

भारतीय गैर न्यायिक

एक सौ रुपये

रु. 100



सत्यमेव जयते

Rs. 100

ONE  
HUNDRED RUPEES

भारत INDIA  
INDIA NON JUDICIAL

Before the Sole Arbitrator, MCX Stock Exchange Limited

पश्चिम बंगाल पश्चिम बंगाल WEST BENGAL

Arbitration Matter No. KOL/05/2013

S 568273

Between

Ms. Sha Devi Banka  
Flat No 304, PALASH  
Modi Compound,  
82, Old H.B Road, Lalpur  
Ranchi - 834001

Applicant

AND

M/s Nirmal Bang Securities Pvt. Ltd.  
A.C Market Building,  
1, Shakespeare Sarani,  
8<sup>th</sup> Floor, Back Side,  
Kolkata-700071

Respondent

Arbitrator:

Mr. Sanjay Bajoria

This is an Arbitration Reference submitted to me under the Rules, Bye-laws and Regulations of the MCX Stock Exchange Ltd.

**BACKGROUND:**

The reference in this dispute being reference No. KOL-05/2013 was entrusted to me by the MCX Stock Exchange Ltd.. (hereinafter referred as "MCX") to consider and adjudicate the dispute and difference between the Applicant and the Respondent mentioned hereinabove and to deliver the Arbitration Award. The Applicant is a constituent of the Respondent and the Respondent is a broker and member of MCX. The Respondent and Applicant previously voluntarily participated in the Investor Grievance Resolution Cell (IGRC) meeting. The meeting was held on 11/09/2013. Extract of the minutes of the IGRC meeting are as follows:

*"Issues raised by the applicant*

1. The Complainant started Trading in Equity Segment in September,2012, and paid about Rs. 3.00 Lacs. From time to time.
2. She paid Rs. 1.00 lacs on 17<sup>th</sup> October,2012,for trading in Commodity Segment, and instructed to stop trading after 12-13 days.
3. Around 30<sup>th</sup> October,2012 the Complainant was informed that there was profit of Rs. 1,221/-. There after the money given by the Complainant was returned to her.
4. In December 2010 Ramesh Kumar Thakur, RM in Commodity Segment and Punit Kumar, RM for Equity & Currency Segment advised the Complainant for purchase of gold worth Rs. 5.00 Lacs. The advice was turned down by the Complainant due to fund shortage & nature of trade done.
5. As suggested by the Branch Manager, the Complainant purchased 200 shares of UB Ltd. @ Rs. 936/- per share on 30<sup>th</sup> December, 2012, which was sold on 9<sup>th</sup> January, 2013 at a loss of Rs. 15,000/-.
6. Sometime in the middle of March'2013 Mr. Punit Kumar suggested that the Complainant should start trading in Currency. Accordingly the Complainant executed trades in Currency and Equity Derivatives during March – April, 2013.
7. On 26<sup>th</sup> April, 2013 the Complainant paid Rs. 60,000/- by cheque for trading in Equities, but the entire money was spent for trading in Currency Segment only.
8. On 21<sup>st</sup> May, 2013 Mr. Punit Kumar informed the Complainant that there was profit of Rs. 36,000/- where as there was a loss in Account. Subsequently on 27<sup>th</sup> May the Complainant found that



substantial trades were made without her consent in both Equity Derivative and Currency Segments. As stated by the Complainant trades without consent took place between 1<sup>st</sup> May and 25<sup>th</sup> May, 2013, which resulted in loss of approximately Rs. 3.75 Lacs, out of this, 80% was in Currency Segment and remaining 20% in Equity Derivative Segment. The total number of unauthorized trading were stated to be 61.

*Response of the Trading Member*

1. The Authorized representative of the Trading Member denied the allegations of the Complainant and stated that the Complainant was provided with SMS alerts and ECNs regularly during the trading tenure.
2. The Complaint was made only after the Complainant suffered loss. Whenever there was profit no complaint was made.
3. From the mail sent by the Complainant on 18<sup>th</sup> July, 2013 it becomes clear that the Complainant took the onus of the trades. From the Complainant's letter dated 16<sup>th</sup> June, 2013 it would be clear that she was quite aware of Currency Trades and agreed to the suggestion given by the Branch Manager of the Trading Member.
4. The authorized representative of the Trading Member submitted ECNs and SMS logs in the form of CD.
5. The CD containing voice recording was played in the presence of both parties.

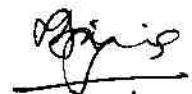
*Conclusions of the IGRC:*

Both parties were given an opportunity for mutual understanding and settlement. Since the authorized representative of Trading Member was not agreeable to any mutual settlement, the matter is referred for Arbitration. The Complainant, if she so likes, can make an Arbitration application in accordance with the Rules, Regulations and Bye-laws of the Exchange."

The complainant had further filed an arbitration application and now the matter has come up before me.

**CASE OF THE APPLICANT:**

The applicant submits that substantial unauthorised trades were executed in her account by the officials of M/s Nirmal Bang Securities Pvt. Ltd. (hereinafter referred as "TM"), Ranchi Branch between 1<sup>st</sup> May 2013 to 25<sup>th</sup> May, 2013 and that her shares were sold without her consent and without taking any Collateral Letter for using them for the purpose of margin, thereby resulting in a loss of Rs. 72,900. The



applicant further conceded that Branch Manager of the TM had assured her of compensating all the losses incurred by Mr. Punit Kumar, RM for Equity & Currency Segment (hereinafter referred as "RM") through complementary trades. But as a result of such trades, the losses further increased to Rs. 2.5 Lacs.

