

For MARATHA SAHAKARI BANK LTD.

MRS. S. S. SAMANT  
Authorised Signatory

MARATHA SAHAKARI BANK LTD  
196, MATUSHREE APTS. H V ROAD  
ANDHERI (EAST)  
MUMBAI - 400 069

STP(V)/C.R./1099/01/10/802-05/10

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Before The Sole Arbitrator Mr. Deba Prasad Roy

In The Matter Of Arbitration under the Bye Laws, Rules and Regulations of MCX  
Stock Exchange Limited (MCX-SX)

ARBITRATION MATTER NO.: MUM-04/2013

Between

**RTG Share Broking Ltd.**

(Trading Member)

3, Chapel Road, Nr. Jeff Caterers,

Off. Hill Road, Bandra (West),

Mumbai - 400 050

..... Applicant

And

**Mrs. Sunita Gupte**

(Constituent)

7A 2X, Sch. No. 71-'C' Sector,

Indore - 452009

..... Respondent

**AWARD**

**1. The claim**

The applicant RTG Share Broking Ltd. (trading member of MCX-SX) filed a claim for ₹1,00,394.15/- (Rupees one lakh three hundred ninety four and paise fifteen only) from Mrs. Sunita Gupte (Constituent) being the debit balance in her ledger account together with interest at 21% p.a. from April 01, 2012 till date of payment.



## 2. The Hearings

The proceedings in the arbitration matter were initiated by issuance of letter dated March 05, 2013 by the arbitration department of MCX-SX upon receipt of application with relevant documents submitted by the trading member on February 18, 2013.

The initial hearing was fixed on April 02, 2013 by letter dated March 06, 2013 issued to both the parties by the arbitration department of MCX-SX.

## 3. Appearances

Ms. Glynis Sequeira, appeared for the applicant under due authorization. The respondent appeared in person accompanied by her husband Mr. Krishna Gupte for the purpose of assisting her in the matter.

## 4. Applicants statement of case


The respondent had opened a MCX-SX Currency Derivative trading account with the applicant on January 17, 2012 and had been trading through their Indore branch. However she stopped trading in March 2012 when asked to clear the debit balance in her account. She said that she was out of town and would clear the balance on her return. Despite regular follow-up the payment was not forthcoming and the applicant's Mumbai head office who contacted her was told that she was out of Indore and would clear the outstanding shortly on her return.

Only when the applicant received her complaint from the Exchange they realized that the respondent was denying the trades, in spite of receiving digital contract notes and trade logs on her registered email id daily. The applicant submitted KYC, Member Client Agreement, Tripartite Agreement between stock broker, sub broker and client, contract notes, trade logs, ledger account and sauda summary.

## 5. Respondent's statement of reply

The respondent had given ~~the~~ cheque for ₹5,000/- and ₹1,00,000/- to open her trading account in January, 2012. She had specifically instructed the applicant not to trade in her account without specific instructions and directions. Copies of executed documents were not sent to her. On visiting the branch office on April 03, 2012 she was informed that the office had closed in March, 2012. On contacting the Mumbai office she was informed that there was a debit balance of ₹1,00,394/- in her account when no trade had been done and she had not received any phone, SMS or ledger statement.

Thereafter she lodged a complaint with NSE who directed it to MCX-SX. She denied having carried out any trades and had not made any phone calls for this purpose.





## 6. Proceedings

At the hearings held on April 02, 2013 the applicant made detailed submissions in regard to their statement of claim. The Sole Arbitrator enquired how such large debits were allowed in the account without the respondent furnishing any margins. They submitted that it was a relationship call. The applicant advised that orders were received over the phone but there was no system of recording and no SMSes were sent at the end of the day.

The respondent pleaded that no orders were placed by her although ₹1,00,000/- had been deposited in anticipation of currency trades to be conducted in future. She also stated that the Email-ID mentioned in the KYC was that of her husband. The latter submitted that he had never opened the mails received during the period under dispute. The respondent had also submitted a claim of ₹1,00,000/- to the Exchange but as the applicant's claim was received earlier in point of time it was taken up by the Exchange.

The Sole Arbitrator directed the applicant to submit proof of delivery of ledger statement.

## 7. Examination of claim and decision

The applicant had sent the ledger statement by mail to the respondent on March 16, 2012. The log of sending the ledger statement was submitted by the applicant to the Exchange on April 05, 2013.

I have heard both the sides exhaustively and extensively. I have also carefully gone through the records. The respondent's arguments in a nut shell is that there was unauthorised trading in her account and that all the trades were without her knowledge. The respondent has not denied having signed the KYC form, Member Client and Tripartite Agreements. She has not denied her signature nor has she said that her signature is forged.

It is clear from Page 67 of the Member Client Agreement that the respondent had authorized, sending of digital contract notes, statement of funds and securities to the Email-ID indicated. It is not the responsibility of the trading member to ascertain if it belongs to her husband or not and it is irrelevant whether the mail box is opened and messages are read.

It transpired in the IGRC meeting held on January 09, 2013 that while the respondent pleaded ignorance of computer operations, she had another broking account with her own name in the E-mail id. Copies of documents submitted by the applicant are quite convincing and credible to support their contention.

After scrutinizing the evidence produced before me by both the sides I have arrived at a conclusion that the applicant's claim appears to be more convincing and hence believable. The applicants claim succeeds. The counter claim of the respondent therefore fails.






Hence, I pass the following award

- I. Respondent to pay to the applicant ₹1,00,394.15/- (Rupees one lakh three hundred ninety four and paise fifteen only.
- II. Respondent to pay interest at 12% p.a. from April 01, 2012 till receipt of payment.
- III. Respondent's counter claim for refund of ₹1, 00,000/- (Rupees one lakh) is hereby dismissed.
- IV. Parties to bear their own cost.
- V. The Award is engrossed on stamp paper of ₹100/- as required under the law with three copies. MCX-SX is authorized to retain one stamped original and forward one signed copy to each of the Applicant and Respondent.

**Place:** MUMBAI

**Date:** April 30, 2013

  
**Mr. Deba. P. Roy**  
**Sole Arbitrator**