



महाराष्ट्र MAHARASHTRA
प्रधान मुद्रांक कार्यालय, मुंबई
प. मु. विद्येज्जा क्र. १०६
26 DEC 2012
सक्षम अधिकारी

श्री. ल. शि. बांबळे

परवाना क्रमांक १०६
श्यामकुंज, खोखाणी लेन, घाटकोपर (पु)
परवाना क्र ३२५०५, घाटकोपर
क्रमांक ३८८१ दिनांक
सर्वश्री/ श्री/ जैन्ती Justice Dr. Pratibha Upasani (Retd.)
याचा रु. ३०१ - ३०२, A Wing,
पेपर विस्तार Mulye Building Shivaji Nagar,
Naupada Thane (W), 400 602,
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परवानाधारक मुद्रांक विक्रेता

BEFORE THE SOLE ARBITRATOR
JUSTICE DR. PRATIBHA UPASANI (RETD.)

(Appointed as Sole Arbitrator by MCX SX, Mumbai vide its letter No. MCX-SX/ARB/MUM-02/2012/13692 dated 22nd October, 2012 as per rules of the Exchange.

Arbitration Matter No. MUM-02/2012

BETWEEN

Mr. Prabhakar Bhaskarrao Pawar,
14, "Vidyavihar", Chopda,
District – Jalgaon, PIN - 425107
(PAN No. AASPP8199D)

Applicant /
Constituent

AND

M/s Angel Broking Limited,
G1, Akruti Trade Centre, Room No. 7,
Andheri (E), Mumbai – 400 093

Respondents /
Trading Member

Appearances

For Applicant

Applicant in person along with his Assistant Mr. Anil Sitaram Marathe.

For Respondents

Miss Renuka Nair, Authorized Representative

AWARD

- 1) This Arbitration Application dated 10/10/2012 is filed by the Applicant / Constituent, Mr. Prabhakar B. Pawar against the Respondents / Trading Member, Angel Broking Limited seeking direction that Respondents be directed to pay to him sum of Rs.1,00,000/-
- 2) Case of the Applicant as revealed from his Complaint letter dated 10/10/2012 which is being treated as his Statement of Case may be stated briefly as follows :-
- 3) It is the case of the Applicant at the outset that the Respondents were trying to take disadvantage of the signed documents, namely, the Member Client Agreement and the Risk Disclosure Agreement. He received a letter on 10/06/2012 from the Respondents dated 7/06/2012 which according to him was totally baffling and untrue. In the said letter the Respondents had mentioned that amount of

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Rs.34,482.11 was outstanding for payment by the Applicant for the last 90 days, when the fact was that Respondents started trading from 4/05/2012 and exhausted all his money on 23/05/2012. The letter also stated that Respondents had sent Contract Notes and Bills at the relevant time and also approached the Applicant several times in the past over phone and through personal visits. The Applicant has averred that this Statement of the Respondents is false as he did not receive any type of communication from the Respondent Company. He has stated that he was not at all consulted beforehand nor had he confirmed those trades, and all the trades were made without his knowledge. He has further stated that he had instructed the Sub Broker Mr. Prashant Naik that before trading he should consult the Applicant and that he intended to trade with one currency with small quantity. It is the grievance of the Applicant that the Sub Broker, however, did not adhere to his instructions and traded heavy positions without consulting the Applicant and failed. According to him it was the wrong practice of the Respondents not to consult and confirm trading prior to execution and it is his experience with the other companies that they regularly consult and confirm trades prior to execution. He has stated that till date he has not received a single copy of contract note from the Respondents nor did they approach him in the past over phone or through personal visits as alleged by them. His specific grievance is that he was not advised or informed in any manner or through any medium about squaring up of his position. He has stated that on 24/05/2012 he received a message pertaining to the trading that had taken place. On closer

inspection he realized that the sub broker had heavily traded. The said message did not talk about squaring up. When the Applicant contacted the Sub Broker it was at that time that the Sub Broker bluntly responded that the (Respondent) Company had squared up his positions. The Applicant was bewildered as to how the Company could take such drastic measures without his knowledge. Following the squaring up, the Applicant received a message on 24/05/2012 for margin shortfall which should have preceded the step of squaring up thereby giving him opportunity to save his money. Since that was not done the Applicant did not get opportunity to cover up his losses.

