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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 20.03.2025

Judgment pronounced on: 01.07.2025

\+ **O.M.P.(COMM.) 83/2024**

RAM KAWAR GARG .....Petitioner

Through: Petitioner in person.

versus

BAJAJ CAPITAL INVESTOR SERVICES LIMITED NOW NEW NAME IS JUST TRADE SECURITIES LIMITED AND ORS. .....Respondents

Through: Mr. Dhruv Dewan, Ms. Smarika Singh, Ms. Yashna Mehta, Mr. Arjun Singh Rana, Ms. Sanjukta Roy, Advs. for R-1.

Mr. Sujoy Sur, Mr. Aubert Sebastian, Mr. Vedant Kumar, Advs. R-2&3.

Mr. Ashish Aggarwal, Mr. Rahul Malik, Ms. Shivangi Shokeen, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity "*the Arbitration Act*") seeking to challenge the Appellate Arbitral Award dated 31.07.2015 (for brevity "*the Appellate Award*") whereby the Appellate Arbitral Tribunal dismissed the appeal of the petitioner against the Original Arbitral Award dated 16.05.2014 (for brevity "*the Original Award*") *vide* which the Original Arbitral Tribunal dismissed the claim of the petitioner of Rs. 2.25 crores against the respondent No. 1.

2. In the present case, the respondent No. 1 is the stock broker, respondent No. 2 is the National Stock Exchange of India Limited (for brevity "*the NSE*"), the respondent No. 3 is the Arbitration Department of the NSE and the respondent No. 4 is the Securities and Exchange Board of India (for brevity "*the SEBI*").

FACTUAL BACKGROUND

3. The brief facts of the case as per the pleadings are that on 13.07.2007, the petitioner entered into a Member Client Agreement (for brevity "*the MCA*") with the respondent No. 1. According to the MCA, the petitioner, being "the client", agreed to invest and trade in securities, contracts and other instruments admitted for trading on the NSE. The MCA also allowed the petitioner to trade in the derivatives segment and enter into derivative contracts through the respondent No. 1, being "the stock broker".

4. In 2007, the petitioner opened its trading account with the respondent No. 1. From September 2010 to June 2011, the petitioner, with the client ID No. PP 14 RG 012, traded in Nifty Futures through the respondent No. 1. The petitioner deposited a total of Rs. 1,46,00,000/- into the trading account via RTGS, including Rs.1,21,00,000/- on 11.10.2010 and Rs.25,00,000/- on 19.10.2010. As per the respondent No. 1, the petitioner incurred losses during trading and on 29.06.2011, the respondent No. 1 issued a cheque for Rs.31,525.19/- along with the statement of accounts, reflecting the credit balance available in the account of the petitioner.

5. Subsequently, the petitioner invoked the arbitration mechanism under Regulation 5.9(h) of the NSE (Futures & Options Segment) Trading Regulations (for brevity "*NSE Regulations*") by filing a Statement of Case dated 20.09.2013 before the NSE. The petitioner alleged that the losses incurred were solely due to the actions of the respondent No. 1, alleging unauthorized trades in the derivatives segment, violations of the Securities and Exchange Board of India Act, 1992 (for brevity "*the SEBI Act*") and incompetence of the respondent No. 1. The petitioner stated that the respondent No. 1 failed to provide contract notes, allowed excessive leverage and squared off positions erratically without notice. Consequently, the petitioner made a claim of Rs. 2.25 crores against the respondent No. 1, which included the principal amount of Rs.1,46,00,000/- plus interest at 15% per annum for three years.

6. The Original Arbitral Tribunal dated 16.05.2014 concluded that all trading transactions during the relevant period were within the knowledge of the petitioner and subsequently dismissed the entire claim.

7. Thereafter, the petitioner challenged the Original Award before the Appellate Tribunal through an appeal dated 23.06.2014. In this appeal, the petitioner argued that the funds of Rs.1,46,00,000/- were provided for delivery-based share trading in the cash market. The petitioner also contended that the recordings of conversations between him and the respondent No. 1, submitted to the Original Arbitral Tribunal, were false and fabricated and that his positions were squared off without prior notice.

8. The Appellate Arbitral Tribunal, in the impugned award, dismissed the appeal of the petitioner and upheld the findings of the Original Tribunal.

