

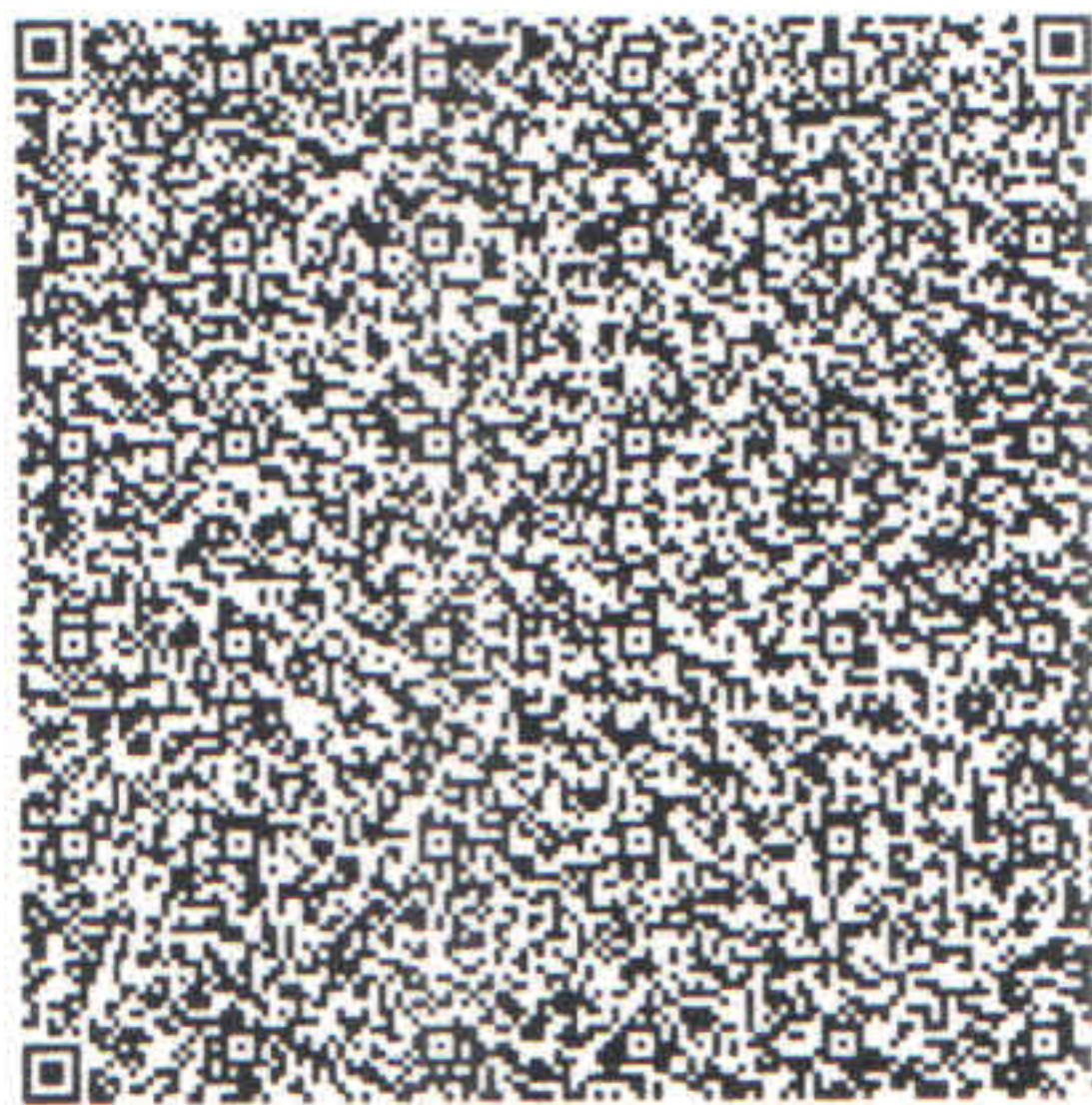
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

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Purchased by	: MCX STOCK EXCHANGE LIMITED
Description of Document	: Article Others
Property Description	: NA
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Before Justice (Reth.) Mahmood Ali Khan,  
Sole Arbitrator  
MCX-SX/ARB/DEL-12/ 2013

Shri Sailendra Kumar  
R/o 3<sup>rd</sup> floor, I-9, Near Subhash chowk  
Laxmi Nagar, New Delhi-110092

Applicant - Constituent

VERSUS

Kaynet Capital Ltd.  
Kaynet House, 55 Panchkuian Road  
Near R.K.Ashram Metro, New Delhi-110001

