



दिल्ली DELHI

49AA 795157

Before Mr. R.K.Ahooja, Sole Arbitrator

In the Matter of Arbitration under the Bye-laws, Rules & Regulations of the

MCX Stock Exchange Limited

Arbitration Matter No. DEL-05/2012

Between

Mrs. Shashikala Rathi,

A-305, Prashant Vihar, Rohini,

Delhi-110085

Applicant

And

M/s Religare Securities Ltd.,

D3, P3B, District Centre, Saket,

New Delhi-110017

Respondent

AWARD

R.K. Ahooja



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The Applicant states that she was persuaded by Mr. Khimender Mohan, Relationship Manager (RM) and Mr. Gagnesh Gupta, Branch Manager (BM) of the Respondent to open a trading account with the Respondent with effect from 4th August, 2010. As the Applicant was not well versed with the stock/commodity market, she states that she made clear to the RM and BM that she was interested only in long term investment. On this assurance she gave various cheques amounting to Rs. 8, 48,580.99 by way of opening charges and initial deposit in her trading account. The Applicant further submits that in order to ascertain the progress and to get the information about the profits and gains she contacted the BM in March 2011 and asked for the statement of account as she was not provided with the requisite unique ID code and password through which she could access her account on line. She was, however, put off on one pretext or another and it was only in August 2011 when she visited the Branch Office of the Respondent that she came to know that huge losses had been incurred in her account through unauthorized trades the details of which she learnt only when she was able to get the password from the Respondent on 25.01.2012. The Applicant alleges that all of her investment was lost through illegal, unauthorized and speculative trades conducted by the officials of the Respondent solely with a view to earn vast amounts of brokerage and to meet their internal targets for which they were rewarded by the Respondent at the cost of immense losses to the Applicant. She now seeks, through these proceedings, the reimbursement of these losses from the Respondent.

2. In the Reply Statement, the Respondent has denied the allegations made by the Applicant and characterized them as concocted and fabricated. As per the version of the Respondent the Applicant while opening her account had opted for trading in "F&O/derivative segment" and "currency derivative segment" as well as the "cash segment"; further more she had also signed the Risk Disclosure Document for the currency derivative segment. It has also been asserted by the Respondent that the Applicant undertook trades in all the three aforementioned segments and her active participation and knowledge, it is stated, is affirmed by the various pay-ins and pay-outs made in her account at various times and intervals. As per the Respondent, contract notes as well as quarterly statements of account were punctually and regularly sent to her but no error was pointed out by the Applicant nor any dispute raised. The Respondent submits that claim of the Applicant is based on an afterthought of making good her losses by shifting the responsibility for her own trades to the Respondent.

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3. I have heard the parties. It was strenuously argued on behalf of the Applicant that none of the pay-ins and pay-outs listed in the Reply Statement related to the currency derivative segment. The Applicant sought to establish this with reference to the Financial Statement for the Year 2010-11 attached with her Rejoinder which, it was stated, had been down loaded from the web site of the Respondent. It was pointed out that this statement which depicted the derivative trades has no mention of any pay-ins or pay-outs showed conclusively, according to the Applicant, that the money deposited by her was meant entirely for the cash segment and that these trades were not authorized by her. The Authorized Representative (AR) of the Respondent on the other hand questioned the evidentiary value of the statement since it was possible to cull out a statement to show only the trades of a particular segment without producing the complete statement of account which would have clearly bought out that pay-ins and pay-outs were related to the total trading including derivatives entered into by the Applicant.

4. I find that while it is correct that the pay-ins of 8.10.10(Rs.3 lakhs) and 3.12.10(5 lakhs) do not find a mention in the Financial statement for 2010-11, the pay in of 25.8.2011(Rs. 1.26 lakhs) and the pay outs of 28.4.11(Rs. 4,12,705.08), 13.9.11(Rs. 1,96,477.44) and 1.11.11(Rs. 97,485.00) are found in the Financial Statement for the year 2011-12 which is also annexed with the Rejoinder filed by the Applicant. This Statement contains a large number of derivative trades and thus the very basis of the argument of the Applicant disappears. I also find that the credibility of Applicant's case is adversely affected by certain inconsistencies in her version. Thus, for instance, she states that she came to know that there were large losses in her account in August 2011 but waits till January 2012 to find out the details. In the meantime she accepts pay outs in September and November 2011. What is even more significant is the fact that she made a substantial pay-in of Rs 1.26 lakhs at the fag end of August 2011 when she already was aware of her losses on account of 'unauthorized trades'. Such anomalous conduct can hardly inspire confidence in the veracity of her claim.

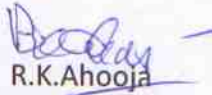
5. I might add that during the course of arguments a recording of the conversation between officials of the Respondent and the husband of the Applicant was played. This contained a reference to a trade in euro currency. The explanation given on behalf of the Applicant was that the conversation related to the account of the daughter and not of the Applicant. Be that as it may the inference does arise that dealings in the currency segment were

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being conducted in a related account by the husband of the Applicant who was also acting for the Applicant.

6. In the light of the discussion in the preceding paragraphs, I find that the claim of Applicant fails and is accordingly dismissed. The parties will however bear their own costs.

New Delhi
June 15, 2012


R.K. Ahooja
Sole Arbitrator