9. Hence, the present petition with the following substantial prayers:

> *"i. In view of the above humble respectful submission of the petitioner client it is prayed that the full claim of Rs. 2.25 crores of the client may kindly be allowed by setting aside the impugned arbitration award on each of the issues and grounds raised by the petitioner in the grounds of appeal, pleadings and submissions. Further the petitioner may kindly be awarded interest from 01.11.2013 till the final date of disposal of this application of the petitioner along with the cost of arbitration proceedings both at the original and appellate stage held in the National Stock Exchange Limited, New Delhi and the costs involved in pursuing this application.*
>
> *ii. The kind directions of the Hon'ble Court may be issued to the National Stock Exchange Limited, Mumbai and New Delhi to provide all the information sought by the petitioner which is essential to determine the claim of the petitioner. If the*

respondent broker and the exchange fail to provide the factual details vis-a-vis the prevailing position of substantive law contained in the rules, regulations, orders , notifications etc. issued by the market regulator SEBI and in pursuance thereof by the exchange in terms of the said trading regulations then it is impossible to settle the subject matter of dispute through arbitration as per the present law in force as contained in sub clause (i) of clause (b) of sub section 2 of section 34 of the said Arbitration Act. As such the Hon'ble Court is requested to kindly pass suitable order in this regard. The market regulator SEBI is under a legal duty to oversee the functioning of the exchange as per the rules and regulations mandated by the SEBI Act 1992 and as such suitable directions may kindly be issued to SEBI in asking the NSE Ltd to provide all the relevant information and details called by the client in the interest of justice. …"

SUBMISSIONS ON BEHALF OF THE PETITIONER

The Appellate Award and the Original Award are time barred, being passed beyond the limitation period.

10. The Original Award dated 16.05.2014 is time-barred since it was passed and received well after the four-month period mandated from the date of the appointment of the arbitrators i.e. 31.10.2013, as provided under Bye-Law 13(b) of Chapter XI of the National Stock Exchange Bye-Laws (for brevity

"*the NSE Bye-Laws*"). The petitioner received the award on 23.05.2014, well past the required receipt date of 28.02.2014 and no SEBI-sanctioned extension was sought by the respondent No. 1 or the NSE. As a result, the Original Award is void ab initio, rendering any subsequent proceedings based on it legally groundless.

11. Similarly, the Appellate Award dated 31.07.2015 is also time-barred because it was made after the stipulated three-month period from the appointment of the appellate arbitrators i.e. 05.09.2014, as provided under Bye-Law 19(b) of the NSE Bye-Laws. An extension of 2 months was granted on 01.12.2014 and a further extension was agreed upon for reconstitution of the tribunal on 21.01.2015. The award was issued on 31.07.2015, well past the required date of 21.04.2015.

12. Moreover, in terms of SEBI Circular No. CIR/MRD/ICC/8/2013 dated 18.03.2013, the NSE failed in its duty to promptly notify the petitioner as regard to the appointment of the arbitrator and thereby exacerbating delays. In the case of the appointment of the original arbitrators, the arbitrators were appointed on 31.10.2013 and the said intimation was sent on 29.11.2013 and thus, there was an unexplained delay of 29 days. In the case of the appointment of the appellate arbitrators, the arbitrators were appointed on 05.09.2014 and the said intimation was sent on 24.09.2014 and thus, there was an unexplained delay of 19 days.

13. It is further submitted that the legal maxim "*sublato fundamento cadit opus*", as established in ***Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307***, is applicable in the present case, asserting that once the foundational

award is removed due to lapse of time, any derivative or appellate award loses its legal basis.

14. Consequently, both the Original and Appellate awards are deemed void and the arbitrators, having become *functus officio* due to time lapse, no longer possessed the legal mandate to decide on the matter in both the original arbitral proceedings as well as the appellate arbitral proceedings.

15. Reliance is placed on the decisions of the Hon'ble Supreme Court, in ***Pathapati Subba Reddy (Died) by LRs & Ors. v. The Special Deputy Collector (LA), 2024 INSC 286***, ***Shri Mukund Bhavan Trust & Ors. v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle & Anr., Civil Appeal No. 14807 of 2024, Order dated 20.12.2024*** and ***H. Guruswamy & Ors. v. A. Krishnaiah since deceased by LRs, 2025 INSC 53,*** wherein it has been reiterated that the law of limitation is a matter of public policy, mandating fixed periods for litigation to end.

16. The Hon'ble Supreme Court in ***NBCC Limited v. J.G. Engineering Private Limited, (2010) 2 SCC 385*** held that judicial leniency in extending time cannot override clear statutory limits and that once a stipulated time elapses without award publication or proper extension under Section 28 of the Arbitration and Conciliation Act, 1940 (for brevity "*the 1940 Arbitration Act*"), the mandate of the arbitrator terminates.

