



पश्चिमवङ्ग पश्चिम बंगाल WEST BENGAL

R 395182

ARBITRATION AWARD

Arbitration matter No. KOL-04/2013

CAAP Id ARB/MCX'SX/K/2013/216

BETWEEN

Sambhu Nath Rudra Pal,
Roygate, Palashi
24 Parganas North, West Bengal
Pin-743 195
PAN No. ARSPP 8246 N

.....Applicant

And

M/s Nirmal Bang Securities Pvt. Ltd.,
AC Market Building
1, Shakespeare Sarani, 8th floor, Backside
Kolkata-700071

.....Respondent

1. **Appearances**

For the Applicant Mr. Sambhu Nath Rudra Pal, the Applicant, appeared in all the hearings. He was assisted by Mr. Tarak Pal in the second hearing.

For the Respondent Mr. Arindam Ghosh, authorized representative appeared on behalf of M/s Nirmal Bang Securities Pvt. Ltd. in all the hearings. He was assisted by Mr. Soumitra Ukil of their Salt Lake office in the second and third hearings as per direction of the Arbitrator.

2. **Facts of the case**

The Applicant has requested for adjudication by arbitration of his claim for recovery of a sum of Rs. 1,60,000/- from the Respondent (hereinafter called Nirmal Bang) for the trades done by the Respondent in the portal of MCX'SX.

3. **Documents submitted**

By the Applicant:

- (i) Arbitration application on form No. I dated 28th May, 2013.
- (ii) Copy of the complaint dated 8th May 2013 addressed to the Officer-in-Charge of Invested Service Centre at MCX'SX.
- (iii) Copy of the minutes of the meeting dated 15th May, 2013 held at Investor Service Centre of MCX'SX at Kolkata
- (iv) Copy of the Financial statement for Financial Year 2012-2013.
- (v) Copy of clientwise global position statement for the period 01.04.2008 to 31.03.2013.
- (vi) Information about complaint furnished to MCX'SX dated 23rd April, 2013.
- (vii) Copy of reply dated 25.04.2013 received from the Respondent along with a CD
- (viii) Copy of KYC, policies and procedures, running account authorization, internet trading letter and other documents executed in connection with opening of trading account with the Respondent.

By the Respondent

- i) Reply by the Respondent to the Arbitration Application dated 1st July 2013 along with enclosures, viz:
 - a) Copies of duly executed KYC documents, risk disclosure document, general terms and conditions, running account authorization, ECN mandate letter etc.
 - b) Copy of the financial ledger of the Applicant for the financial years 2012-2013 and 2013-2014.
 - c) Copies of contract notes for trades executed in the currency segment of MCX'SX.
 - d) Copy of ECN logs showing delivery of contract notes.
 - e) Copies of SMS logs evidencing successful delivery of SMSs at the Applicant's registered number.
 - f) Copy of the complaint lodged by the Applicant
 - g) Copy of the reply filed by the Respondent dated 25.04.2013.
- ii) Response of the Respondent dated 18.07.2013 after the first hearing held on the 8th July 2013 enclosing the following:
 - a) Copy of welcome letter
 - b) Proof of dispatch of welcome kit
 - c) Transcript of recording of conversation between the Applicant and employees of the Respondent company on various dates pertaining to both currency segment in MCX'SX and equity segment is NSE
 - d) The CD containing the recording of conversation
 - e) Notarised affidavit of the transcript of conversation.
- iii) Responses of the Respondent further to the hearing held on the 25th July 2013

4. **Applicant's Case**

The Applicant opened a trading account with Nirmal Bang in their Salt Lake Branch on the 11th January 2013. He executed necessary documents in this connection. He also opened a D-mat account for transfer of his shares to Nirmal Bang. Thereafter, he transferred shares worth Rs. 2.23 lakhs (as on 16th January 2013) from VCK shares and Stocks, Kolkata to

Nirmal Bang except 27 shares of Nagarjuna Fertilizers. The Applicant deposited a sum of Rs. 30,000/- on 15th February, 2013 and another sum of Rs. 10,000/- on 2nd February 2013.

