



दिल्ली DELHI

49AA 176180

BEFORE SHRI VIJAI N. MATHUR, SOLE ARBITRATOR
In the matter of Arbitration under the Regulations, Bye- Laws and Rules of the
MCX Stock Exchange Ltd.
AM No DEL-04/2011

Between

Rishi Gupta
Constituent
G-56 Green Park Main,
New Delhi 110016

Applicant

And

Religare Securities Ltd.,
Trading Member
D-3, P3B, District Centre,
Saket, New Delhi-110017

Respondent

AWARD

(Passed on 3rd April 2012)

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RUPEES

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INDIA NON JUDICIAL

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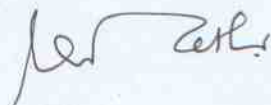
AWARD

Shri Rishi Gupta (hereinafter "the Applicant") has filed this Arbitration Application for recovery of Rs 10, 00,000 (Rupees Ten Lac only) from Religare Securities Limited a Trading member (hereinafter the "Respondent"). The detail of claim as per Annexure 3 of the Claim however mentions the claim amount as Rs 9, 98,600.

2. The applicant states that he was approached by one Pulkit Bhatia RM of the Respondent who pretended himself as the Portfolio Manager. The Applicant opened a trading account with the Respondent and executed a Member Client Agreement (MCA), Client Registration form and Risk Disclosure document on 9th/20th September 2010 for trading inter alia in Cash, F&O and Currency segment of NSE; Cash segment of BSE and MCX SX. The Respondent was allotted the customer ID RG 13049. The Applicant paid Rs 6,03,600 in his account in tow tranches and also transferred Rs. 3.5 Lacs worth of stock and Mutual Funds to the Respondent.

3. The said Pulkit Bhatia and one Tinku Mali traded heavily in the Applicant's account and pretended as they are managing his account, without providing sufficient information to him and caused heavy losses. On being objected, they assured him that they are authorized by the company to trade in client's account. He had to rely on this statement. Tinku Mali would inform the Applicant fraudulently that he was making profit. He further asked that the Applicant should reply in 'OK', when he receives the end of the day confirmation calls from the compliance department. The Applicant also used to request the Tele caller about the profitability of the trades done during the day, but no response used to come from them. The Applicant also received electronic contract notes which showed the trades done and not the profitability. He was not provided CRN access password and hence was unable to track his account. All the trading was done in his account to generate the large amount of brokerage.

4. The Respondent denies the claim being misconceived, false and devoid of any merit. The applicant traded as per his desire for nearly two months, he incurred net losses in his trading and only thereafter disputed the trades. All contract notes and bills etc were regularly sent to the respondent's email account provided by him. Copies of the E-log have been filed. In addition as a measure of abundant caution, physical contract notes for trade in derivative segment were also sent through National Bill Mailer Service. Proof of dispatch has been filed. Besides the amount of Rs 6,03,600, the Applicant also transferred some shares, the sale proceeds of which were credited to his account. The Applicant also took pay out on several



occasions and never objected to the trades even at that point of time. He never made a complaint to the respondent of the wrongful trading in his account. The Respondent has also annexed voice recordings in support of the averment that Applicant was actively involved in the trades and accepting trade confirmations without any objection.