Respondent – Trading Member

#### Statutory Alert:

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BEFORE JUSTICE (Retd) MAHMOOD ALI KHAN,  
SOLE ARBITRATOR

MCX-SX/ARB/DEL-12/2-13/DEL-338

IN THE MATTER OF:

Shri Sailendra Kumar  
r/o 3<sup>rd</sup> floor, I-9, near Subhash Chowk  
Laxmi Nagar  
Delhi – 110 092

..Applicant – Constituent

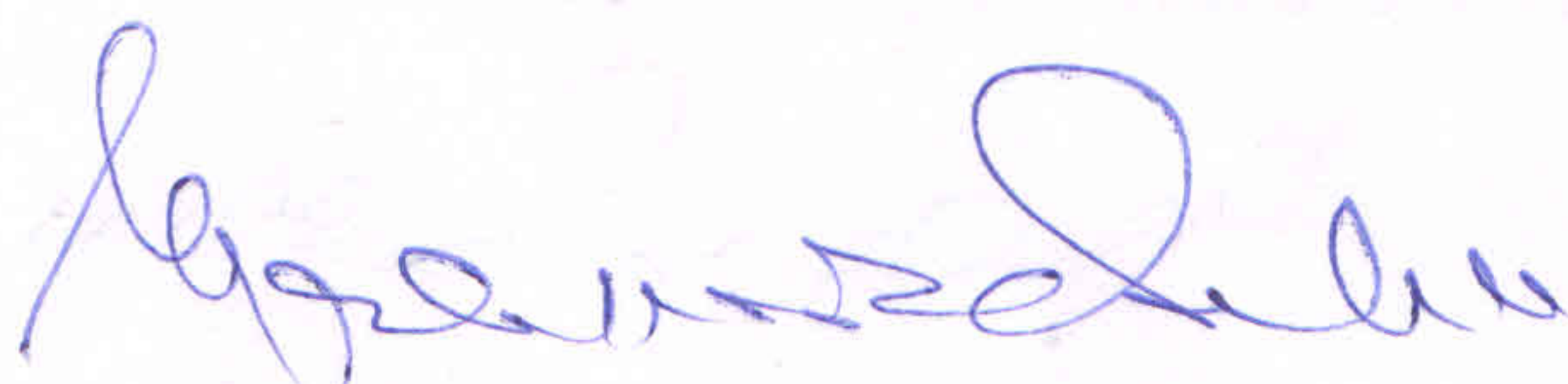
Versus

Kaynel Capital Ltd.,  
Kaynet House,  
55, Panchkuian Road  
Near Ramkrishna Metro Station  
New Delhi – 110 001

..Respondent – Trading Member

AWARD

1. The applicant – Constituent had a currency trading account with the respondent – Trading Member. He has filed the present arbitration application for recovery of the claim of Rs. 51,186/- from the respondent on the allegations that unauthorized trades in currency have been executed in his account on 7.1.2013, as a result of which he has suffered loss of Rs. 49,186.92. The respondent – Trading Member has contested the claim and in reply has contended that the executed trades were as desired by the applicant and due information was sent to the applicant – Constituent and confirmation of all the trades was also made by the applicant.
2. The dispute, which has arisen between the parties, has been referred by MCX Stock Exchange for adjudication by arbitration.
3. I have heard the applicant, who has argued in person, and the representative of the respondent.- Trading Member. I have also carefully gone through the entire record.
4. The case of the applicant is that on 7.1.2013 the dealer of the respondent had persuaded him to allow trading in USD INR. Since he did not know much about trading in USD INR, he asked him to put stop loss of Rs. 3,500/- to Rs. 4,000/-. The dealer did not tell him about the lot size and the margin requirement in such trades. He took upon himself the responsibility. He bought 200 lots of USD INR <sup>which</sup> with required margin of Rs. 1,93,991.04 (1.75% of the total value of the transaction). The trade of this volume was done by just increasing leverage for which no consent was taken from him. He never told him that he would start trading with 200 lots of USD INR on sell side followed by trade of buy 200 lots of USD INR. The dealer knew that even brokerage of these transactions would be Rs. 8,000/- and some taxes of about Rs. 2,500/- will be levied which is far far away from his stop loss of Rs. 3500 – 4000. He had suffered loss of Rs. 49,186.92 as against the specific stop loss of Rs. 3,500/- to Rs. 4,000/-. It is





submitted that he had a talk with Shri Tejpal Dahiya, Relationship Manager about it on 11.1.2013 but nothing has come out. He made complaint in writing on 12.1.2013 to the respondent but received no response.

