim. It is also stated without admission that in case the applicant would not have traded between 17th August 13 and 24th August 13 than there would have been a loss of Rs.68,896.89 ps.



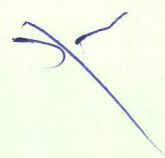
19. The applicant has sent two mails dated August 29, 2013 and dated September 25, 2013 where in the stand taken by the applicant for unauthorized transactions are different. The later email is favourable to the applicant since he earned huge profit on the transaction dated August 23, 2013. In fact the official of the respondent have clarified the each transactions in response to the complaint of the applicant dated August 29, 2013 and there after the applicant have taken payout of Rs.839,000 without any dispute.
20. That the conduct of the Arbitrator was biased and partial for the respondent company and circumstances exist that give rise to justifiable doubts to his independence or impartiality. It was submitted that, the Arbitrator has given the clue to the Applicant to amended claim amount from Rs. 179,821/- to Rs. 417,844/-.
21. That, it is essential to mention that as per the order sheet dated March 24, 2014 the matter was fixed for final hearing on April 21, 2014, but on April 21, 2014, Arbitrator again adjourned the hearing for April 28, 2014, with the motive to give the favour and undue advantages to applicant to increase the claim amount and subsequently award in his favour. It seems that the Arbitrator wants to give the undue support to the applicant.
22. That the respondent company will suffer loss and hence it is prayed that a new Arbitrator may kindly be appointed in this matter for this matter for the fresh adjudication of the proceeding in the interest of justice.

REASONING AND CONCLUSION:

23. First I shall deal with the objection raised by the respondent on after first two hearing and the appointment of new arbitrator. In the first hearing Mr. Sachin Ambre (VP) attended from respondent, however he was not aware about the whole case as well as the account of applicant which in the books of the respondent, which was submitted by the respondent. Mr. Sachin Ambre (VP) requested for the adjournment as he was neither prepared nor aware about the case since he is from sales. Under the principles of natural justice the

case was adjourned to 21st April 2014 giving sufficient time to the respondent to present their case properly with necessary directions with their consent.

24. On 21st April another person Mr. Amit Gautam from legal department of the respondent attended. The respondent filed the documents as directed except call logs. The respondent mentioned in their reply and I quote *"It is submitted that due to some technical failure in the recording system of Mumbai Branch, the data based of the recordings for the period of July and August 2013, pertains to the **client of Mumbai** branch got corrupted, therefore we are not able to provide the call logs of the above mentioned mobile numbers"* The respondent than was asked to explain the order logs as filed by them, upon which Mr. Amit Gautam explained that he does not understand the order log and he needs to ask his Delhi office for the same. He was allowed to call their office to make Arbitrator aware about the details of the order logs submitted by respondent. After some time Mr. Amit Gautam showed his inability to explain the order logs. However though the date was fixed for final hearing; the same was adjourned for the sake of proper justice and Mr. Amit Gautam undertook not only to explain the order logs but also to submit the call logs. The matter was adjourned to 28th April with the consent of both the parties.
25. On 28th April 2014 Mr. Sachin Ambre (VP) attended but Mr. Amit Gautam remained absent. Mr. Sachin Ambre (VP) was asked to explain about the letter dated 23rd April 2014 sent by them to the exchange, He stated that he has nothing to say and further that the Hon. Arbitrator does not require any details for order logs for the case and reference. Mr. Sachin Ambre (VP) further stated that the presumably the calls made were by the applicant on the dealer's cell phone for which they are unable to give call logs and the trades must have executed accordingly.
26. Considering all the above events I feel that the respondent is not at all co-operative and does not obey the directions of the Arbitrator. In addition to that respondent being the member of the Exchange must work under the Rules, Regulations and Bye-laws of the Exchange and depute proper persons who are aware about the arbitration mechanism. Exchange must take note of such matters and take necessary action for the same.

27. Now I turn to the merits of the case. This is the case of unauthorized transactions for period between 17th August 13 and 24th August 13, where the applicant was out of India. The applicant has produced the passport in support of his traveling out of India during the period, hence it is correct to say that the applicant was out of India during the said period.
28. The applicant has lodged the complaint to the respondent on 29th august 2013 and again on 25th September 2013. The applicant has filed the reference claiming Rs.179,821/- as per statement of case. The applicant again filed a statement showing the loss of Rs.417,844/- on 21st April 2014 and Rs.263,272/- giving details of the date wise without considering the trade for 23rd August 13 on 28th April 2014. There was a profit of Rs.66,924.64/- on 23rd August 2013 as per ledger account.
29. The respondent has stated that the trades were carried out under the instructions from the applicant; however failed to prove the same by not producing the call logs and not explaining order logs. However they have claimed that the contact notes were sent to the applicant through email and the same is accepted by the applicant in IGRC.
30. The respondent not only failed to produce the details of call logs for some or the other reasons, but also failed to explain certain order logs for trades dated 21st, 22nd and 23rd August 2013; where order no, user ID and TM Id are missing.
31. The respondent also stated that how can the applicant own the trade of 23rd August and not for other dates though he was out of India? The applicant stated that he called from abroad on 23rd August for the trades, while he did not give instructions for the trades dated 19th, 21st, 22nd and 23rd August 2013.
32. Considering all the documents and papers on record and the pleadings forwarded by both the parties I am of the opinion that the applicant claim is right considering the fact that the respondent has failed in substantiate there defense by not producing the sufficient and evidences to prove that the transactions have been instructed by the applicant.
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33. While granting the claim to the applicant it is necessary to understand that for three times the applicant have claimed different amount of losses. It is also important to note that the applicant having after thought sent mail claiming the transaction of 23rd August 13 as his own claiming the trade of 23rd August 2013 as correct. However considering the all I allow the claim of the applicant as per statement of case.

34. The applicant has not claimed any interest hence the same is not considered. The applicant thus succeeds.

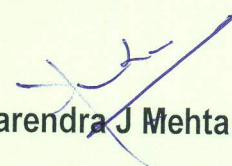
1) In view of the above, I pronounce award as under:

Award:

1. The claim of the applicant is allowed and the respondent is directed to pay to the applicant Rs.179821/-
2. There is no cost.
3. MCX_SX may retain the stamped original and forward one original to each of the applicant and respondent.

Place: Mumbai

Date: May 26, 2014


Narendra J Mehta