

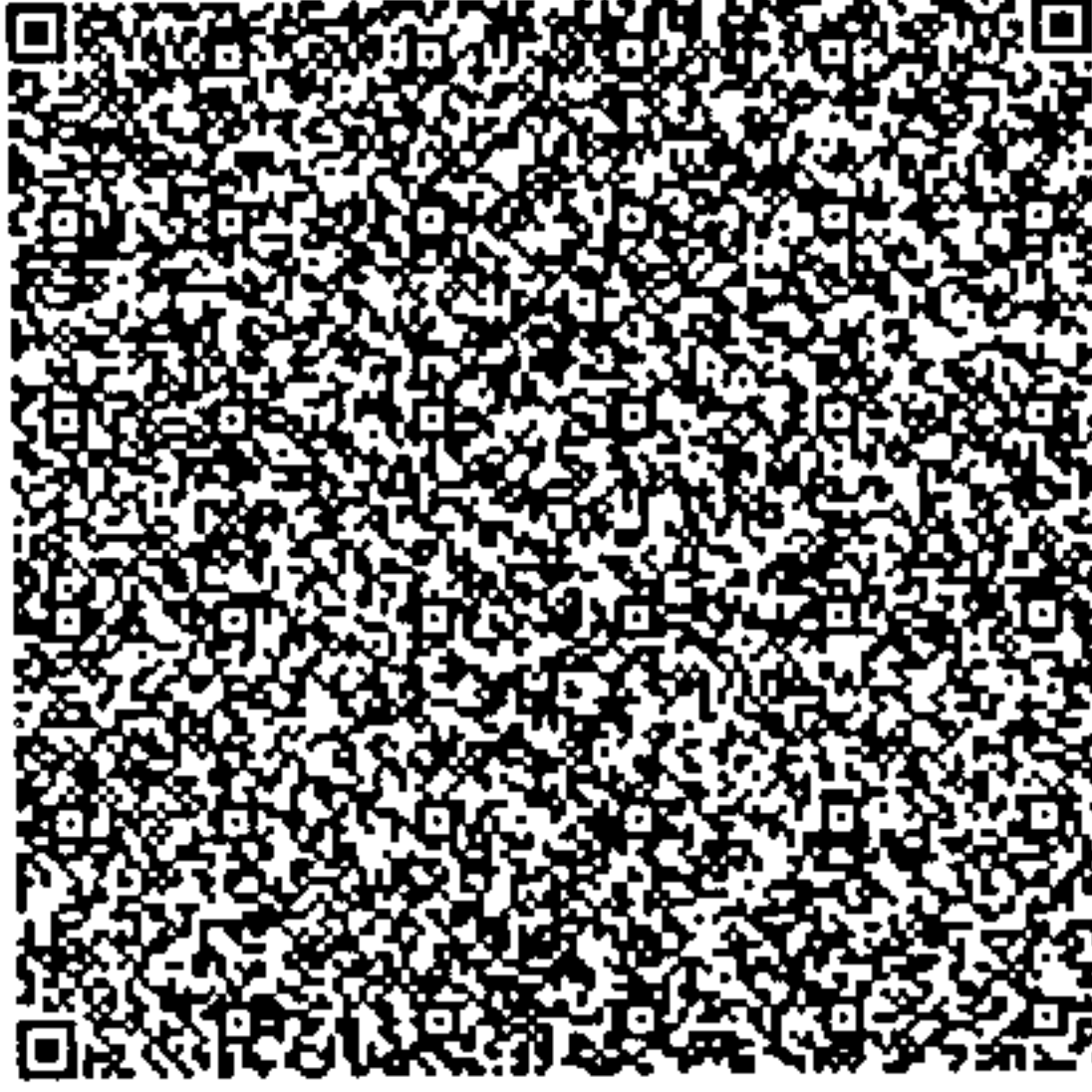
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Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: BSE LTD
Second Party	: Not Applicable
Stamp Duty Paid By	: BSE LTD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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In The Matter Of Arbitration Under the Bye-laws, Rules & Regulations of BSE Ltd.
Arbitration Matter No. 297/2015

Ms. Pinki Roy
C-2/2314, Vasant Kunj,
New Delhi-110070

Versus

Trustline Securities Ltd.
B-3, Sector-3, Noida-201301

.....Applicant

.....Respondent

[Signature]

Statutory Alert:

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This is an Arbitration reference submitted by me under the Rules, Bye-laws & Regulations of BSE Limited.

