



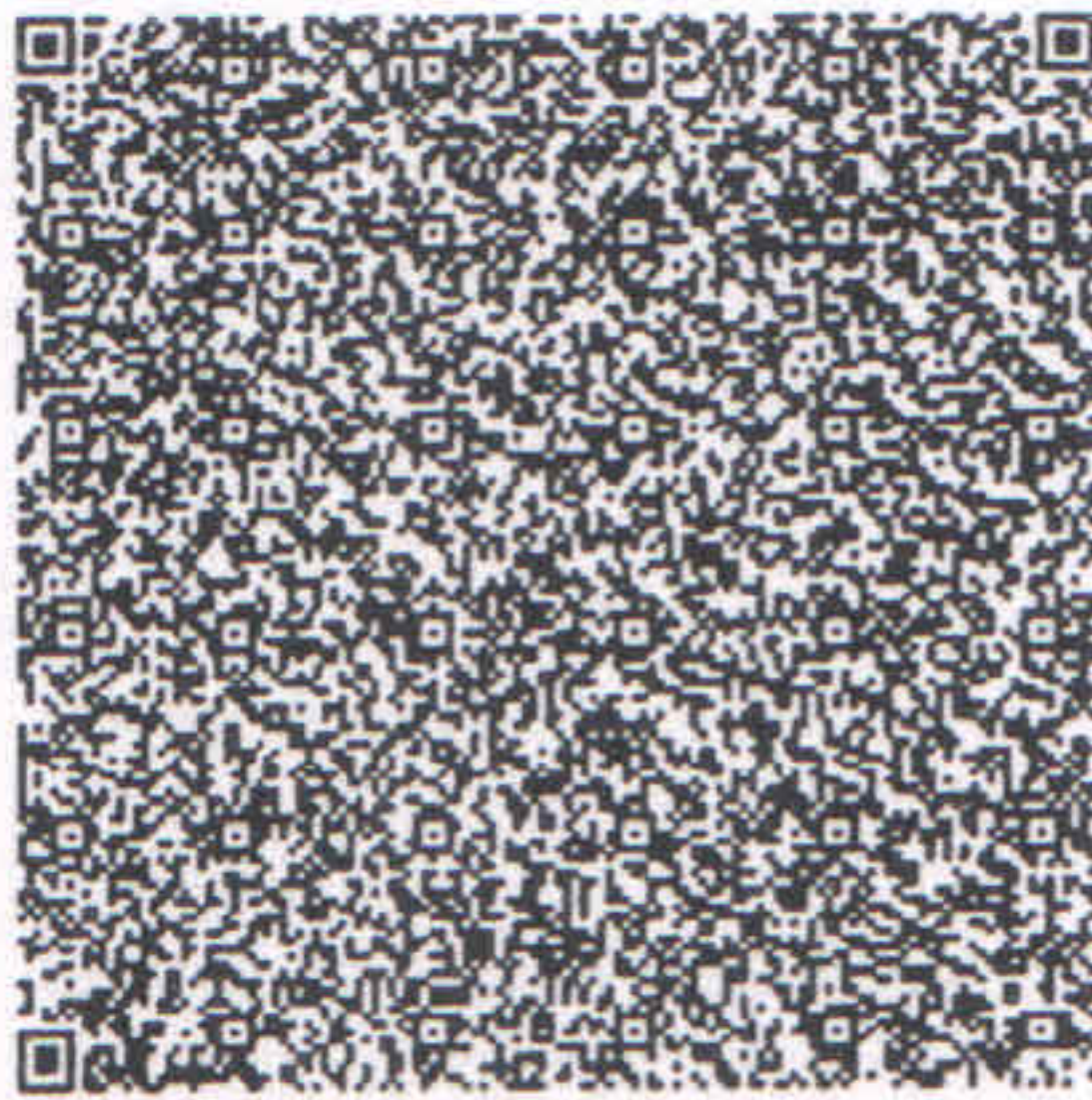
सत्यमेव जयते

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Certificate No. : IN-DL83535402066204L
 Certificate Issued Date : 26-Feb-2013 11:16 AM
 Account Reference : IMPACC (PF)/ dl763913/ DELHI/ DL-DLH
 Unique Doc. Reference : SUBIN-DL76391366713625043119L
 Purchased by : MCX STOCK EXCHANGE LTD
 Description of Document : Article 12 Award
 Property Description : NA
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : MCX STOCK EXCHANGE LTD
 Second Party : NA
 Stamp Duty Paid By : MCX STOCK EXCHANGE LTD
 Stamp Duty Amount(Rs.) : 10
 (Ten only)



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In the matter of Appellate Arbitration as per the Bye-laws and Regulations Of MCX Stock Exchange Ltd.
 Before the Appellate Panel of Arbitrators Consisting of

Justice S.N. Kapoor (Retd.)
 (Presiding Arbitrator)

Shri R.K. Ahuja, IAS, (Retd.)
 (Arbitrator)

Shri Vijai Mathur
 (Arbitrator)

Appellate Arbitration matter no. (DEL- 01/2012)/2013

Between

Rohit Shandil (constituent)

Applicant

Versus

Religare Securities Ltd. (Trading Member)

Respondent

Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
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Award

This appeal is directed against an Award dismissing the claims of the Appellant Shri Rohit Shandil.