On 7th March, 2013, the Applicant received an SMS alert conveying sale of his shares on the same day. He alleged that the shares were sold without his consent and he did not place any orders either for purchase or for sale. He also denied having made any transaction in currency derivatives. The Applicant/Complainant alleged that the transactions in currency derivatives were made through MCX-SX involving huge sums of money and he was not aware of any such transactions. For a small investor like him it was not possible to make such huge trading.

The Applicant/Complainant also alleged that his shares were sold by Nirmal Bang through NSE and again purchased through BSE to keep his debit balance alive.

5. **Respondent's Case**

Nirmal Bang have submitted the following in reply to the complaint filed by the Applicant.

- (i) The arbitration application filed by the Applicant does not contain his statement of case. Therefore, it is not possible on the part of the Respondent to file the reply to Applicant's statement of case. However, from the content of the complaint made to Investor Service Centre of MCX'SX at Kolkata, Nirmal Bang have submitted their responses.
- (ii) The Applicant became a client of Nirmal Bang after signing necessary documents, viz, KYC Application form, risk disclosure documents, general terms and conditions, running account authorization, ECN mandate letter etc.
- (iii) The Applicant, from time to time, entered into various dealings and trades on the currency and stock exchange.
- (iv) The very first transaction in the account of the Applicant was in currency segment of MCX-SX.

- (v) All the trades/deals in the account of the Applicant have been executed as per the desire and direction of the Applicant. The soft copies of all contract notes, bills, margin statements, ledger etc were sent electronically at the registered E-mail address of the Applicant.
- (vi) The Applicant has not raised any dispute grievance immediately on their receipt. The copy of ECN logs showing successful delivery of all contract notes, bills etc. have been submitted as proof for the same.
- (vii) The trade details were also conveyed to the registered mobile number of the Applicant by way of SMS. The applicant has kept mum after receipt of these SMSs. The copies of SMS logs evidencing successful delivery of SMS has been submitted by Nirmal Bang.
- (viii) The Applicant has made payments to Nirmal Bang on two occasions, first on 15.02.2013 and then again on 22.02.2013. Had the trades been executed in the account of the applicant without his knowledge and consent, he would not have made these payments.
- (ix) The transcript of recordings of conversation between the Applicant and the employees of Nirmal Bang at their Salt Lake office on various dates has been submitted along with the CD. Nowhere in the voice recording any whiff of dispute or voice of disagreement regarding any trade is voiced by the Applicant.
- (x) The Applicant alleged that he had instructed Mr. Srunitra Ukil, the dealer at the Salt Lake office of Nirmal Bang to stop further trade after 2/3 days of starting the trade. In case, the applicant really gave such an instruction, he would not have accepted further trades in his account.

By giving the aforesaid clarifications, Nirmal Bang have prayed that the Arbitrator dismisses the claim and contentions of the Applicant as false and baseless.

6. Dates of Hearing and brief contents thereof

- 6.1 Hearings were held on the 8th July 2013, 25th July 2013 and 28th August 2013 at the office of MCX'SX, Kolkata.
- 6.2 Mr. Sambhu Nath Rudra Pal, the Applicant himself appeared in the 1st hearing held on the 8th July 2013. He made his submissions. He narrated the developments that took place. He mentioned that copies of documents executed at the time of opening the trading account, viz., MCA, KYC and other related documents were not received by him. He wanted to know why his stocks were sold in NSE and purchased at BSE on the same day. He also mentioned that after 2/3 days of starting the trades, he instructed Mr. Soumitra Ukil, the employee of the Respondent at their Salt Lake office to stop the trades. He also mentioned that he had received the ECNs at the end of the day and trade confirmation were also received after the day's transactions. He also agreed that the SMSs were received by him but he did not realize the implication of these SMSs. He also mentioned that he had done share trading with VCK Shares and Stocks since 2007 but he had not done any currency derivative trading in the past. Therefore, he did not have any knowledge about currency trading.