1. Ms. Pinki Roy (Applicant) has filed this claim for Rs 400,000 (mentioned as Rs 4.55 Lac in the body of the claim) including interest of Rs 2 Lac against Trustline Securities Ltd (Respondent) towards losses suffered by her on account of unauthorized trading in her account

2. The Applicant opened a trading account with the Respondent in July 2010 at the behest of one Shri Sailendra Jain the Relationship Manager (RM) of the Respondent. She was asked to sign blank documents, which were later filled in by the Respondent. Copies of the account opening form were not provided to her. She paid a sum of Rs 4.55 Lac in the account on various dates. Shri Sailendra Jain started trading in her account. In the meantime, she had to move overseas for some assignment in November 2010 and came back in February 2011. Then she started getting messages from the Respondent about debit balances in her account. On contacting the Respondent, she was informed that it had provided all contract notes pertaining to the trading in her account and that there is no unresolved query pending with it pertaining to her account. The Respondent did not transfer securities to her Demat Account. The contact details of the RM were not provided to her. Her request for resetting her password was also not adhered to by the Respondent. Due to this she had to close her Demat account in June 2014 at which time, the value of her holding had reduced to 1.08 Lacs.

3. The Applicant made the first complaint to the Respondent on 27th February 2011 and requested to suspend trading in her account. Thereafter she was repeatedly asking the Respondent to provide contact details of the RM but the same was not provided to her. Since 2011-12 she was also asking the Respondent to provide escalation matrix in its organization set up and SEBI contact details, which were not provided to her. The last trade in her account was made on 18th March 2011. She approached IGRP in July 2014 to redress her grievances, which could not settle her claim. Hence this Claim.

4. The matter was first referred to Investor Grievance Redressal Committee (IGRC) vide reference no. 201407/56, wherein it was concluded by Hon'ble member of IGRP that in view of the facts submitted before the committee & submissions of the Appellant & AR of the Respondent it appeared that the complaint cannot be resolved in that forum & complainant if so advised, may take recourse to the process of arbitration mechanism in accordance with Bye laws, Rules & Regulations of the Exchange. Matter was thus disposed of by IGRP.

5. The Respondent denies the claim. The Applicant signed the KYC and other documents on 15th July 2010 and was allotted UCC N61029, and as per practice, copies of all the documents were provided to her. Copies of the KYC, policies and procedures, and other documents have been filed. The Applicant signed ECN mandate to receive all communication and contract notes etc mentioning her personal Email address for this purpose.

6. The Applicant traded in the cash and the F&O segment. All trades in the account of the Applicant were executed on the instructions of the Applicant. The Applicant was regularly sent contract notes pertaining to transactions in her account by email at the address registered with the Respondent and as per the authorization given by the Applicant in this behalf. Copies of the log record have been placed on record. The Applicant was also sent SMS intimation on her registered mobile number for the trades executed in her account. Copies of the log records have been filed. The Applicant opted for online trading for which a unique ID and password was provided to her. However she did not trade on line. She allegedly sent several mails to the Respondent, asking for irrelevant information, which was already available to her and to the public at large.



She made several payments in her account and also received the payout from the Respondent. The account opened by the Applicant is a trading account and not a PMS account as alleged by her. No trades were carried out in her account after she gave instructions to stop trading.

7. It is also the case of the Respondent that the claim is time barred as per SEBI circulars. She has not given any calculation of her claim and has wrongly charged interest. Hence the claim, being unfounded, is liable to be rejected.

8. I have gone through the documents and submissions of the parties and also heard the Applicant in person and the AR of the Respondent. The Respondent has submitted the statement of account of the Applicant as it appears in its books of accounts. It has also filed log records of the emails and SMS messages sent to the Applicant after the end of trading days and other documents in support of its case.

9. The preliminary issue to be considered in the case is the claim being barred by limitation as claimed by the Respondent. The issue in the case involves Section 18 and Section 19 of Limitation act, which clearly state that a) an admission of the acknowledgement; b) Such acknowledgement must be in respect of liability in respect of property or right; and c) it must be made before the expiry of the period of limitation ;(or else it would come under section 25 of Contract Act). In S.F. Mazda v. Durga Prasad (AIR-1961 SC 1236) it has been held that an acknowledgement constitutes that the parties intended to create legal relationship and it must appear that the statement is given with the intention to admit such jural relationship. The said case has also held that the acknowledgement need not be specific but should include the necessary facts, which constitute the liability.