We have heard the Appellant Shri Rohit Shandil appearing in person as well as Authorized Representatives (AR) Mr. Rajesh K. Verma & Mr. Mayank Bhatia of the respondent Trading Member M/s Religare Securities Ltd., (hereinafter referred to as TM for short)

The Appellant has claimed an amount of Rs. 2,40,514/- against the Trading Member. The Appellant had undisputedly opened a Trading Account with the Respondent on 17.07.2010 and subsequently entered into another Account for Trading in Currency on 04.07.2011 by entering into a Member Client Agreement (MCA). The Appellant has submitted that the numerous transactions were unauthorized in his Account. He had no previous knowledge of the Equity Market and so he had not opted for the highly risky MCX-SX Derivatives Market and Currency Derivatives. He was led by Relationship Manager (RM) Shri Varun Aggarwal to trade in F&O. RM had sent him the form for it. The RM had done unauthorized trading in his account only to generate brokerage. He relied upon Annexure 16, the letter dated 13.12.2011. He has also claimed that he wanted to stop the trading as the RM was indulging in fraudulent practices and transactions in his Account in December, 2011. He mentioned some allegedly forged figures in the statement and claimed that the RM had deceived him by making him to believe that everything was alright in derivatives by furnishing false and incorrect information. This has led to the loss. Though, RM promised and assured to come to his place and explain all the transactions, he came after about a month and could not satisfactory explain the losses. The Appellant also claimed that during the meeting with the officials of the Trading Member he had given oral instructions to the TM to stop trading in his Account.

The Respondent disputed the claim and clarified that as per the financial statement of the Appellant's Account, the Appellant suffered a loss of Rs. 2,46,716/-. The Respondent disputed the claim of the Appellant that all the Currency Trades in his Account were unauthorized. According to the Respondent the Appellant had voluntarily opened a Currency Specific Account on 04.07.2011 (vide Annexure-1). The Respondent has also pointed out that as per Annexure-3 the Financial Statement for the period from 01.04.2011 to 31.02.2012, the Appellant had made as many as five payment amounting to Rs. 2,08,000/-. This would indicate knowledge as no prudent person would make the payment without checking his account. Though the Appellant allegedly complained about unauthorized transactions in his account he



had made the payment of Rs. 25,000/- in his account towards his trading obligations. The Appellant was also confirming the trades on getting the confirmation calls and contract notes; quarterly statements were sent to him regularly at his Registered, Email-id but he had never disputed the trades spread over six months. Thus, the Appellant was aware of his trades from the very first day and he continued to trade without any objection. As such he could not dispute that all the trades had been done as per his desire or directions. The AR of the Respondent also disputed the allegations of the Appellant that he could not view his account details on line i.e. between 02.09. 2010 to 23.06.2011 before, he opened his Currency Account in July 2011.

Having heard both of the parties and having perused the challenged Award and the documents referred to by the parties we find it difficult to accept the bald version of the Appellant. It is claimed that certain parts of the Excel upfront Currency Scheme Form were filled up by Shri R.M. Varun Aggarwal. But the Claimant accepts opening of the account and his signatures on it. He subsequently operated on the account by entering into various transactions – at least by allowing RM to enter into transactions. He is literate enough to appreciate the implications. Consequently, his plea has no substance. It is unacceptable that he was deceived into signing the document for opening the Currency Specific Account on 04.07.2011. It may be mentioned that Appellant is not only a Commerce graduate, he also operates the computer and internet for the purpose of remaining the contact with the world. He claims that he was not able to trade as access to the site was blocked at his work place but it is not his case that it was blocked by the TM for he never requested for getting it opened at his work place. He could and must have had open access at his residence and elsewhere. He could have also demanded a statement. He had also admittedly confirmed trades on phone to Religare. It could not be believed that he was not aware of the transactions when he was being informed about the transactions on phone for confirmation, and when contract notes and the statements etc. were being sent to his email address as well as by post.

The Appellant could not deny these facts. Nor did he deny that a payment of Rs. 25,000/- was made after sending the request dated 13.12.2011, for change of his R.M.

The Respondent has filed numerous documents indicating sale confirmation (vide Annexure – 3). They relate to specific transactions.

It would be worthwhile to reproduce Appellant's complaint dated 13.12.2011. It reads as under:

Dear Mr. Vikas Sethi,


Vikas Sethi

Ankur

Religare

This is to bring to your notice that I am not satisfied with the conduct of my Relationship Manager (RM), Varun Aggarwal. The reasons are stated below-

