



दिल्ली DELHI

44AA 047714

Before Mr. R.K.Ahooja, Sole Arbitrator

In the Matter of an Arbitration under the Bye-laws, Rules and Regulations of the
MCX Stock Exchange Ltd.

Arbitration Matter No. MCX-SX/ARB/03/2011

Between

Mohit Kumar
F-130/8, 1st Floor, Gautam Nagar,
New Delhi-110049.
Constituent

Applicant

And

M/s Religare Securities Ltd.
Plot No. A-3/4/5, GYS Global,
Sector 125, Noida-201301.
Trading Member

Respondent

AWARD

Religare



दिल्ली DELHI

44AA 047715

AM No. MCX-SX/ARB/03/2011

A Member-Client Agreement was signed between the parties on 16th December, 2010 for trading on the platform of MCX Stock Exchange. A Client ID was given to the Applicant and Mr. Pulkit Bhatia and Mr. Tinku Mali were respectively designated by the Respondent as Relationship Manager and Dealer for the Applicant. However the Applicant alleges that Mr. Mali started trading in the account of the Applicant with effect from 20th December, 2010 without any order or instruction from the Applicant. The Applicant further alleges that the Dealer would inform the Applicant that he was making profits but he could not verify it since the office of the Respondent while seeking confirmation of the trades in the evening would indicate nothing about MTM, margin on trades or anything about loss or profits on the trades. The electronic contract notes received by the Applicant also did not reveal information on these points. As the Respondent did not provide him online CRN access password and did not render the required training to track his account, the Applicant could not ascertain the correct position of his trading account. After 3rd January, 2011 the Relationship Manager and

[Handwritten signature]

the Dealer also avoided any meeting with the Applicant till the Applicant landed up in Respondent's office on 22nd January, 2011 when the Relationship Manager showed him a credit balance of Rs. 3.48 lakhs in a ledger. The grievance of the Applicant is that when, upon the CRN kit and the password being given to him, he accessed his account, he discovered to his dismay that the balance in his ledger was only Rs. 1178.33. As repeated representations with the Respondent's officers did not yield any result, he has filed the present claim for Rs.3,50,000/-.

2. The claim and the allegations of the Applicant are denied by the Respondent. It is pointed out that the Applicant admits the receipt of the electronic contract notes as well evening calls from the Respondent's office seeking confirmation of the daily trades. It is also pointed out that the Applicant followed his initial payment of Rs 3 lakhs by a second payment of Rs 50,000/- which he would not have done had he not been aware of his ledger position. According to the Respondent, the admitted receipt of the contract notes and the confirmation calls clearly establish not only knowledge but also consent on the part of the Applicant and the claim filed by him is thus only a ruse to recover the losses incurred by him in the normal course of trading undertaken by him.

3. In his oral arguments, the Authorized Representative (AR) of the Applicant pointed out that the Applicant, as per the KYC, had no previous experience of trading in the currency market yet there were hundreds of trades shown in his account on 21st December, 2010 virtually a day after the opening of the account. He also sought to refute Respondent's argument that the Applicant's repeated payments indicated awareness of his deals by pointing out that only two payments were made viz. on 20th December, 2010 and 23rd December, 2010 of Rs 3 lakhs and Rs. 50,000/- respectively. Particular emphasis was laid on the payment of huge brokerage charges, amounting according to the AR to no less than Rs. 1.5 lakhs. This, it was argued, was the incentive for the Respondent's officials to do such large scale unauthorized trading in the account of the Applicant. The AR also drew my attention to the transcripts of the conversations recorded purportedly between the Applicant and the Relationship Manager and the Dealers which went to show firstly that they tried to evade a meeting with the Applicant

Reedha

and secondly that they tried to mislead the Applicant by presenting a false picture of profits in the trades.