17. Reliance is placed on ***Harji Engineering Works Private Limited v. M/s Bharat Heavy Electricals Limited & Anr., 2008:DHC:2719, Ariba India Private Limited v. M/s Ispat Industries Limited, 2011:DHC:3251*** and ***Scorpion Express Private Limited v. Union of India through Secretary, AIR 2018 Delhi 51,*** to urge that once the time prescribed in the arbitration

agreement is exceeded without a clear extension under the Arbitration Act (or invoking Section 28 of the 1940 Arbitration Act, where applicable), the arbitrator becomes *functus officio* and the award is liable to be set aside.

The composition of the Appellate Tribunal is bad in law.

18. The composition and appointment process of the appellate tribunal violates several procedural and statutory requirements. The three arbitrators, including Justice (Retd.) K.S. Gupta, were simultaneously appointed as the arbitrators in fifteen cases of the family members of the petitioner, which is contrary to stipulated NSE and SEBI Regulations and the Arbitration Act. The appointment process, guided by the SEBI Circulars dated 11.08.2010 and 18.03.2013, is challenged on the grounds that it allowed for conflict of interest, with one arbitrator improperly designated as the presiding arbitrator, thus compromising the impartiality and fairness of the arbitral tribunal.

19. Further, the petitioner stated that the NSE is authorized for managing the tribunal appointments through a "Centralized Arbitrator Appointment Process" and does not adhere to the detailed procedure mandated by its own guidelines.

20. Hence, in accordance with Section 34(2)(a)(v) of the Arbitration Act, the entire process is flawed and vitiated in law, warranting the appellate award to be struck down.

Factual Contentions of the Petitioner.

Trade Logs and NEAT System Generated Confirmation Slips:

21. The petitioner argued that the absence of trade logs and NEAT system-generated confirmation slips renders the derivative trades unauthorized. According to the petitioner, the NSE is legally obligated under the NSE Regulations, specifically Clause 3.4 and Clause 5.13A, to maintain and provide these records. The failure to do so, coupled with the neglect of the arbitrators to call and verify these critical documents, as also outlined in their appointment letters, has resulted in biased and collusive award that favor respondent No. 1, thereby compromising the integrity of the arbitration process. The petitioner contends that this omission is a clear violation of Section 34(2)(b) Explanation 1(i) of the Arbitration Act.

Standard Operating Procedures:

22. The petitioner argued that the branch of respondent No. 1 and its employees have not been approved or recognized by the NSE; the respondent No. 1 has failed to furnish information despite repeated requests. The respondent No. 1 did not comply with the Standard Operating Procedures (for brevity "*the SOP*") or Clauses 2.1.2, 4.1.1 and 4.2.1.(b) of the NSE Regulations for operating a branch and for having NCFM-qualified employees/dealers. Further, the NSE, which should ensure compliance, has not provided the requested details and appears biased, acting as a spokesperson for the respondent No. 1 and arbitrators. The petitioner stated that the findings of the arbitrators are contradictory and illegal because they downplayed the necessity of adhering to the NSE and SEBI Regulations. The arbitrators have violated the Code of Conduct stipulated in the SEBI Circular dated 11.08.2010.

Telephone Recordings:

23. The petitioner contended that the telephone recordings provided by the respondent No. 1 are fabricated, tampered with, manipulated and therefore, inadmissible as evidence since they do not represent confirmed order placements but rather general discussions. The recordings, produced for only four days, were never officially played during arbitration and the order sheets remain silent on the matter. The petitioner argues that these recordings were not authenticated by the regulatory authorities, the SEBI and the NSE, who do not recognize such unauthenticated recordings as valid evidence. Further, the respondent No. 1 initiated unauthorized trading activities based on these distorted recordings, starting a spree of unauthorized entries into the account of the petitioner which resulted in the wiping out of the initial capital of the petitioner. The transcripts do not include essential details such as the names and designations of the employee of the respondent No. 1, who recorded these conversations, raising serious doubts about their authenticity. In addition, the explanation of the respondent No. 1 for not producing all recordings is not valid as per the petitioner stating that the excuse of a long passage of time is insufficient, especially as the recordings should have been preserved and produced when initially requested in a letter dated 25.04.2011.