Thereafter, the views of the Respondent were sought on the remarks made by the Applicant. Mr. Arindam Ghosh, the authorized representative of the Respondent narrated whatever has been covered in their statement of defense. However, to get a clearer picture, Mr. Ghosh was asked to arrange for/furnish the following:

- (i) Attendance of Mr. Soumitra Ukil, the employee at their Salt Lake office in the next hearing
- (ii) Proof of delivery of KYC, MCA and other related documents
- (iii) The voice recording CD along with the transcript and related affidavit both at NSE and MCX'SX.
- (iv) Documentary proof of consent given by the Applicant to place verbal orders
- (v) Break-up of loss incurred by the Applicant showing the brokerages component separately

- (vi) Whether any similar complaint has been received against Mr. Ukil from any other investor/constituent.

The Applicant was also asked to furnish the following:

- (i) Documentary proof, if any, of the request to stop trading after 2/3 days of starting the trade.
- (ii) When he made the first complaint to Nirmal Bang?
- (iii) Any other submission the Applicant would like to make to strengthen his case.

Both the parties were asked to furnish the above clarification/ responses to MCX-SX by 18th July, 2013 for onward transmission to the Arbitrator.

The date of next hearing was fixed on the 25th July 2013 at the office of MCX-SX, Kolkata.

- 6.3 The second hearing was held on the 25th July 2013. The Applicant appeared in person. He was assisted by Sri Tarak Pal. The Applicant made further submissions. To substantiate his comment regarding alleged unauthorized trading, Mr. Pal, the authorized representatives of the Applicant mentioned that there must be some voice recording at the office of the Respondent when Mr. Sambu Nath Rudra Pal was placing the orders with the Respondent. He also mentioned that he found no reason for selling the stocks at NSE and again buying the same at BSE on the same day, i.e., 7th March, 2013. The reason for the same must be clarified to the Arbitrator. The Applicant also mentioned that the sole motive for executing huge currency transaction to the extent of Rs. 2 crores to Rs. 10 crores (approx) on a single day was only to earn heavy brokerage. He also mentioned that Mr. Soumitra Ukil confirmed to him on 7th March 2013 that he still had some position in future segment left after sale of the securities.

Mr. Arindam Ghosh, the authorized representative of Nirmal Bang was asked to comment on the remarks made by the Applicant / his authorized representative. He generally covered in his response whatever has been already submitted in their statement of defense and further written clarifications. When Mr. Ghosh was asked about

documentary proof for placement of orders, he expressed that Mr. Soumitra Ukil, being the concerned dealer, will be the better person to respond. When Mr. Ukil was asked for his comments, he mentioned that all the orders were executed by him as per direction of the Applicant. When he was asked for some documentary proof, he requested for some time as he has to go back to his office and look for the old records/documents. Mr. Arindam Ghosh mentioned that their office had informed to the Applicant about all the transactions executed during the day by means of ECNs and SMSs. Quarterly statements have also been sent as per agreement. No complaint was received by them from the Applicant regarding unauthorized trading immediately after receipt of the same. The ignorance as projected by the Applicant does not appear to be convincing. The Applicant used to share his views with Mr. Ukil about the transactions.

After hearing the submissions from both the parties it was felt that the following clarifications would be needed for taking a final view in this matter.

- (i) Some documentary proof be submitted by Mr. Soumitra Ukil on behalf of the Respondent as proof of placement of order.
- (ii) Why the shares were sold in NSE and again bought in BSE on the same day, i.e., 7th March, 2013?
- (iii) On certain days huge transaction were undertaken by the dealer, Mr. Soumitra Ukil. Why was this done?
- (iv) Copy of voice recording containing the transaction on the 7th March, 2013 which took place between the Applicant and Mr. Soumitra Ukil, which has been submitted by the Respondent to the IGRC at NSE.
- (v) The Applicant commented that he was informed by Mr. Ukil that some position was still left after the sale transaction on 7th March 2013. The Respondent would give their response to the above comment of the Applicant.

