



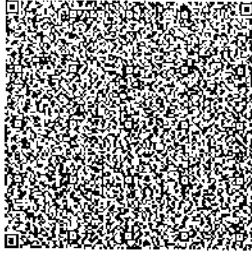
सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

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Before Mr. Ashwani Kumar Mehta, Sole Arbitrator  
In the matter of Arbitration under the Bye Laws, Rules and Regulations of the  
National Stock Exchange of India Ltd  
A.M. No: F&O/D-0022/2017

Between

Mr. Pu'kit Mathur  
12A PXT- III,  
Mayur Vihar I,  
Delhi- 110091  
Pan No. ANDPM3574F

And

.....Applicant

TrustLine Securities Limited  
Trading Member  
R-3, Sector-3  
Noida-201301 (U.P.)

Award

.....Respondent

#### Statutory Alert:

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Before the Sole Arbitrator : Mr Ashwani Kumar Mehta

Arbitration No : NSE/ARBN/F&O/D-0022/2017

Between

Sh. Pulkit Mathur

.....

Applicant

( Constituent )

VS

Trustline Securities limited

.....

Respondent

( Trading Member )

**AWARD**

For Applicant : Self along with Sh . Amit Gupta Advocate

For Respondent : Sh Pravin Kumar Head Compliance and Legal

The petition for arbitration is a claim of Rs. 15,96,116 from one Mr. Pulkit Mathur against the above referred respondent company, primarily on the ground of alleged unauthorized trades in the applicant's trading account, ostensibly conducted by an employee of the company, resulting in loss of the amount claimed for.

2. Written statements have been filed by the applicant and the respondents and personal hearing was given when both the parties were present.

2.1 As per the applicant's written statement, he had opened a trading account with the respondent for conducting trading in capital market segment in the year 2012. Thereafter somewhere in the year 2014, one Mr. Vijay Kumar, a senior relationship manager of the respondent met him along with an ex class- mate of his ( Mr. Deepak Agarwal) and tried to convince him about trading in F&O segment. As per the applicant Mr. Vijay Kumar informed him that the respondent company also provides PMS services for clients not well versed with Derivative market and that he should be able to earn about Rs 10000 pm by operating in that segment, thereby also using his idle shares lying in DP. It was stated that after long discussion, Mr. Vijay Kumar was able to gain his confidence and he agreed to conduct trades of F&O, on the precondition that losses if incurred should not go beyond Rs 2 lacs and that Mr. Vijay Kumar will keep him updated with gain/loss position regularly as the applicant does not understand status of accounts from contract notes/ statement of accounts. As per the applicant, Mr. Vijay



Kumar agreed to these conditions and assured him to send statement on designated email id of the applicant. It was stated that applicant allowed Mr. Vijay Kumar to perform the trading in F&O only because of the reputation of the respondent company, under the impression that the plan has been offered by the company.

2.2 Once the activity started Mr. Vijay provided, from time to time, the statement of the profit and loss incurred. First mail was sent on 11.05.2015 which did not contain F&O details. Upon applicant's request another mail was sent on 26.05.2017 wherein loss of Rs24400/ was shown, which was subsequently raised to Rs 144606/. It was further stated that every time loss was communicated, he would raise concern and remind Mr. Vijay Kumar of the cap condition. As per him, apparently Mr. Vijay Kumar deliberately communicated to him losses below Rs 2 lacs, which were fabricated and with the mala fide intention to keep him in dark about the actual position. The mails were sent by Mr. Vijay Kumar from the company mail id.

2.3 Further, as per the applicant, when even whatever losses being communicated were not getting recovered, the applicant got worried and raised the alarm with company's other email ids in the month of Nov 15 to Dec 215, from which he got to know the actual picture which reflected a humongous loss. A detailed chart of the email exchanges has been provided, after which, as per him, the applicant came to know that he has suffered a loss of Rs 302362.15 in 2014-15 and Rs 1293754.35 in 2015-16 and his entire portfolio of Rs.15,96,116 stands disposed off, to square off his positions. The applicant has a major grievance that he was never informed by Mr. Vijay of the sale of shares in his portfolio. Providing year wise details from F.Y 2012-13 onwards, the applicant also highlighted the fact that the net payment made to respondent is Rs. 17, 81,327/-. It has been mentioned by the applicant that Mr. Vijay has allegedly either absconded or expelled by the respondent Company and cannot be reached.