10. Applying the above ratio on the facts of the case, it can be seen that transactions have also taken place subsequent to the last trade, as claimed by the Respondent. The parties have been in correspondence after the trading was stopped in the Applicant's account. The Respondent admittedly made a payout in March 2012. Even after that exchange of documents, statement of accounts etc were exchanged between the Applicant and Respondent. For section 18 of the Evidence Act it would be good that the promise is for payment of debt as it would be a clear indicator of acknowledgement but as held in Subbarsadya v. Narashimha, (AIR 1936 Mad.939) in words of Cornish.J. "I do not agree with the Munsif that an acknowledgment within Section 19(old act), Limitation Act, must contain a promise to pay or amount to a promise to pay." It is not absolutely necessary that an acknowledgment within Section 18 must contain a promise to pay or should amount to a promise to pay. If present it will just give some weightage to the fact that acknowledgement has been done. In view of the above, in my view, the contention of the Respondent of the claim being time barred cannot be accepted and must be rejected.

11. Coming to the merits of the case, the first issue to be looked at is with regard to the amount of the claim. The Applicant has not submitted any details of the claim or the loss suffered by her on account of unlawful trades. However during the proceedings, the Applicant herself submitted a statement of the shares which are still lying in her ID-mat account with the Respondent and also the payouts made to her. Admittedly, a total payment of Rs. 4.24 Lac was made by the Applicant from time to time between July 2010 and October 2010. The applicant has not been able to explain as to how she has made a claim for a lump sum amount and also in respect of the shares which are still lying in her ID-mat account or the payments have been received by her. It is also noted from the statement of account that trading has been done in the Applicant's account both on the NSE and BSE platform, which has not been segregated by the Applicant to determine her claim of unauthorized transactions under the BSE platform. It is also not clear as to how the interest which is equivalent to the claim amount has been claimed by her. Under these circumstances, it is not possible to arrive at the correct amount of claim demanded by the Applicant.




12. The Applicant has stated that no consent was taken from her for operating in the F&O segment in her account. However the documents or evidence on record show that Applicant had indeed given her consent for trading in this segment. While opening the account, she has signed and given her consent to trade in all the segments

13. The Applicant has stated that she met Sailendra Jain, who first gained her confidence by giving some profitable tips for trading and later promised that in case she participates in a scheme suggested by him, she can get returns to the extent of 3.5 to 10% per month. However no document or evidence has been placed on record in support of this argument. This contention is also vehemently objected to by the Respondent. The Applicant is a well educated person and no prudent person could have been lured for the promise of such high returns for trading in securities. She also signed documents for opening the trading account with the Respondent and has admitted in her claim statement that she had given her consent for 'placing orders' in her account on her behalf. Having given this consent, there is no justification at this stage for the Applicant to claim that she did not give permission "for the Relationship manager to trade on her behalf". Her claim that she entered the relationship with the Respondent as Portfolio Manager for the PMS scheme has not been proved and therefore is rejected.

14. From the statement of account of the Applicant filed by the Respondent, it emerges that she had made several payments to the Respondent, between July 2010 and October 2010. It has not been explained by the Applicant, as to why she made substantial payments in her account, without understanding the nature of the transactions in her account or requirement/need of making further payments in her account. She had an online account and could have checked her account in case of any doubts and should have refrained from making further payments, if she suspected any foul play or unauthorized trades in her account. Her actions clearly indicate that she was aware of the trades in her account and status of her account and therefore made further payments to continue trading in her account.

15. It has also been alleged by the Applicant that she was made to sign blank documents, which were later filled by the Respondent. This averment of the Applicant has no force for two reasons. Firstly the Applicant is an educated person having knowledge of securities and mutual funds etc and therefore she is expected to be knowledgeable and as a prudent person should have been fully aware of the pitfalls of signing blank documents and should have taken precautions in this regard. Secondly the Applicant ought to have raised this objection much earlier. I am in respectful agreement with the observations of the Hon'ble Bombay High Court in *SICOM LTD., VS HARJINDERSINGH* (AIR 2004 BOMBAY 337), wherein it has been observed that the assertion in the reply filed by the defendant that the plaintiff obtained their signature on the blank documents, is "one of desperation and obviously not bona fide." As in that case, this grievance has been made by the Applicant for the first time in the Claim application in these proceedings which are belated and not bona fide. Accordingly, I find that there is no substance in the assertions placed by the Applicant in this regard.