- 4) The Applicant has further given 5 dates of trade and corresponding 5 dates when he received message from the Respondents for margin shortfall. He has demonstrated by citing these dates that each time the margin call was much subsequent to the date of trade. For example, when the date of trade 17/05/2012, the margin call was received by him on 24/05/2012. Similarly, when the date of trade was 22/05/2012, the margin call was received by him on 24/05/2012. It is the contention of the Applicant that this delay in conveying the margin shortfall left him completely helpless to make an effort to save him money. According to him this mechanism caused him heavy losses and showed how faulty the Respondents' working was. It is contended by him that his Account was managed by the Sub Broker for generating brokerage only. Lastly, he has submitted that he was not accepting any trades made by the Respondents and that he was also not accepting the dates shown in his

Account. He has requested that his case be considered sympathetically and the amount of Rs.1,00,000/- be recovered from Respondents Company.

- 5) The Respondents have filed their reply / Statement of Defence dated 9/11/2012 refuting all the allegations levelled against them by the Applicant. They have admitted that the Applicant is their Constituent, registered through the Sub Broker, Mr. Prashant Naik and that for opening the Trading Account with the Respondents, the Applicant executed Member Client Agreement and signed and delivered Risk Disclosure Statement, tripartite Agreement with the said Sub Broker and other relevant documents. The Applicant was allotted Client Code P58362 for the purpose of trading and maintaining Statement of Accounts and securities. After completion of these formalities the Applicant started trading through the Respondents on the MCX Stock Exchange Limited with effect from 4/05/2012. The Respondents have annexed to their Statement of Defence copies of the relevant documents collectively called KYC and has marked them as Exhibit – "A".
- 6) The Respondents have submitted that the Applicant, after opening his Trading Account with the Respondents, made a payment of Rs.1,00,000/- on 3/05/2012 for which credit was given in MCD-Futures segment. Exhibited – "B" annexed to the reply is the copy of Ledger Statement for currency segment (MCD-Futures). The first trade executed in the Applicant's Account, according to the narration of the Respondents, was on 04/05/2012 and the last trade carried out in his account was on 23/05/2012. It is the contention of

the Respondents that Applicant has executed several trades with them without raising any dispute, for which they, at all times, issued contract notes and bills to the registered residential address provided by the Applicant while executing KYC.

- 7) The Respondents have stated that all the trades executed in the Applicant's Account were under his express instructions and with his knowledge. They have stated that contract notes and bills were regularly sent to him. They have annexed to their reply copies of the contract notes and bills for relevant period as Exhibit – "D" Collectively. Exhibit – D1 are the copies of PODs of contract notes for relevant period. They have further stated that with respect to all the trades executed in the Applicant's Account, trade confirmations through SMSs were also sent on daily basis to the designated mobile number 9764850530 provided by the Applicant himself while signing KYC. They have annexed to their reply as Exhibit – "E" copy of the SMS log. They have further stated that Quarterly Ledger Statement was also sent to the residential address of the Applicant. Exhibit – "F" is the copy of Quarterly Ledger Statement and Exhibit F1 is the copy of proof of dispatch (POD) sent under Certificate of Posting.
- 8) Respondents have further submitted that the Applicant used to place orders with the Sub Broker over cell phone and was in continuous touch with him and used to call him from his registered cell number as mentioned in KYC to the cell phone and landline number of the Sub Broker and vice versa. Exhibit – "G" annexed to the reply is the call log

details of the Sub Broker issued under RTI Act, 2005 which clearly showed that the Applicant was in continuous touch with the Sub Broker and was fully aware of the trades executed in his Account. They have contended that on this background the Applicant's grievance that he was not aware of the trades executed in his Account and that he had no knowledge of the same is false and baseless.

- 9) The Respondents have further submitted that Applicant had also taken a payout from his Account in MCD segment for Rs.5,000/- on 9/05/2012 which clearly proved that the Applicant had full knowledge and was well aware of all the trades executed in his Account. They have further pointed out that it was never his case that trades were executed in his Account with his consent until the Respondents squared off the open positions of the Applicant to minimize the losses.
- 10) The Respondents have submitted that the Applicant carried out following transactions in currency derivatives segment.

Sr. No.	Symbol	Qty	Expiry
1	FUTCUR EURINR	15	29-05-2012
2.	FUTURE JPYINR	10	29-05-2012
3.	FUTURE USDINR	25	29-05-2012

The Respondents have submitted that following sell position were outstanding on 23/05/2012. On 22/05/2012, when the market opened, the Applicant had an opening credit balance of Rs.12,550.72 in his Account and due to market movement of the said date, the Applicant incurred Mark to Market Loss

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of Rs.18,912.50 on his above said outstanding positions and the Applicant's Ledger turned negative with a debit balance of Rs.6,361.78. The Applicant's margin account on 22/05/2012, when the market closed had a margin shortage of Rs.1,03,523.09 which the Applicant was bound to furnish in order to keep his outstanding positions. Respondents also have submitted that the margin account of the Applicant was running short of funds though with small amounts from 16/05/2012. They have annexed to their reply as Exhibit – "H" copy of the margin statement for the relevant period.