5. I have gone through the documents filed by the parties and heard the AR of the Respondent.

6. At the initial hearing of the case on 11th November 2011, the Applicant sought and was granted time to engage a counsel to argue his case. At the next date of hearing on 9th December 2011, the Applicant again sought time to file the rejoinder to the Respondent's reply, circulated by the Exchange to the Applicant on 24th October 2011. At his request he was allowed time to do so. On the next date of hearing on 20th December 2011, the Applicant moved an application under section 27 of the Arbitration and Conciliation Act 1996, seeking permission to apply to the Court for taking the evidence of two witnesses. After hearing the parties, the Applicant was allowed to apply to the Court for assistance in taking evidence of 2 employees of the respondent and was allowed further time to do so. At the next hearing date on 8th February 2012, the Applicant stated that he has not filed the said application so far. No satisfactory reason for not doing so during the intervening period of about one and a half months could be provided by the Applicant. The case was thereafter fixed on 13th March 2012 for arguments. The Respondent was not present on that date and no application for adjournment was received. In the interest of justice a final opportunity was given to the Applicant and the case was fixed for 23rd March 2012 for final hearing. On 22nd March 2012, i.e. one day before the hearing, the Exchange received a fax from the Applicant, requesting for adjournment stating that he will be unavailable in Delhi on the date of hearing. The Applicant had been served all notices sent by the Exchange, of all the hearings. Although these tactics of the applicant clearly indicated his attempt to delay the proceedings without any justification, another opportunity was given and the case was fixed on 27th March 2012. On this day also, the Applicant failed to present himself at the hearing without any intimation and has not, in spite of the opportunity being granted, filed the Rejoinder.

7. From the actions and behavior of the Applicant as mentioned above, it appears that he is willfully and deliberately avoiding appearing at the hearings and attempting to delay the proceedings, without any valid reason or justification. In view of the above, there is no option but to proceed with the case ex-parte under section 25 of the Arbitration and Conciliation Act 1996 and MCX Stock Exchange (Currency Derivatives Segment) Trading and Clearing Regulations and decide the case based on the documents on record.




8. I have heard the AR of the Respondent in detail. The statement of account filed by the respondent shows that since the opening of the account in September 2010 the Applicant was continuously trading in his account. He made payments in his account of Rs 2 Lac at the time of opening the account and again on 2nd November 2010. The second payment of Rs 4,03,600 was made when there was already a credit balance of Rs. 53,445.31 in the account. This appears to be an on account payment for further trading in his trading account and this amount was in fact used for trading purposes within a period of one week thereafter.

9. The Applicant also got pay outs from his account on three occasions. As per the statement of account placed at page 69 of the Respondent's reply, he took three pay outs between 18th November 2010 and 14th January 2011. The last pay out was Rs. 2005.31 exactly the amount of lying credit in his account on 30th December 2010. This clearly shows that the Applicant was fully aware of the status of his account and he was making payments and taking pay outs on a regular basis, depending on his requirements and the status of his account.

10. The Applicant was also given facilities for on line viewing from the portal provided to him by the Respondent. The Applicant admits to the same but states that the password lapsed. There is no evidence on record to show that he made any attempt to regenerate the password and his plea on this account cannot be accepted. The Applicant also never raised any objection in the past about his not receiving the contract notes and statement of account etc. Therefore his contention to this effect at this stage appears to be an afterthought and has to be rejected.

11. The subsequent actions of the Applicant also do not support the contentions made in the claim statement. On the one hand he confirms receipt of the electronic contract notes and the confirmation calls, and on the other hand his contention is that wrongful trading was done in his account without his permission or knowledge. The Respondent has filed voice recordings of the confirmations calls made by its office, during which the Applicant never objected to the trades or attempted to make a complaint to the Respondent of the alleged disputed trades. He made the complaint for the first time on 9th February 2011, after the transactions in his account were over and he had taken the final pay out from his account. It may be pertinent to note that the Applicant started trading in his account from 20th October 2010 and the last trade was done 10th December 2010. The Final pay out was taken by the Respondent on 14th January 2011. This final payment was also received by the Applicant, without any protest or objection.



12. In view of the above facts and circumstances, the Applicant cannot say that he had been kept in dark about the trading transactions done in his account on his behalf from time to time or was totally ignorant of the same. He is therefore fully liable for losses if any, suffered by him on account of these trades and cannot shift the same on to the Respondent

13. In view of the above and on the basis of the documents submitted and the submissions of the parties, I hold that the Applicant's case has no merit and the same is therefore rejected.

In view of the above, the following award is passed.

Award

The claim of the Applicant is rejected.

New Delhi

3rd April 2012



Vijai N Mathur

Sole Arbitrator