Written Consent of the Petitioner:

24. The petitioner contended that the original tribunal and the appellate tribunal ignored the submissions of the petitioner regarding the telephone recordings

produced by the respondent No. 1. It is stated that the contention of the respondent No. 1 that these recordings are oral orders, is impermissible under the NSE Regulations. According to the SEBI Circular No. SEBI/HO/MIRSD/DOPI/CIR/P/2018/54 dated 22.03.2018, only confirmed written instructions are valid. The reliance of the respondent No. 1 on these recordings being oral orders, which have not been approved or confirmed in writing, is therefore contested as illegal and unauthorized. It is further argued that merely presenting recordings from four days does not suffice to validate all the trades executed in the account of the petitioner. It emphasizes that every trade must be supported by unequivocal, documented consent of the client. The reliance of the arbitrators on a limited, allegedly manipulated sample of recordings is stated as a distorted interpretation that disregards the lack of written evidence. This approach violates natural justice principles and prescribed code of conduct by the SEBI for arbitrators.

Contract Notes, Quarterly Statement of Accounts, Daily Margin Statements etc.:

25. The petitioner contended that the respondent No. 1 violated the regulations, notably the SEBI Circular No. MIRSD/SE/Cir-19/2009 dated 03.12.2009 and NSE Circular No. NSE/INSP/2010/91 dated 03.02.2010, by entering derivative trades without obtaining the specific option of the petitioner through written authorization. According to the petitioner, derivative trades form an independent class requiring clear and confirmed orders and the failure of the respondent No. 1 to provide proper disclosures or verify the instructions of the petitioner renders the trades unauthorized. In addition, the respondent No. 1 did not send any quarterly statements to the petitioner

constituting intimation of such derivative trades. The respondent No. 1 did not adhere to the SOP prescribed under Chapters 3, 4 and 6 of the NSE Regulations. Key procedural lapses included not obtaining written confirmed order instructions before executing trades, not maintaining statutory records such as NEAT system-generated trade slips or order confirmations and issuing contract notes without proper consent of the petitioner. These breaches mean the contract notes do not reflect the actual orders of the petitioner, thereby making them invalid. Consequently, the petitioner submits that the appellate tribunal has erred in concluding that the trades were executed with the consent of the petitioner.

Margin Calls:

26. The petitioner argued that the respondent No. 1 unilaterally liquidated and squared off the positions of the petitioner without any prior margin calls, notifications or written consent. The claim of respondent No. 1 of having informed the petitioner about such actions is denied and evidence is cited from the own defense statement of respondent No. 1, which admits to these unauthorized actions. It is submitted that by creating artificial positions and then squaring them off, the respondent No. 1 effectively wiped out the capital of the petitioner, arguing that this was done without due diligence and in clear violation of the NSE Regulations. The respondent No. 1 provided extra leverage and exposure without the request of the petitioner, leading to significant financial losses. According to the petitioner, the actions of the respondent No. 1, including the absence of mandated margin calls and subsequent failure to process proper payout procedures, further

accentuating the losses. Furthermore, the petitioner stated that the arbitrators failed to address these issues adequately. It is argued that key facts, such as the unilateral squaring off and the provision of extra leverage by respondent No. 1, were either ignored or misinterpreted. The submissions of the petitioner regarding these violations of Clause 3.10(b) and Clause 6.1.4 of the NSE Regulations were not properly considered, thus resulting in an unjust award.

The Appellate Award passed is against the terms of the MCA, the Arbitration Act and are against the public policy of India.

27. The petitioner argued that the impugned appellate award is invalid because it violates substantive law, the terms of the contract and the public policy of India. It is contended that the award is driven by fraud, corruption and institutional inefficiencies and that the arbitrators exceeded their jurisdiction by rewriting the contract and ignoring evidence. It is stated that the award is violative of Sections 28(1), 28(3) and 34(2)(b)(ii) of the Arbitration Act. The petitioner argues that the award is vitiated by patent illegality, as the appellate arbitrators dismissed the grounds of appeal without proper consideration.

28. It is further submitted that respondent No. 1 has committed blatant violations of the MCA which outlines that both parties must adhere to the NSE Bye-Laws, the NSE and SEBI Regulations and relevant government notifications. The violations include not reconciling accounts periodically, not providing mandatory daily activity logs and not maintaining acknowledged duplicate copies of contract notes as required by SEBI and the NSE Regulations. It is

also asserted that the respondent No. 1 carried out unauthorized trades in an inactive account, illegally retained funds and securities and disregarded the required procedures such as the Running Account Authorization.

29. Moreover, both the original and appellate arbitrators provided contradictory findings and denied the petitioner a proper opportunity to present evidence or challenge the trades effectively. It is stated that the arbitrators ignored key evidence, pertinent correspondence and established case law, thereby undermining the principles of natural justice.