- 11) The Respondents have stated that Applicant was well informed about the margin shortfall running in his Account through SMSs sent to his designated mobile number intimating him to make the payment towards margin shortfall running in his account. Further, the Respondents' sub broker had been requesting him to replenish the margin account with funds. On 22/05/2012, as margin account showed serious shortage Respondents requested the Applicant to pay the margin money but he failed to furnish the same. On the following day i.e. on 23/05/2012, market further moved against the Applicant incurring more loss to him. Since the Applicant did not make the payment of margin money and the market was moving against him, the Respondents were constrained to square off the said outstanding future currency position in order to reduce risk of loss to the Applicant and to maintain the integrity of the currency derivatives market. Respondents have submitted that on 23/05/2012 the Applicant incurred a further loss of Rs.23,889.76. As a result of losses from the said trade, as

on 23/05/2012 the Applicant's account accumulated debit balance of Rs.34,482.11. According to the Respondents this is evident from the Ledger Exhibited as 'B' to their reply. According to them the total debit balance in the Applicant's account as on 24/05/2012 was, therefore, Rs.34,482.11 which the Applicant, as per the Respondents' counterclaim, the Applicant was legally liable to pay to the Respondents. Respondents have claimed payment of this amount from the Applicant with interest @ 18% p.a. from 24/05/2012.

- 12) The Respondents have further submitted that the Applicant had opened trading account with his eyes open, made payment to the Respondents for carrying out trade and had also withdrawn money from his account and that he was fully aware of the financial risk involved in trading. They have further pointed out Clause No. 5 and 6 of the Member Client Agreement which empowers the trading member to liquidate / close out all or any of the client's position for non payment of margins or any other amount, etc., etc. According to them they were within their powers and authority to liquidate the positions of Applicant for not replenishing the shortage in the margin shortfall. According to them Respondents have also provided the Applicant a unique ID and password which allowed him to 24 X 7 excess to the back office website of the Respondents where the Applicant could view status of his account including margin positions, ledger balances and all transaction details. They have also reiterated about regularly sending contract notes and bills, quarterly Ledger Statement and sending SMSs. They have also further highlighted that there was no complaint from the

Applicant any time before and such a complaint was made first time after the squaring off. They have, therefore, prayed that the Arbitration Application of the Applicant be dismissed with costs and their counterclaim for Rs.34,482.11 be allowed.

- 13) The Sole Arbitrator entered reference on 3/12/2012. On that day, however, the Applicant remained absent. It was informed that the Applicant had communicated by e-mail that he would not be attending the meeting. No rejoinder was also filed by the Applicant though he was in receipt of the reply sent by Respondents. The Respondents' authorized representative was present on the date of first hearing. The Sole Arbitrator, therefore, was constrained to adjourn the matter to 21/12/2012. It was directed that if the Applicant desired to file rejoinder, he should send the same within 10 days. At the time of second hearing, the Applicant was present along with his assistant Mr. Anil Marathe. He, however, had not filed any rejoinder in spite of the direction contained in the Roznama dated 3/12/2012. The Respondents' Authorized representative Ms Renuka Naik was present. When the Applicant was specifically asked whether he had brought any rejoinder for filing, the answer was in the negative. However, the Arbitrator felt that since the reply of the Respondents had raised many issues, a specific reply to those issues and averments from the Applicant were desirable. Therefore, the Applicant was asked to submit his rejoinder in writing though he had said that he would proceed orally on the basis of denial. On this the Applicant wrote his rejoinder on the sheet of paper which

only contained few lines. It was taken on record. In the said rejoinder the Applicant had stated that he was sticking to the points that all the trades were unauthorized, that courier record was untrue and it was all managed, that margin money reply was totally misleading and that he was not accepting the debt of Rs.34,482.11 which Respondents had demanded. There was nothing more by way of evidence to substantiate or support these statements.

- 14) I have heard both the sides exhaustively and extensively. I have also carefully gone through the records. After scrutinizing the evidence produced before me by both the sides I have arrived at a conclusion that the Applicant has failed to make out any case. The reasons for arriving at this decision are given below.
- 15) The case of the Applicant in nutshell is that there was unauthorized trading in his account and that all the trades were without his knowledge. The first thing that comes to mind after reading this contention is that, if "all" the trades were made without his knowledge then how come that he received a payout of Rs.5,000/- ? He could have very well asked the Respondents as to from where this amount came since there was no trading. His act of accepting that amount goes to prove that he was aware of the transactions. Secondly, if one goes through his complaint cum Application dated 10/10/2012 it will be revealed that he starts making grievance only after he got letter dated 7/06/2012 from the Respondents in which they had stated that amount of Rs.34,482.11 stood as debit in his account. This fact is