5. The respondent – Trading Member in its reply has denied the allegations of the applicant. It has been stated that on receipt of the complaint from the applicant on 12.1.2013, the ID of the applicant was put on suspension and on verification employees of the respondent confirmed that order for ~~all~~ <sup>the</sup> trades was placed by the applicant at his discretion by making a call from his mobile phone to the mobile phone of the Dealer. It is not possible to record all the discrete communications at random, so arrangement has been made for giving Trade Confirmation Call at the end of the day at client's registered Mobile number and on 7.1.2013, the transaction date of disputed trade, the compliance team of the respondent got in touch with the applicant and explained to him the details of his trades executed by the applicant in his trading ID with the respondent. The applicant has accepted and confirmed all the trades through recorded line. The applicant himself had taken the call to buy / sell and hold the position and now denial after five days was surprising. The transcription of the confirmation calls was being filed.

6. The respondent further stated that the applicant used to take heavy intraday exposure from the respondent in F&O and currency segment as could be seen in the ledger which has been submitted. Prior to 7.1.2013 the applicant's ID was suspended three times and was recouped after the applicant accepted his trade confirmation. The respondent ~~had~~ had been regularly sending trade confirmations to the applicant's registered Email ID. The applicant had subscribed for dispatch of Electronic Contract Notes facility. The applicant was a high volume trader and he used to be provided Intraday exposure 4-5 times strictly on intraday basis so his contention as to how did a trade of 400 lots of USD INR went through on 7.1.2013 holds no base. Besides trade confirmations, SMS were also sent to his registered Mobile number.

7. The dispute is about intraday currency trades in USD INR executed in the account of the applicant on 7.1.2013. The applicant has alleged that he had allowed the dealer of the respondent to do currency trades. But his grievance is that he had asked the dealer to put a stop loss of Rs. 3,000/- to Rs. 4,000/-, yet the dealer had taken sell and buy positions in 200 lots of USD INR (total 800 lots) in intraday trading which resulted into loss of Rs. 49,186.92. It has been submitted that the amount of loss was far ~~the~~ <sup>in</sup> excess of the stop loss of Rs. 3,000/- to Rs. 4,000/- which he had asked the dealer to apply. His contention is that in the beginning of the day on 7.1.2013 he had the credit balance of Rs. 78,059/- and thereafter he had taken two buy positions in DLF & ONGC and invested Rs. 56,370/- leaving Rs. 21,689/- as the available margin. It is submitted that trade in 800 lots of USD INR could not have been done on the basis of available margin without the respondent giving high leverage much more than what was permissible just to earn brokerage at the expense of the client. The applicant has also admitted that he had a talk with the dealer at around 3.30p.m. on the same day and was told that his loss in the



Intraday trade was around Rs. 35,000/-. The applicant has also admitted having received confirmation call from the respondent in the evening or the next morning during which he had confirmed the trades. But his contention is that at the time of the confirmation of the trades, he was unaware of the size of the lot and that after he received ECN of the trades, he found that he had actually suffered loss of Rs. 49,186.92. The submission of the applicant, therefore, is that the dealer had far exceeded his brief and executed the trades in currency of the volume which could not have been done on the basis of available margin in the account and against his instructions of stop loss of Rs. 3,000/- to Rs. 4,000/-.

8. During the hearing, the applicant has admitted that he was an online trader and had been carrying out trades of high volume in F&O segment of the stock market. He has also admitted that before the impugned trades were done, he had carried out currency trading in USD INR in one lot in which he had earned small profit.

9. From the submissions, it is very much clear that the applicant is not a novice in the stock market. He had been carrying out heavy trading in F&O segment of the stock market and was well aware of the size of the lot / position in which he was trading there. He had opened a currency account, obviously with a view of trading in currency segment also. It is unbelievable that he would carry out trades in currency segment without acquainting himself of the size of the lot and the margin requirement. Admittedly, he had carried out trading in one lot of USD INR, may be on trial basis as he has submitted, a few months before 7.1.2013. Before undertaking trading even in one lot of USD INR, he had to acquaint himself of the size of the lot to know about the total value of the trade. Therefore, his contention that he did not know the lot size when he had allowed the dealer to trade in USD INR on 7.1.2013 or confirmed the trades is not believable.