The above information (Particulars were required to be furnished to MCX'SX by 16th August 2013 for onward transmission to the

Amend

Arbitrator. The next hearing was fixed on the 28th August 2013 at the office of MCX'SX at their Kolkata office.

- 6.4 The third hearing was held on the 28th August 2013. The Applicant made further submissions. He initially denied the discussions which took place between Soumitra Ukil and himself before placement of orders. But, subsequently, he confessed that some discussions used to take place with Mr. Ukil but not on regular basis. He also reiterated that Mr. Soumitra Ukil did not take his consent before executing the transactions in the currency market.

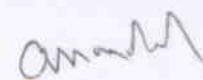
In response to the above remarks of the Applicant, the Respondent made the following submissions:

- (i) Their Salt Lake office is not fully covered under voice recording. Only some lines are connected with the voice recording system.
- (ii) The voice recording CD of 9th January 2013 has already been submitted by them as evidence. This voice recording clearly indicates that the applicant has confirmed the E-mail address.
- (iii) The extracts of two voice recordings dated 1st February 2013 and 19th February 2013 were read out in course of the hearing. These indicate that the Applicant has knowledge about the currency market and has given instruction to trade in the currency market.

After hearing the submissions of both the sides, the Respondent was asked to submit the following by 5th September 2013.

- (i) The reason for selling the stocks in NSE and buying the same in BSE on the same day, i.e., on 7th March, 2013.
- (ii) The extract of voice recordings on 1st and 19th February 2013.
- (iii) CD containing the voice recording that took place between Mr. Soumitra Ukil of the Respondent and Mr. Sambhu Nath Rudra Pal before selling and buying the stocks in NSE and BSE market respectively for onward transmission to the Arbitrator by 5th September 2013.

As no additional points came up during discussion, the hearing was concluded and stage was set for the arbitrator to issue the Award on



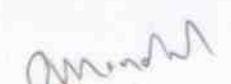
examination of the papers/documents submitted by both the parties and the submissions made in course of the hearings.

7. Analysis and Findings

I have analysed the facts and circumstances of the case including all the documents submitted by both the Applicant and the Respondent and my findings are as under:-

- 7.1 One of the main complaints of the Applicant is that the trades in the currency market were executed by Mr. Soumitra Ukil, the dealer of the Respondent at their Salt Lake Office without his authorization and consent.

I have carefully examined this complaint. As per the agreement executed by Applicant, the client shall give any order for sell or buy of a security/derivatives contract in writing or in such form or manner as may be mutually agreed between the client and the stock broker. In the instant case the client/applicant has chosen to give verbal orders. When the Respondent was asked to furnish proof of placement of orders by the Applicant, they could not submit any documentary proof. They have clarified that all the telephone/mobile phone lines at their Salt Lake office are not linked to voice recording system. The orders were received by Mr. Soumitra Ukil, the concerned dealer through his mobile phone which is not linked to voice recording system. Mr. Ukil was called in course of the second hearing for necessary clarification. He has confessed that he used to have overall discussion with the Applicant prior to the execution of the trades. Only after receiving clear consent he used to trade in the Applicant's account. As most of the discussions were held with the Applicant from his mobile phone and were held way back in February and March 2013, he did not have any proof of call records. However, in this case, the Respondent have sent/provided confirmation of the orders executed by the Respondent on behalf of the Applicant at the end of the day. The soft copies of all the contract notes, i.e., ECNs have been sent at the registered E-mail address of the Applicant. The Applicant has not denied the receipt of the ECNs. The confirmations of the trades done during the day has been



informed to the Applicant in a regular manner. The Respondent have submitted the CD containing the voice recordings of the trade confirmations conveyed to the Applicant. The Applicant has also not denied receipt of these confirmations. Apart from that, SMSs have also been sent to the Applicant regarding the trades executed on the Applicant's behalf. The Applicant has agreed that he received the SMSs but did not understand the implications of these messages. It is therefore, very clear that the Applicant was aware of the trades. The Respondent can not be held liable for the ignorance of the Applicant.