mentioned in the very first paragraph. His complaint about unauthorized trades comes in the subsequent para. A reasonable inference, therefore, may be drawn that the demand of the outstanding amount of Rs.34,482.11 made by the Respondents triggered filing of this Arbitration Application. Applicant's grievance is that he has not received any contract notes and bills. He, however, does not utter a word about SMSs sent by Respondents. The Respondents have highlighted this fact about sending of SMSs but there is no denial at all from the Applicant of this fact. For this purpose filing of Rejoinder and specific denial of this point was necessary which the Applicant has failed to do. It is also pertinent to note that he has not of his own mentioned having received Rs.5,000/- as payout. He has suppressed this fact. When the Respondents pointed this out in their reply, again there is silence on this point by the Applicant in his Rejoinder. This conduct speaks volume. Whatever has not been specifically denied is deemed to have been accepted. On the one hand he says that he did not receive a single copy of contract note and that on 24/05/2012, for the first time, he received message pertaining to the trading that had taken place and that on "closer inspection" he realized that sub broker had heavily traded. On the background of his denial of having received contract notes and bills so also Ledger Statement, "closer inspection" of which documents was made by the Applicant ? Or was it that he found it from the back office website of the Respondents where he was allowed 24 x 7 access ? On this point also there is deafening silence from the Applicant's side. He has not responded at all to all these points

highlighted by the Respondents in their reply. The call-log Exhibit – "G" lends credence to the statement made by Respondents that Applicant was in continuous contact with the sub-broker.

- 16) The Applicant has not denied having signed the Member Client Agreement, Risk Disclosure Document, etc. He has not denied his signature nor has he said that his signature is forged. His contention is that the Respondents were trying to take disadvantage of signing these documents. It is not clear as to what disadvantage the Respondents were trying to take. It is pertinent to note that Member Client Agreement contains important clauses which bind both the parties. For example, Clause No. 5 and 6 empowers and entitle the trading member to liquidate / close out all or any of the client's position for non payment of margins or any other amounts, outstanding debits, etc. and adjust the proceeds of such liquidation / close out, if any, against the client's liabilities / obligations. These clauses further say that any and all losses and financial charges on account of such liquidation / closing out shall be charged to and borne by the client. The Respondents have rightly highlighted these clauses. Taking recourse to clauses in the Risk Disclosure Document, the Respondents have correctly averred that the Applicant had opened the trading account with them with his eyes open and was aware of the financial risk involved in trading. As already observed, the clauses which contain terms and conditions of MC Agreement, tripartite Agreement and the Risk Disclosure Statement bind the parties equally and if Respondents are taking recourse to these terms and

conditions which have been admittedly signed by both the parties, it cannot be said (as contended by the Applicant) that Respondents are trying to take disadvantage of these documents. When there was a shortfall in the margin, demand was made to the Applicant to replenish the shortfall and since the Applicant did not replenish that amount the Respondents legitimately and in pursuance to the clauses mentioned in the Member Client Agreement squared off the Applicant's position. Therefore, it has to be stated that they acted within their power and authority. Moreover, the Applicant is an educated person and he also does not appear to be a novice because he has narrated in his complaint his experience with other Trading Members.

- 17) These are civil proceedings and the initial burden to prove his case is on the Applicant, and when both parties are permitted to adduce evidence, this burden of proof goes on shifting. The Applicant has failed to discharge his burden. The Respondents on the other hand have come out with the convincing documentary proof to support their contentions. In civil proceedings documents speak for themselves. In the present case at hand, the copies of documents annexed by Respondents to their reply (Exhibit – "A" to Exhibit – "H") appear to be quite convincing and credible. Since these documents inspire confidence, the Respondents' case appears to be more convincing and hence believable. Applicant's case, therefore, fails. Even the counterclaim of the Respondents on the basis of Exhibit – "B" appears to be acceptable and it will be appropriate to allow that counterclaim. Hence, I pass the following award.

- a. Arbitration Application filed by the Applicant / Constituent, Mr. Prabhakar Bhaskarrao Pawar, against the Respondents / Trading Member, M/s Angel Broking Limited is hereby dismissed.
- b. Counter claim of the Respondents is allowed and the Applicant is directed to pay to the Respondents sum of Rs.34,482.11 with interest @ 12% p.a. from 7/06/2012 (Date of Demand) till actual payment / realization.
- c. Parties to bear their own cost.

Mumbai, dated this 12th day of January, 2013

P. D. Upasani

Justice Dr. Pratibha Upasani (Retd.)
Sole Arbitrator