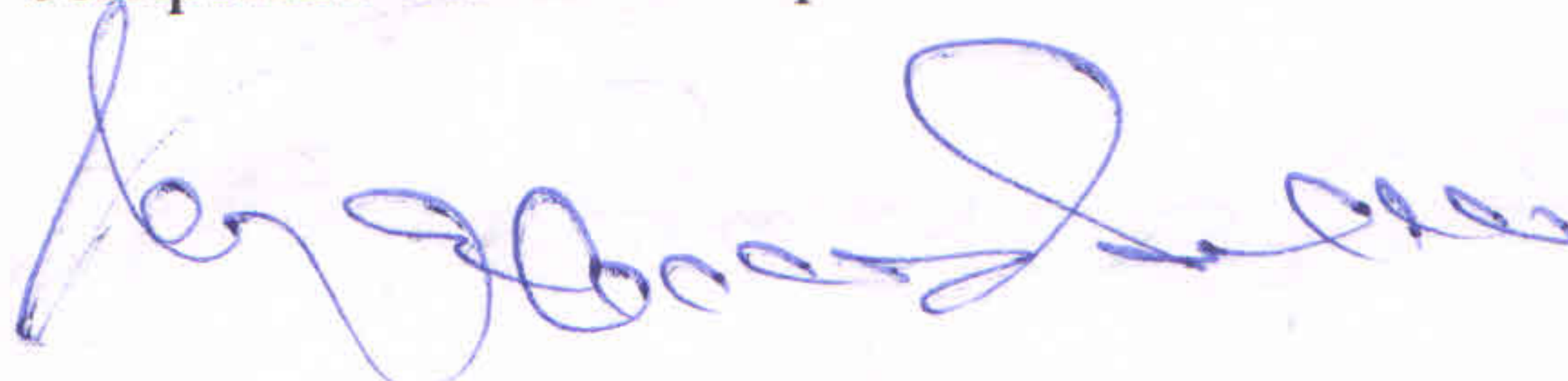
10. The respondent in its reply has stated that it allowed exposure of three to four times for trading Intraday. The representative of the respondent stated that in the stock market, the margin allowed is upto 10 times of the available money depending upon the nature and volume of trade and certain other factors since the business of trading is very competitive but in currency trade it is generally allowed between three to four times. He has denied that the margin is calculated at the rate of 1.75% of the total volume of the trade, as alleged by the applicant. According to him 1.75% of the trade value is taken as margin only in cash market. It is submitted by him whether the credit balance in the account of the applicant is taken to be Rs. 78,000/- or Rs. 21,000/- sufficient margin was available for Intraday trading of the volume which has been carried out in the account of the applicant on 7.1.2013.

11. The applicant has not denied that Intraday trading margin requirement goes up and down with the settlement of each transaction of buy and sell. The requirement of the margin would be much more if the created position is carried forward. In this case, all the positions, which were taken on 7.1.2013 in the account of the applicant, were settled on the same day. Therefore, the margin requirement for the trades which was done was much less, than assumed by the applicant. The applicant had erroneously calculated the margin requirement on the basis of the total <sup>value</sup>, i.e., of the trades buy and sell positions



without realizing that it will go up or down with each transaction. Hedging transaction done in this case will require much less margin. The applicant has alleged that available credit balance in his account in the beginning of the day was over Rs. 78,000/-. Impugned trades were done around 11.30a.m.. Though during hearing he contended that in the meantime he had taken two future positions as a result of which the available credit balance was reduced to about Rs. 21,000/- but no such case is alleged in the complaint. Assuming that applicant's allegation that sufficient margin was not available in his account when the impugned trades were carried out still the trade done will not become illegal / invalid, may be the respondent would have exposed itself to a great risk of losing money as well as invite heavy penalty on itself and its client by Exchange if norms for margin requirement were violated.