The Applicant has mentioned in his complaint that he requested Mr. Soumitra Ukil, the concerned dealer at the Salt Lake Office of the Respondent to stop trading after 2/3 days of starting the trade. When Mr. Ukil was asked for his response to this allegation in course of the second hearing, he flatly refused the receipt of any such request to stop trading. The Applicant also could not provide any documentary proof for making such a request.

I have also gone through the transcript of conversation between the Applicant and the employees of the Respondent on various dates. The calls have been made to the Applicant's registered mobile number 9239021517.

From the confirmation calls pertaining to the currency segment it is observed that the Respondent has confirmed the trades done on the 1st, 4th, 5th, 6th, 7th, 8th February, 2013 onwards. The Applicant has not denied the receipt of these confirmation calls. But, at the same time, the Applicant complained that he requested Mr. Soumitra Ukil to stop trading after 2/3 days of starting the trade. The receipt of confirmation calls has documentary evidence. But, there is no documentary evidence for the request to stop trading.


The Applicant mentioned in course of the first hearing that copies of documents, viz. MCA, KYC, Risk disclosure document etc. which were executed at the time of opening the trading account were not

received by him. The Respondent has provided documentary evidence of proof of dispatch of the welcome kit which contains, interalia, KYC registration documents. The welcome kit was sent through "First Flight Couriers Ltd.". The standard procedure for sending the welcome kit has been followed by the Respondent. In course of first hearing, the Applicant admitted receipt of some documents from the Respondent through courier.

Regarding the trades done on the 7th March, 2013, it is observed from the transcript of conversation that the Applicant has confirmed the trades. When the Respondent's representative informed the Applicant at 16.55 hrs on 07.03.2013 about the trades done in BSE and NSE, the Applicant has sought details of the scrips in which trades have been done. The Respondent's representative has first given details of stock bought in BSE and then given the details of stocks sold in NSE. After giving the details, the Respondent's representative has asked for confirmation of these trades. The Applicant, thereafter, has confirmed by responding 'yes'. The balance of Rs. 19,203.03 (debit) in the account at the end of the day has also been confirmed by the Applicant.

The reason for sale of the stocks at NSE and purchase of the same stock at BSE on the 7th March, 2013 was enquired from the Respondent. Initially, the Respondent conveyed that these transaction were not executed at MCX'SX and therefore, not under the purview of this arbitration proceeding. Later on, the Respondent's representative has clarified that these transaction were carried out as per the desire and direction of the Applicant. The sale and purchase transaction were conveyed to the Applicant on the 7th March, 2013 itself which were duly accepted and ratified by the Applicant.

Lastly, the Applicant had been pressing again and again for submission of some CD submitted to NSE containing the conversation between Mr. Soumitra Ukil of the Respondent and the Applicant which took place immediately before selling and buying



the same stock in NSE and BSE respectively. In this connection, the Respondent have confirmed that all the recordings of conversation which have been furnished before the Investor Services Cell of NSE have already been furnished to MCX'SX. I have gone through the contents of the all the recordings produced before me.

7.2 In view of my aforesaid analysis of the case and taking a holistic view of the entire matter, I do not find any merit in the complaint of the Applicant, Mr. Sambhu Nath Rudra Pal.

8. Award

I, therefore, issue the following award:

- i) The prayer of the Applicant for the claim of Rs. 1,60,000/- is rejected.

The award is duly prepared and signed in triplicate by the Arbitrator as on the date and place indicated below and one set each of the same be supplied to the Applicant and the Respondent and the remaining set be kept as record by the office of MCX'SX.

Dated: The 21st October, 2013

Place: Kolkata


(Amitabha Mandal)

Arbitrator