2.4 The applicant has relied on the decision in, A.M no. F&O/D-0085/2012 in the case of Manmohan Singh Vs SMC Global securities Limited, to support his case that NSE Regulations of F&O segment clearly state that transaction has to be executed only on the instructions of the client, to be duly confirmed later and that there is a prohibition to conduct trade on behalf of the client even if he specifically agrees to authorise him. That can happen only if the trading member was a registered Discretionary Portfolio Manager. It was stated that the applicant's case is similar to the decided case.

2.5 Hence the applicant has prayed for an award of Rs. 15,96,116 in his favour, along with the interest @18%.

3.1 In its written response, the respondent has denied all allegations by the applicant and refused to take any responsibility. It was stated that the applicant had approached the respondent for opening a Trading Account and consequently signed KYC Application form and





respective other relevant documents such as Declaration for Electronic Contract Notes, Authority for facilitating computer, Authority letter for running Account etc. It was claimed that the applicant had opted only Internet based trading to do trades through online mode. Thereafter he was allotted a Unique Client Code (UCC). As per the respondent, since the applicant had a User ID and online trading facility, he was supposed to be trading himself. Specifically reference was made to applicant's request for providing computer system, along with KYC documents, in the branch premises by referring to his filling up and signing printed form. As per respondent it was only through the complaint filed with the SEBI that it came to know about the fact that all trades of the applicant were without his consent. It was stated that the applicant never informed that another person is using his id or password.

3.2 The respondent claimed that it never appointed Mr. Vijay Kumar to act as applicant's relationship manager; in fact it was one Mr. Sachin as records shows. So the respondent never authorised Mr. Vijay Kumar to trade on behalf of the applicant. On the other hand, it was stated, as would be clear from the wording of his petition before the IGPR as also at this stage, the applicant has taken personal help of Mr. Vijay and mingled with him to execute various trades, which would mean that he had directly or indirectly authorised / appointed Mr. Vijay to trade on his behalf. Hence the stand was that in the circumstances the respondent cannot be made responsible for the loss suffered by applicant on account of individual acts of Mr. Vijay. He was not authorised to send mails from company's id. On the other hand the respondent's confirmations through ECNs and SMSs reflected true affairs which were sent well in time.

3.3 The respondent did not agree with the arguments that the applicant was not aware of the trading activities and his position. It was stated that he has executed various trades through his UCC since 2012, and the applicant has never objected to the confirmation of all his trades through ECN on his mail id and via SMS to by the respondent. It was stated that while applicant is highlighting the emails sent by Mr. Vijay Kumar, he has not mentioned the emails sent by the respondent company on the same id. Financial statements were being sent on this id periodically but applicant never raised the issue of unauthorised trades. Further the details of ledger balances, transactions, Holding etc. was confirmed by calling on telephone as well but no objection was ever raised. A CD of the Voice Call confirmations was also filed. Further to support that applicant had been a fully participant in the trading activity, respondent filed a chart of Payin and Payout from 2011-12 to 2017-18. Relying on the log in details, it was claimed that, in fact the applicant has been logging in himself to check his accounts.

3.4 Following arbitration decisions were referred to in the above context to buttress the stand that when applicant was fully aware of the facts and when he has not objected to any of the trades in reasonable time, there is no case for any claim for the loss suffered. 1. MCX-SX/SrB/MUM-01/2012: Mr. Jetho Khemani vs. Religare Securities Ltd (18.12.2012) 2. MCX-





SX/ArB/DEL-12/2013: Sh. Sailender Kumar vs Kaynet Capital ( 15.04.2013 ) 3. MCX-SX/ArB/DEL-14/2013 : Dheeraj Agarwal vs Nirmal Bang Securities (P) Ltd. ( 26.06.2013) 4. CM/M-0022/2011/Jasmine G Shah Vs religare Securities Ltd (28.07.2011)