- 1) My account was opened in the year 2010 and I had been managing it by myself. After sometime, I was not able to trade as access to the site was blocked at my workplace.
- 2) My RM had been pursuing me to give him a chance to trade and then decide according to the results.
- 3) After about one year, in about June or July 2011, I allowed him to trade with my money amounting to Rs. 3 Lakh.
- 4) He called me back saying that a profit of Rs. 5,000 has been made.
- 5) I gained confidence and allowed him to trade in a conservative manner.
- 6) Later he told me that now he has managed a profit of Rs. 50,000.
- 7) Between August & September 2011, RM asked me to transfer Rs. 1 Lakh in 3 installments (from Bank of Religare A/C) due to two reasons – SEBI has changed the amount of margin money to be maintained and later the stock market has fallen.
- 8) On being asked by RM to transfer Rs. 50,000 (from Bank to Religare A/C) on 21st September 2011, I felt that something is wrong and asked him to come to my place for a meeting.
- 9) RM kept avoiding meeting with me for more than a month on the pretext that he is busy.
- 10) During last week of November, I was told by RM on phone that I am running a loss of Rs. 30,000 and asked for more margin money to be deposited from Bank to Religare A/C.
- 11) I was regularly given false information by RM regarding my A/C. At the time when I was told of a loss of Rs. 30,000, I suspect that he had duped me of Rs. 3 Lakh (out of 4 Lakh) due to his reckless trading in only 3 to 4 months.

 Anupam Rastogi

12) I had been confirming trades (on phone to Religare) done assuming that the information being given by RM is correct.

13) When he finally visited for a meeting, he could not explain my account position.

14) On being asked for the reason of losses, he would have only one reply that he acted according to 'calls given by Religare research'.

Please change my Relationship Manager so that I can get correct information about my account, which I am not able to get from my current RM.

Thanks

Rohit

It is apparent from Para 3 that he himself had allowed Relationship Manager to trade with his money amounting to Rs. 3 Lakhs. He also complains in Para 10 and 11 that the Relationship Manager had duped him of Rs. 3 Lakhs out of 4 Lakhs "due to his reckless trading in only to three to four months".

From Para 12 it is apparent that he had been confirming trades on phone by assuming that the information being given by RM was correct. He did not specify that any information given and referred to in Annexure – 3 filed by the Respondent was incorrect. He was also informed by the RM that he was acting according to "calls given by Religare Research".

There are numerous letters filed by the Respondent on record indicating the dispatch of Contract Notes / Bills / Bounce and Margin Statements on various dates as per details attached with the letters w.e.f. 24.08.2012 upto 30.11.2011.

The RM would advise only on the basis of the information collected either from the Market trends or from the Research Cells of the Trading Member. If the RM was acting on such information, he could not be said to be acting with any malafide intention. Anybody's estimated trend of market could go wrong on account of sudden decisions of government(s), changes in government, fiscal policies, foreign relations, world over depressive market trends, sudden calamities etc. All these cause risk in trade and one has to be ready for it.

[Handwritten signatures: Anupam, Akashan]

Though, the Appellant claimed that he had authorized the RM to trade in his Account but such type of arrangement between the client and the RM is prohibited in terms of Clause 2 of Annexure-C. The Clause 2 of Annexure – C which reads as under:

"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 / out come 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 advise / 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 if any on account of such discretionary or similar services accepted by "the Client" in contravention of these explicit written terms between "the Stock Broker" and "the Client".

This Annexure – C was signed by the Appellant (claimant). As has already been mentioned the Claimant is a Post Graduate in Commerce and naturally he would have understood the contents mentioned in Clause 2 of MOU as well as its implications while signing such Memorandum of Understanding (MOU). The Clause 2 of Annexure – C is not in such a small font that it is not readable. The font is adequately large and the term 2 of the MOU is quite clear and legible. If he himself indulged, if his version is at all correct, in allowing the RM to trade in his account, he has only to blame himself and the TM can not be held responsible. Supposing, RM had acted rashly and negligently, and consequently he suffered losses, his remedy would lie against RM Varun Aggarwal in view of aforementioned Clause 2.

The circumstances indicate that the Appellant would all along have been aware of the trades and transactions entered in his Account. The claim has been raised belatedly as an after thought. His own conduct in depositing Rs. 25,000/- on 15.12.2011 and requesting on 13.12.2011 only to change his Relationship Manager is inconsistent with his stand that he wanted to close the trading in his account and had given oral instruction to the TM accordingly. He did not make any such averment in the letter dated 13.12.2011. Nor there is any

Dr. Kapur

Reads -

corroborative piece of evidence in this regard except his own bald oral submission that he had informed the officials, of the TM, to stop trading in his account.

We have considered the case of the Appellant from all possible view points and find it difficult to accept the contention of the Appellant.

In view of the above discussion we feel that there is no substance in submissions of the Claimant that the Learned Arbitrator, who gave the Award, was wrong in dismissing his claims.

It does not appear that the view taken by the Learned Arbitrator was illogical or perverse.

Accordingly, we do not find any reason to interfere with the Award. In the result, for aforesaid

S.N. Kapoor reasons the appeal fails and it is dismissed accordingly.

This Appellate Arbitral Award is announced on *2nd* Day of *March* *2013* at *Delhi*
MCX'SX Arbitration Centre Delhi at New Delhi.

S.N. Kapoor
Justice S.N. Kapoor (Retd.)
(Presiding Arbitrator)

R.K. Ahuja
Shri R.K. Ahuja, IAS, (Retd.)
(Arbitrator)

Vijai Mathur
Shri Vijai Mathur
(Arbitrator)