4. I have carefully considered the arguments advanced by either party. The Respondent in its additional submissions dated 24th October, 2011 admitted that as per its records a brokerage of Rs. 1,90,500/- was charged from the Applicant. Considering that this brokerage was determined on trades undertaken over barely ten days it does highlight the issue raised by the AR of the Applicant regarding the inordinately large number of trades over a very short period of time. However, in the absence of any corroborating evidence, it is not possible to infer from this fact that such trades could have been done necessarily without the consent and knowledge of the Applicant. In fact there are sufficient indications on record to conclude otherwise.

5. First and foremost in this regard is Applicant's own admission that he not only received telephonic confirmation of all the trades from the office of the Respondent at the end of each day's trading but also received all the relevant contract notes. He cannot therefore plead ignorance about the trades that were undertaken in his account. Paragraph 39 of the MOU annexed to the Member-Client Agreement (MCA) signed between the parties' states as follows:

"The Client agrees that it is his/her/its responsibility to review any/ all information communicated including but not limited to order placement, order confirmations, order modifications, order executions, trade confirmations, trade modifications, bills, transaction statements, account statements, margin requirements etc. communicated to 'the Client' by any of the aforesaid means or mode whatsoever, immediately on their receipt and take necessary action. **If 'the Client' does not revert with objections within 48 hours of the issuance of information to him, the same shall be deemed accepted by the Client.** (Emphasis supplied)

6. In this case the requisite information was admittedly received by the Applicant through telephone calls as well as through Contract Notes and no objection was raised by

Rishabh

the Applicant at the relevant time. Necessarily, therefore, it has to be deemed and concluded that all the said transactions were accepted by the Applicant. This alone thus takes the bottom out of the Applicant's case.

7. The A.R. of the Applicant sought to explain this point by advancing two grounds. Firstly, it was argued that the Applicant was a novice in such trading and therefore in the absence of details regarding profit and loss as well as balance standing in his account, he could not assess the implications of the information conveyed to him. Secondly, it was alleged that the Relationship Manager having assured him that he was making a profit advised him merely to acknowledge the information regarding trades conveyed to him over the telephone. Both these arguments do not hold water. In case the Applicant was a novice and had no knowledge about the market he should not have entered such a risky business. Similarly, if he left everything to the word of the Relationship Manager, then he has only him self to blame. In fact paragraph 2 of the MOU makes the position of the Applicant quite clear:

“The ‘Client’ also acknowledges that ‘the Stock Broker’s employees/agents (whether dealer, relationship manager, sub-broker or authorized person) are not authorized to give any assurances as regards returns/outcome of trading and/or providing any type of discretionary services for trading etc. and ‘the Client’ agrees not to solicit or rely upon any such advice from the ‘Stock Broker’s employees/agents. It is agreed and accepted by ‘the Client’ that in the event any such advice/discretionary management services are accepted by ‘the Client’ from any employee/agent (including sub-broker/authorized person) of the Stock Broker, the same shall be unequivocally a personal, private arrangement between such person and ‘the Client’ and the ‘Stock Broker’ shall have no liability towards ‘the Client’ for outcome including losses...”

8. For the afore-said reasons, I find that the explanation given by the Applicant for not acting on the telephonic information as well as the contract notes is not tenable. There



is therefore no alternative but to conclude that the disputed trades were accepted by the Applicant. His claim therefore must fail.

9. Much emphasis was laid by the AR of the Applicant on the allegation that the Applicant was misled and duped deliberately by the Relationship Manager and the Dealer by verbal assurances of profit making and through falsification of ledger entries shown to him. Clearly, if the accusation here is of fraud perpetrated upon the Applicant, than this is a matter of criminal action and not one of arbitration. It is, of course, for the Applicant to decide whether he would opt for criminal action or not.

10 In the light of the discussion in the preceding paragraphs, the claim put forth by the Applicant fails and is accordingly dismissed. The parties will bear their own costs.

New Delhi
November 02, 2011.


(R.K. Ahuja)
Arbitrator