3.5 It was stated that the respondent can not be held responsible for the loss suffered by the applicant due to his arrangement with Mr. Vijay and of which he must have been aware. According to respondent this application has been filed with a view to recoup the losses from the company. It was stated that since applicant had accepted all the trades by not contesting them, as required by the regulations, Principle of Estoppel shall be applicable and thereby the applicant, has no legal ground to claim any compensation from the respondent. Referring to his statement that Mr. Vijay Kumar has been providing details of his position once in a while, the respondent stated that clearly that was between him and M Vijay at their personal level, as the applicant has not asked anybody at the headoffice or helpline for profit or Loss statement or similar document. It was clarified that the respondent had never provided PMS services to applicant.

4.1 During the personal hearing on 29/11/2007, the counsel for the applicant relied on and reiterated whatever has been stated in written statement and the annexures thereto. He once again highlighted the fact of Mr. Vijay Kumar misleading the applicant by not disclosing correct position of loss from time to time. It was alleged that the respondent company was well aware that Mr. Vijay was messing up his account. In response to a query, the applicant clarified that he himself never traded on his online account. The applicant agreed that he was receiving confirmation calls but he would just confirm them as instructed by Mr. Vijay, as he was assuring him of doing his best to stem losses. The complete picture of his misinformation came to light only when papers were submitted before Investor grievance Cell. It was clarified that neither did he ever interact nor was he contacted by Mr. Sachin, stated to be his relationship manager, after the initial account opening exercises. The counsel also highlighted the average economic background of the applicant for the losses to be unbearable.

4.2 On his part Mr. Praveen Kumar A/R of the respondent relied on the KYC form where the applicant had opted for trading in F&O, along with others segments, right from the beginning. He also emphasised of his being given a UCC, his option to trade online and his request for allotment of computer at the respondent premises. He emphasised the fact of regular contract notes being delivered, SMS and verbal confirmations of trades and regular statements of transactions as well as financial statements on the applicant's registered email id. Regarding the appellant being unaware of derivative trading, he pointed out an entry of 2011-12, that is even before Mr. Vijay's appearing on the scene, wherein such a trade been entered into. Mr. Praveen Kumar also played a sample audio of conversation of applicant and the respondent staff, to press home the point of the applicant being fully involved in the trading activity.





5.1 To square off the factual and legal matrix, certain further queries were raised by the undersigned during the hearing. Both the parties were given option of another hearing, which was declined by both. Consequently a written reply from the respondent was thought to be an ample compliance.

5.2 In response thereto the respondent vide its letter dated 8.12.2017, confirmed that Mr. Vijay Kumar has left the service and therefore cannot be produced before the forum. It was also stated that no vicarious liability can be fastened to the respondent company for any acts of Mr. Vijay Kumar in the context, as it is not the case of doing authorised act in an unauthorised manner. It was reiterated that Mr. Vijay Kumar had never been authorised to do trades for the applicant. Details were also filed as how the applicant had been duly alerted via SMSs whenever there was shortage of margin.

6.1 On the other hand, after the conclusion of the hearing, later on the same day the appellant has filed a CD with the office of NSE, claimed to be containing the telephonic recording of one Mr. Anil Kumar Singh, an ex employee of the respondent company, wherein, it was claimed that the said Mr. Anil has exposed the working style of the respondent and has also disclosed the fact that the account of the applicant was being misused by the respondent company. It was requested that the same be taken on record. On the other hand the respondent company filed a letter dated 5.12.17, enclosing a letter of the said Mr. Anil Kumar, which talks of having been pressurised to speak against Mr. Vijay to malign the respondent company and win the award and the voice having been recorded without his knowledge and denying whatever was stated in conversation with the applicant on 27.12.2017.