12. It is also pertinent to note that as per statement of the applicant, he had come to know from the dealer at about 3.30p.m. that he had suffered a loss of Rs. 35,000/- in the currency trade, yet he did not raise any objection. After all he was an on line trader and could have easily sent a written protest to the respondent. Furthermore, he would have refused to confirm the impugned trades when a confirmation call was received from the respondent. The representative of the respondent has submitted that the respondent has a facility of first sending the confirmation call to the client within half an hour of the closing of the trading day generated by its auto system. The confirmation call is generated by auto system and the client may confirm it or dispute it by pressing a button as per instructions but the applicant had disconnected the auto generated confirmation call. So as per practice a manual confirmation call was sent to him immediately after disconnection of the auto generated call. He has placed recording of the conversation between the applicant and the dealer at 3.05p.m.. during which the applicant did not dispute the currency trades in his account although he knew about the volume of the trades. In the manual confirmation calls also, the applicant confirmed the trades. His contention that he had confirmed the trades because at that time he did not know about the lot size and the total value of the trades done in the account is devoid of any merit. Around 3.30p.m. he had come to know that he had suffered loss of Rs.35,000/- at least. This loss was much more than what was expected by him as per his case while giving instructions to the dealer before the trades were done. The applicant could not have accepted the trades if he had asked the dealer to put a stop loss of Rs. 3,000/- to Rs. 4,000/-. The applicant has admitted that he had not told the dealer about the lot size in which the trades were to be carried out. In fact his contention is that the impugned trades were unauthorized because they were traded in 800 lots of USD INR in which he suffered loss of over Rs. 49,000/-. The applicant has come to know of the lot size of the trades around 3p.m. yet he had confirmed the trades in the evening. He even did not complain when he received the contract notes on his Email ID. He was an online trader and could have easily sent a complaint on line immediately when he found that the trades which were executed were not in accordance with his desire and instructions. He made the first complaint over telephone on 11.1.2013 and a written complaint on 12.1.2013. He has not been able to explain the delay of 4 or 5 days in making the complaint. He is an experienced trader in stock market, so ought to have



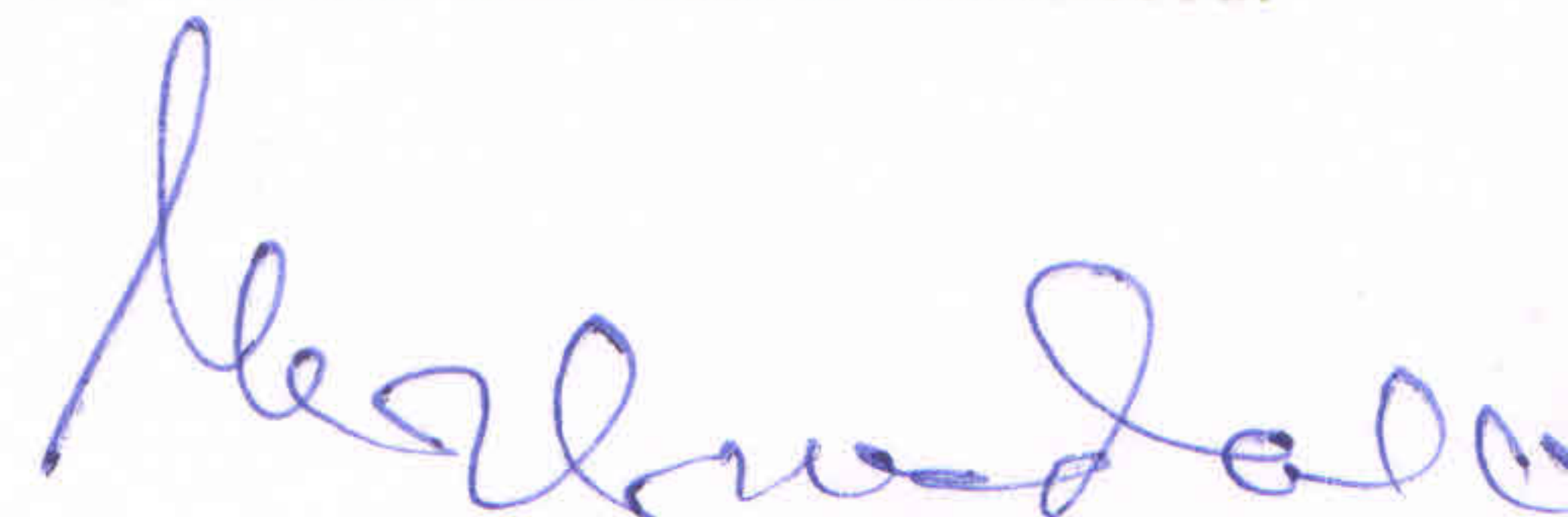


objected to the trades on his coming to know of its volume in the afternoon or decline to confirm it when the confirmation call was received or on receipt of the ECN or at least on the following day. This has not been done. It is contrary to the conduct of an ordinary prudent man what to say of an experienced trader in the stock market.

13. For the reasons stated above, it cannot be held that the currency trades were not in accordance with the instructions of the applicant to the dealer and that the applicant is not liable to bear the losses resulting from those trades.

14. Accordingly, the arbitration application and the claim preferred therein fails and is dismissed.  
No cost.

Award announced on this  
the 25<sup>th</sup> day of April, 2013



(M.A. KHAN)  
SOLE ARBITRATOR