30. It is alleged that the arbitrators are siding with the respondent No. 1 and failing to address the numerous compliance failures, leading to an unjust outcome. The petitioner emphasizes that the arbitration process should protect the interests of the petitioner and any ambiguities should be resolved in favor of the petitioner.

31. Reliance is placed on ***Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49, Ssangyong Engineering and Construction Company Limited v. National Highway Authority of India, AIR 2019 SC 5041*** and ***Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Express Private Limited, 2024 SCC OnLine SC 522***.

<u>On Respondent No. 2, 3 and 4.</u>

32. The petitioner emphasized that the NSE and the SEBI fall under the definition of "Relevant Authority" as provided under Definition 11 of the NSE Bye-Laws. The petitioner argued that these authorities cannot avoid answering critical regulatory issues, which are directly relevant to the determination of the present petition. Specific unanswered regulatory

questions, such as the legality of award timelines, compliance with appointment procedures of the arbitral tribunals and the failure of the arbitrators to seek trade logs, are listed by the petitioner, which are required to be addressed by the SEBI and the NSE.

33. Originally, the NSE and the SEBI were made parties to the petition under Section 34 of the Arbitration Act, although no monetary relief was sought against them. While they were later removed from the list of parties by an earlier court order dated 19.10.2016 passed by this Court, the NSE was subsequently re-added by the court on 14.03.2018 due to its essential role in explaining delays in passing the appellate award. The SEBI is duly represented in the present case and has filed an affidavit dated 06.07.2023 outlining procedural requirements and confirming that award must be passed within prescribed limits, reinforcing that they are active participants in the matter, despite claiming otherwise.

34. It is stated that the NSE is acting in collusion with the respondent No. 1 by seeking dismissal of the present petition, despite being responsible for managing arbitration and regulatory compliance. This amounts to misconduct and a failure to act as a neutral regulatory authority.

35. The arbitration in question is described as institutional and mandatory, conducted under the rules of the NSE approved by the SEBI. It is stated that the NSE, being the custodian of all arbitral records, must assist the court in understanding and verifying the process required to be adhered to.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1

The Appellate Award is not time barred.

36. The petitioner contended that the Appellate Award issued on 31.07.2015, is null and void because it was rendered beyond the time limits set by Bye-Law 19(b) of the NSE Bye-Laws. The petitioner argues that the Appellate Tribunal is *functus officio*, meaning it no longer has the authority to act and therefore, the award should be considered invalid.

37. It is pertinent to note that the Appellate Tribunal was appointed on 11.09.2014 and was required to dispose of the appeal within 3 months, by 10.12.2014. An extension of 2 months was granted on 01.12.2014 and a further the parties agreed for reconstitution of the tribunal on 21.01.2015. Ultimately, the Appellate Award was issued on 31.07.2015.

38. The respondent No. 1 argued that the petitioner did not raise any objections regarding the timeline until after the award was issued, effectively waiving his right to contest the timing under Section 4 of the Arbitration Act. The respondent No. 1 also claims that the timelines in the NSE Bye-Laws are directory rather than mandatory, as there are no specified consequences for non-compliance.

39. Furthermore, the respondent No. 1 asserted that the Appellate Tribunal was not *functus officio* because the NSE Bye-Laws and the SEBI Circulars do not provide for automatic expiration of the mandate of the arbitral tribunal upon the expiration of the time period. The respondent No. 1 argues that the absence of a provision for automatic termination means that the tribunal retained its authority.

40. The respondent No. 1 also pointed out that prior to the 2015 Amendment to the Arbitration Act, there were no explicit consequences for failing to meet

timelines, and thus any delay would be considered an irregularity rather than an illegality.

41. In conclusion, the respondent No. 1 argued that even if the Appellate Award was issued beyond the prescribed time, it does not meet the criteria for being set aside under Section 34 of the Arbitration Act and therefore, the award should be upheld.

The Appellate Award is valid under the law.

42. The petitioner argued that the Appellate Tribunal failed to adequately address the merits of the dispute in its award, claiming that both the Appellate and Original Awards should be set aside. However, the respondent No. 1 contends that the Appellate Tribunal considered the necessary facts and circumstances in the Original Award before issuing their reasoned Appellate Award.

43. In paragraph 6 of the Appellate Award, the Appellate Tribunal found that the petitioner was aware of the Nifty Future trades and had provided funds for trading. The tribunal highlighted that the petitioner did not raise objections about the contract notes until years after the trades were executed, undermining his claims of ignorance.