6.2 In yet another email to the arbitration department of NSE, the applicant on 15.12.2017, forwarded to the undersigned on 18.12.2017, has stated that "I would be sending a detailed reply against the false details shared trustline securities. They have used their financial muscle and made false claims for which I would need a week to answer in consultation with my lawyer"

7.1 I have gone through the matter carefully. To start with let us first dispose off the issue of the fresh CD filed after the hearing was over and the subsequent communication from both sides. The undersigned at no stage agreed for admittance of this CD as an evidence, while the respondent responded and the applicant wants to respond further. It is clarified that I find no reason to admit the same in the facts and circumstances of the case. Firstly in any appellate proceedings, it is incumbent on the party producing fresh / additional / non contemporaneous evidence to justify the reasons as what prevented it to produce it at the initial stage. Secondly I do not find much relevance of a third party oral narration, to the issue at stake, without proving the connection with the trading activity of the appellant. While it is a moot point as to what extent an excerpt of a conversation, recorded without the knowledge of the person, can be





used as an evidence against a third party, one cannot indulge in acts of forensic verification of the CD and subsequent examination and cross examination in an arbitration proceedings. This forum is not meant to conduct a sort of trial proceedings. Hence the said CD submitted by the applicant is not being taken on record. Consequently any subsequent communication on the issue becomes redundant.

7.2 Coming to the substantive issue, the overall context is that the applicant Mr. Pulkit Mathur has been operating in share market for quite sometime and had reasonable amount of share holding before he met Mr. Vijay Kumar in 2014. Therefore it is difficult to believe that he could have in any way been brainwashed into opting for trading in F&O segment by Mr. Vijay, either in his personal capacity or on behalf of the respondent. Clearly Mr. Mathur wanted to earn more money, so he chose another avenue after discussions. Also the fact that it was a more risky avenue was very well known him, as is evident from his trying to put cap on the losses, as claimed by him, in the initial meeting with Mr. Vijay. Obviously it was agreed between the two of them that Mr. Vijay can use his account on his behalf. Therefore if he has never traded himself, as asserted, obviously he knew all along that Mr. Vijay is using his terminal. The fact that he received contract notes, SMS alerts and phone confirmations, after the trades, has also been admitted. The assertion of the respondent that the financial statements were being sent at regular periodicity, as evidenced by its log records, remains uncontroverted. Therefore while on one hand the respondent discharged its obligations, on the other the applicant never objected. The applicant was regularly paying money also if his account so warranted, so as a prudent person would have some idea of the profit or losses. In such a situation his inaction in not putting in any complaint to the respondent company or the NSE or SEBI, in this entire period, if he was aggrieved, goes against him. Apparently he went on playing the game, as if it were, in order to make some money next time round. The applicant, in his written submission, has given details of losses incurred from 7.02.2012 upto 03.09.2015. It is interesting that he continued using the trading account with the respondent company even much after that ( may be even now) as per papers filed by the the respondent, and has earned good payouts also thereafter as per position on 31.10.2017, almost two years after the complaint. Hence it is reasonable to come to the conclusion that the applicant must be having good knowledge of the affairs at the relevant period.

7.3 In that background the only question that remains is whether there were any actions on the part of the respondent that compelled the applicant into taking actions leading to the losses in question and what was the role of Mr. Vijay Kumar. The applicant did not sign any papers either with the company or Mr. Vijay Kumar for having a PMS relationship. The company has denied any specific authorisation to Mr. Vijay Kumar to deal with the applicant which remains un rebutted. On the face of it, the applicant had direct access to his trading account and anybody else using it had to have his permission. There does appear to be a paper or two from



Mr. Vijay which may not have given the complete picture, but in the face of so much information being forwarded to the applicant by the respondent and his regular payments to the company during the period, it is difficult to accept that he was misled by the respondent into trading for about two years to end up with the losses he is claiming for. Clearly he continued to rely on Mr. Vijay as per his personal relationship and judgment. The applicant has been unable to show that the respondent company influenced his decisions, directly or through Mr. Vijay Kumar, whether they resulted in loss or profit. In such circumstances it is difficult to hold the respondent responsible for his (or their mutual decisions) and be fastened with any vicarious liability for the conduct of Mr. Vijay Kumar.

8. Hence considering all the facts and circumstances, the loss suffered by the applicant cannot be attributed to the respondent and hence there is no case of seeking any compensation. In the result the arbitration petition and the claim preferred therein is dismissed. No order towards costs.

DATE-22.12.2017



ASHWANI KUMAR MEHTA

( Arbitrator)