The applicant listed the following grievances:

- a) Not providing of any proof of placement of orders by the applicant or the voice recording clips by the TM (pre trade).
- b) Not providing of all the voice recording clips recorded during the period of dispute by the TM (post trade).
- c) Execution of unauthorised trades by the TM during 20.05.2013 to 24.05.2013.
- d) The officials of the TM provided false information on several phone calls.

#### **RESPONSE OF THE RESPONDENT:**

The representative of the respondent states that the entire claim of the applicant is baseless. The respondent submitted a CD containing some voice recordings of the calls for the period from 09.05.2013 to 30.05.2013 along with the transcript of the conversation, made to the applicant's husband for confirmation of trades made on her behalf. The respondent argued that the trades/ deals which are disowned by the applicant were in fact executed as per the direction of the applicant and there was an implied consent on her part for all such trades/deals. The respondent further submitted voice recordings along with ECNs and SMS logs for the period from 20.05.2013 to 24.05.2013 as asked from him.

The respondent further stated that contract notes, bills, margin statement etc for all the trades/deals were sent electronically at the registered email address of the applicant. The applicant never raised any dispute immediately on the receipt of such documents.

#### **DOCUMENTS:**

The Applicant submitted along with the claim:

1. Financial position and ledger statement issued by the TM on 3<sup>rd</sup> June, 2013 which shows 9 currency trades executed between 20/05/2013 to 24/05/2013, claimed to be unauthorised by the applicant.
2. Calculation sheet of losses incurred.
3. Global Net position to assess extra charges on trades done.



The Respondent submitted the following:

1. Executed Client Registration Form.
2. Copies of Financial Ledgers of the applicant.
3. Few copies of Contract Notes of the trades executed during the period of dispute.
4. ECN Logs for the period 20<sup>th</sup> to 24<sup>th</sup> May, 2013.
5. SMS Logs for the period 20<sup>th</sup> to 24<sup>th</sup> May, 2013.
6. Collateral letter obtained from the applicant.
7. Sample voice recordings for 9<sup>th</sup> to 30<sup>th</sup> May, 2013
8. Voice recordings for the period 20<sup>th</sup> to 24<sup>th</sup> May, 2013.

#### **HEARING:**

Hearings were held on 12/02/2014 and 24/02/2014.

During the hearings, the applicant was represented by her husband Mr. Bharat Kumar Banka and respondent Trading Member was represented by Mr. Subrata Paul, Assistant Manager.

#### **ARGUMENTS:**

The Applicant's representative was very vocal that all the trades done in his wife's account between 20<sup>th</sup> and 24<sup>th</sup> May 2013 were unauthorised. He narrated the sequence of events that lead to the losses in his wife's account. The loss figure of Rs. 72,900 given on 3<sup>rd</sup> June 2013 was on the basis of the position on that day without settlement of the outstanding trades. He also explained that the initial claim of Rs. 3,75,000 before IGRC was on estimate as all the transactions were not squared up till then. The representative of the applicant reiterated that substantial unauthorised trades were executed in his wife's account by the officials of TM, Ranchi Branch and the shares were sold without his consent and without taking any Collateral Letter for using them for the purpose of margin, thereby making a loss of Rs. 72,900. He further contended that the respondent failed to provide any evidence in relation to placement of the orders and moreover he had denied confirmations of such trades multiple times on recorded lines. In addition the applicant contended that Branch Manager of the TM had assured her of compensating all the losses incurred by the RM through complementary trades.

The Respondent submitted that all the trades were properly communicated to the Applicant and that ECN and SMS logs for the same were present. He refuted the claim of the Applicant that the trades were unauthorised. He also relied on the voice recordings available.



## **FINDING:**

The above documents were examined in detail and considered.

The representative of the applicant, failed to provide any documentary evidence to support his contention. On the other hand the respondent provided the voice recordings for the period from 20<sup>th</sup> to 24<sup>th</sup> May 2013 along with the ECN and SMS logs as required from him. On perusal of the same it was observed that the details of trades matched with the voice recordings put on record for 21<sup>st</sup> May 2013 and that the applicant's representative confirmed such trades. The other calls for this period remained unanswered. Further the respondent produced the Collateral Letter obtained from the applicant authorizing the use of the applicant's shares as margin against the equity derivative and currency trades. Thus the objection of the applicant that her shares were used as margin without any authority is also not sustainable.

In addition to this, the ECN and SMS logs for the period from 20<sup>th</sup> to 24<sup>th</sup> May 2013 as submitted by the respondent clarifies that the applicant regularly received the trade confirmation and that no immediate complaint was made regarding any trade on receipt of such confirmations. On the contrary the applicant has failed to produce any substantial evidence to classify the trades made during the aforesaid period as unauthorised.


Considering the evidences put on record by both the parties the award given is as follows:

## **AWARD**

In view of the contents of the above Analysis, I hereby publish the Award in three originals on **12<sup>th</sup> March 2014**. One copy is to be retained by the Exchange and the other two copies by the parties:

- a) **The claim of the applicant is dismissed.**
- b) **Considering the facts of the case I do not make any order as to cost or penalty.**

Place: Kolkata  
Date: 12<sup>th</sup> March 2014

  
**Sanjay Bajoria**  
(Sole Arbitrator)