44. In paragraph 7 of the Appellate Award, the Appellate Tribunal reviewed contract notes, quarterly statements, and other relevant documents, concluding that the petitioner had received the necessary documentation and was aware of the terms and conditions of the trading account. The tribunal noted that the petitioner deposited a significant amount shortly after opening the account, indicating knowledge of the trading activities.

45. In paragraph 7 of the Appellate Award, the Appellate Tribunal noted that the respondent No. 1 had the right to square off positions if the petitioner failed to meet margin requirements, as stipulated in the MCA. The tribunal found that the respondent No. 1 acted within its rights under the MCA.

46. In paragraph 8 of the Appellate Award, the Appellate Tribunal examined audio recordings of conversations between the petitioner and the representatives of the respondent No. 1, confirming that the petitioner did not deny the authenticity of these recordings. The tribunal dismissed the claims of the petitioner that the recordings were manipulated, stating that they were relevant to the case.

47. In paragraph 10 of the Appellate Award, the Appellate Tribunal determined that the respondent No. 1 did not breach any applicable NSE or SEBI Regulations, stating that the absence of strict compliance with documentation requirements did not render the trades illegal.

48. The respondent No. 1 argued that the claim of the petitioner that the Appellate Award is against public policy lacks merit, as the necessary legal standards were not violated by the respondent No. 1, which is correctly held by the Appellate Tribunal.

49. The respondent pointed out that the petitioner has filed similar petitions against multiple brokers, indicating a pattern of vexatious litigation aimed at recouping losses rather than legitimate grievances.

On the Factual Contentions raised by the Petitioner.

Trade Logs and NEAT System Generated Confirmation Slips:

50. The respondent No. 1 countered the claim of the petitioner regarding the absence of order confirmation slips and trade logs for the derivative trades executed in the account of the petitioner. Regulation 6.1.4 of the NSE Regulations, mandates that brokers maintain order confirmation slips, trade confirmation slips, and exercise notice records for a period of five years. The respondent No. 1 asserts that all trading activities occur on the NEAT Platform, where all relevant documents, including contract notes (also referred to as confirmation slips), are generated and maintained. The respondent No. 1 has produced copies of the contract notes generated from the NEAT System before the Original Tribunal, demonstrating compliance with the regulatory requirements. This evidence supports the assertion that the necessary documentation was maintained and is available.

Standard Operating Procedures:

51. The petitioner asserted that respondent No. 1 did not adhere to the SOP for entering trades and failed to obtain approval from the NSE for opening its branch. However, the respondent No. 1 contends that the requisite approval for opening the branch was indeed obtained from the NSE. The respondent No. 1 emphasizes that if it had not secured the necessary approval, the NSE would have penalized it and taken appropriate action. This indicates that the broker was compliant with regulatory requirements. Regarding the qualifications of its employees, the respondent No. 1 provided evidence of compliance by submitting a copy of the NCFM Certificate for Mr. Vishal Pal, which was annexed with the Statement of Defence (for brevity "*the SoD*").

Telephone Recordings:

52. The petitioner asserted that only four transcripts of phone conversations between him and the broker were submitted, claiming that these do not accurately represent the situation and suggesting that other recordings have been destroyed or concealed. The respondent No. 1 clarifies that the Original Tribunal specifically directed the production of sample recordings/transcripts, which is why only the transcripts for four days were provided. There was no requirement from the tribunal to produce all transcripts related to every trade executed by the petitioner.

Written Consent of the Petitioner:

53. The respondent No. 1 refuted the claim of the petitioner that written consent was not obtained prior to executing transactions, asserting that such consent is not strictly mandated under the relevant regulations. Regulation 3.4.1 of the NSE regulations states that trading members must obtain "appropriate confirmed order instructions" from clients before placing orders on the NEAT system. However, it does not explicitly require these instructions to be in written form. Regulation 17(j) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (for brevity "*the SEBI Regulations*") requires brokers to maintain written consent for contracts entered into as principals, but this does not negate the validity of trades executed based on confirmed instructions received through other means. The respondent No. 1 argues that the amendment to the NSE Regulations clarifies that "appropriate confirmed

order instructions" can include instructions received via telephone, provided that these instructions are recorded and maintained. The respondent No. 1 maintains that the MCA does not stipulate that trade orders must be given in writing. Clause 1.3.5 of the MCA serves as a general advisory for the benefit of the investor, indicating that instructions can be given in a manner mutually agreed upon.