16. The Applicant has stated that all the trading in her account were done without her consent and that she was kept in dark about the status of her account and the reason why the balance in the account has gone down. This averment is not supported by the documents on record placed by the Applicant and contrary to the facts and documents submitted by the Applicant herself. At page 46 of the Claim statement, she has contradicted herself completely. In her email dated 18th March 2012, addressed to Sailendra Jain more than one year after the trading was suspended in her account due to alleged unauthorized trading, she states "How long do you think it will take for this to recover the capital.... Starting July 2010, we are approaching July 2012....I can see massive losses" As per the Respondent trading member, the said Sailendra Jain left the services of the Company sometimes in 2012. This clearly indicates that she was in regular contact with the RM and was fully aware of the trading and consequent losses in her account. The Applicant also closed her DP account in June 2014, without any protests or demur. She approached IGRP only in July 2014 to redress her grievances against the Respondent.



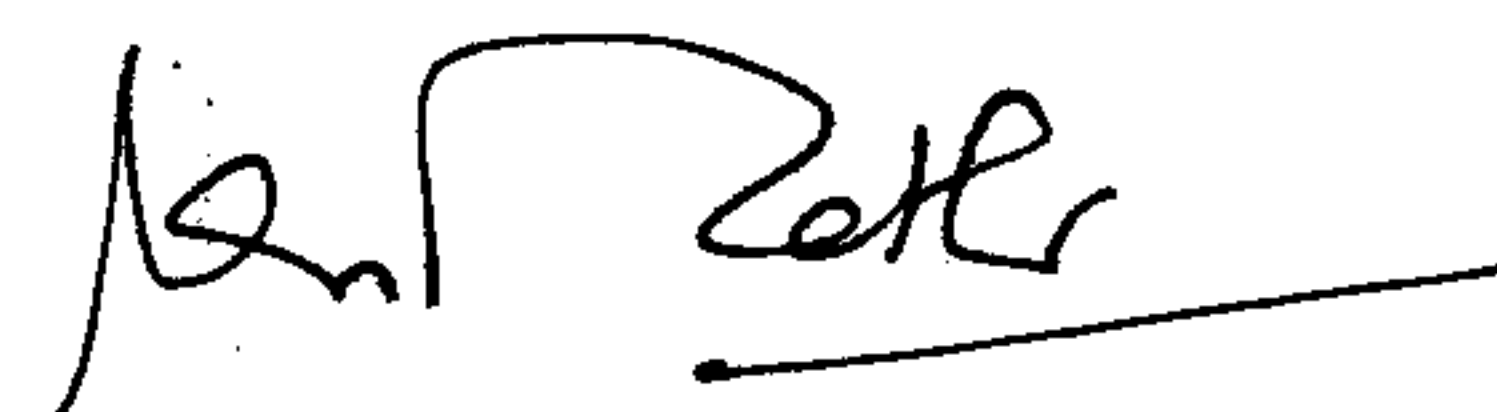
She therefore at this stage, cannot put the burden on the Respondent to prove that the trading was done with her knowledge. Her assertions in this regard has no force and therefore liable to be rejected.

17. The Respondent has filed the proof of sending the contract notes to the Applicant at her registered email address provided in the KYC. The Respondent has also been sending statement of accounts to the Applicant. The Respondent has also submitted copies of the SMS log records of the SMS messages sent to the Applicant's registered mobile number during the disputed period. During the hearing the Applicant stated that she had indeed received the contract notes. However the SMS messages could not be received during the period she was out of the country. She however did not raise any objection or disputed any transaction on receipt of the contract notes or the SMS messages after each trade was carried out. Therefore the stand taken by the Applicant in this regard of her lack of knowledge of the trades during the disputed period cannot be accepted. Her statement is only a bald denial and is, therefore, not sufficient, as held by the Hon'ble Delhi High Court in the **ORIENTAL BANK OF COMMERCE VS. EAGLE BOOK BINDER & ORS.** (88) (2000) DLT 277

18. In view of the above facts and circumstances, the Applicant has not been able to establish that she was not aware of and had been kept in dark about the trading transactions done on her behalf from time to time during the disputed period or was totally ignorant of the status of her account with the Respondent. The Applicant has not been able to establish the allegation of fraud against the Respondent nor could show that she herself acted in a prudent or reasonable manner in her dealings with the Respondent and in accordance with BSE Regulations and the KYC/MCA executed between the parties. She cannot therefore claim any amount from the Respondent and remains fully liable for losses if any, suffered by her on account of these trades and can not shift the same on to the Respondent. All other contentions of the Applicant, having no force are rejected.

In view of the above and on the basis of the documents submitted and the submissions of the parties, I hold that the Applicant's case has no merit and the same is therefore rejected.

New Delhi
16th Nov, 2015


Vijai N Mathur
Sole Arbitrator