Contract Notes, Quarterly Statement of Accounts, etc.:

54. The respondent No. 1 asserted that the claim made by the petitioner regarding the non-supply of contract notes, quarterly statements of accounts and other relevant documents is false. The respondent No. 1 included copies of the contract notes and proof of dispatch in the Original SoD. Specifically, contract notes and quarterly statements for the period from September 2010 to June 2011 were annexed with the SoD and proof of dispatch of the contract notes was included with the SoD. The petitioner himself submitted quarterly statements along with his submissions dated 03.02.2014, to the Appellate Tribunal. The Original Award concluded that the petitioner was provided with all relevant documents and was aware of the trades conducted in his account, as noted in paragraph 23 of the Original Award. The Appellate Award also confirmed that the petitioner was aware of the trades and had received the necessary documentation, as stated in paragraph 7 of the Appellate Award.

Margin Calls:

55. The respondent No. 1 countered the claim of the petitioner that the broker unilaterally squared off the margin position without prior approval. The respondent No. 1 states that Regulation 3.10(a) of the NSE Regulations does not apply in the present case, as the respondent No. 1 acted in accordance with the provisions outlined in the MCA. Specifically, Clauses 37 and 40 of the MCA allow the respondent No. 1 to square off open positions without prior notification if the petitioner fails to meet margin requirements. The respondent No. 1 emphasized that the petitioner had not disputed the fact that he failed to meet the margin requirements. Therefore, the respondent No. 1 was justified in squaring off the positions to mitigate risk. The respondent No. 1 asserts that the petitioner was informed about the squaring off of the positions, which aligns with the terms of the MCA. Furthermore, the respondent No. 1 claims that there was no violation of Regulation 3.10(a) of the NSE Regulations because the margin was collected from the petitioner. The transaction was closed due to the non-payment of daily settlement obligations by the petitioner, in accordance with Regulation 3.10(b) of the NSE Regulations.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2 AND 3

NSE is neither a necessary nor a proper party to the present proceedings.

56. The respondent No. 2 and 3 argued that the NSE is neither a necessary nor a proper party to the current proceedings under Section 34 of the Arbitration Act.

57. The dispute arose solely from the MCA between the petitioner and the respondent No. 1, in which the NSE is not a party. Therefore, the involvement of the NSE in the proceedings is unwarranted.

58. The respondent No. 2 and 3 submitted that the NSE has already complied with the relief sought by the petitioner, as the arbitral record has been submitted to the court.

59. The arbitration proceedings were conducted under the aegis of the NSE, but the NSE was not involved in the dispute between the petitioner and the respondent No. 1, nor did it have any interest in the outcome. The petitioner did not seek any relief against the NSE in the arbitration proceedings and the arbitral tribunal did not issue any directions against the NSE.

60. The respondent No. 2 and 3 highlighted that this Court, by an order dated 19.10.2016, removed the NSE from the list of parties, affirming that the arbitration was solely between the petitioner and the respondent No. 1. Additionally, an order dated 24.08.2018 passed by this Court, directed the NSE to provide an affidavit regarding the consent of the petitioner and the respondent No. 1 for continuation of the proceedings by the Appellate tribunal. The affidavit noted that both parties had no objection to the same panel of arbitrators being reconstituted.

61. The respondent No. 2 and 3 cited specific provisions from the NSE Bye-Laws that clarify that the NSE is not to be construed as a party to disputes arising between clients and trading members, namely:

A. Bye-Law 4 indicates that the NSE does not incur liability regarding dealings in securities.

B. Bye-Law 5 states that no legal proceedings can be initiated against the NSE for actions taken in good faith.

C. Bye-Law 18 states that the NSE shall not be considered a party to dealings or transactions under the Bye-Laws.

The Appellate Award is not time barred.

62. The respondent No. 2 and 3 outlined that the Appellate Tribunal was constituted on 11.09.2014, with a 3 months period for completing the proceedings expiring on 10.12.2014, as per Bye-Law 19(b) of the NSE Bye-Laws. A request for an extension of the mandate of the Appellate Tribunal was made on 28.11.2014. An extension of 2 months was granted on 01.12.2014, extending the mandate to 10.02.2015. Respondent No. 1 consented to the reconstitution of the Appellate Tribunal on 21.01.2015, and the petitioner provided consent for the reconstitution on 28.01.2015. The Appellate Award was issued on 31.07.2015.

63. The respondent No. 2 and 3 asserted that the NSE Bye-Laws do not specify timelines for a reconstituted arbitral tribunal, nor do any SEBI circulars address the timelines for concluding reconstituted arbitration proceedings.

64. In compliance with an order dated 24.08.2018 passed by this Court, the NSE filed an affidavit on 02.11.2018, explaining the situation regarding the Appellate Arbitral proceedings. The affidavit noted that both parties had no objection to the same panel of arbitrators being reconstituted.

65. The respondent No. 2 and 3 argued that both parties were aware of the expiration of the time period for the Appellate Award and consciously

approved the reconstitution of the same panel of arbitrators, as evidenced by the letter of the petitioner dated 28.01.2015.

66. The respondent No. 2 and 3 emphasized that there is no provision in the NSE Bye-Laws for the automatic termination of the arbitral tribunal upon the expiration of the mandate of the arbitrator.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 4

SEBI is neither a necessary nor a proper party to the present proceedings.

67. The respondent No. 4 asserted that SEBI is not a necessary or proper party to the proceedings, as the dispute arises solely from the MCA between the petitioner and the respondent No. 1, with SEBI not being a party to this agreement or the arbitration proceedings. Reliance is placed on Section 2(j) of the Securities Contracts (Regulations) Act, 1956 and the SEBI Act.

68. The respondent No. 4 highlighted that this Court, by an order dated 19.10.2016, removed SEBI from the list of parties, affirming that the arbitration was strictly between the petitioner and the respondent No. 1. This order has not been challenged by the petitioner.

69. The respondent No. 4 emphasized that jurisdiction of the SEBI is limited to regulatory actions and does not extend to adjudicating disputes between clients and brokers. The resolution of such disputes falls within the purview of civil courts or arbitration tribunals.

70. The respondent No. 4 addressed the reliance of the petitioner on specific clauses of the NSE Trading Regulations, asserting that it is the responsibility

of the petitioner to prove any violations and that SEBI has no role in this regard.

The Appellate Award is not time barred.

71. Both parties consented to the reconstitution of the Appellate Tribunal, indicating their awareness of the timeline for the Appellate Award. The petitioner provided written consent for the reconstitution on 28.01.2015.

72. The respondent No. 4 explained that the NSE Bye-Laws do not impose mandatory timelines for the reconstituted arbitral tribunal and there are no penal consequences for exceeding the prescribed timelines. The absence of such provisions means that the deadlines should be interpreted as directory rather than mandatory.

ANALYSIS AND FINDINGS

73. Section 34 of the Arbitration Act delineates the grounds for setting aside an arbitral award. The provision reads as under:

> *"**34. Application for setting aside arbitral award**.—*
>
> *(2) An arbitral award may be set aside by the Court only if—*
>
> *(b) the Court finds that—*
>
> *(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
>
> *(ii) the arbitral award is in conflict with the public policy of India.*

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence."

74. In ***Delhi Metro Rail Corporation Limited (supra)***, the Hon'ble Court endorsed the position in ***Associate Builders (supra)*** and ***Ssangyong Engg. & Construction Co. Ltd. (supra)***, on the scope for interference with

domestic award under Section 34 of the Arbitration Act. The relevant paragraphs reads as under:

> *"39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] A "finding" based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice."*

75. On perusal, the position of the law is settled that under Section 34 of the Arbitration Act, judicial intervention is confined to manifest errors, procedural irregularities and breaches of principles of natural justice. The courts do not re-assess factual findings unless there is a clear error or violation of statutory or public policy.

76. In the present case, even though the petitioner has made averments challenging both the Appellate Award and the Original Award on the ground that the law of limitation is a matter of public policy and the fixed timelines

mandate the speedy disposal of the arbitration proceedings under the Arbitration Act as well as the NSE and the SEBI rules and regulations, however, the parties have substantially argued only on the merits/demerits of the Appellate Award. Hence, the scope of the present judgment is limited to the validity of the Appellate Award and is not going into the examination of the validity of the Original Award.

The Appellate Award is time barred being passed beyond the limitation period.

77. The undisputed facts of the present case are that the arbitral proceedings are governed by the NSE Bye-Laws. The Appellate Tribunal was appointed on 11.09.2014. In terms of Clause 6.5 of the SEBI Circular dated 11.08.2010 and Bye-law 19(b) of the NSE Bye-laws, the Appellate Tribunal was to dispose of the appeal within 3 months i.e., by 10.12.2014. One of the arbitrators wrote to respondent No. 3 on 28.11.2014 requesting for extension of time of the mandate of the Appellate Tribunal. As per Clause 6.6 of the SEBI Circular dated 11.08.2010, an extension of 2 months was granted on 01.12.2014, starting from 10.12.2014 till 10.02.2015. On 21.01.2015, the respondent No. 1 wrote to the respondent No. 3 giving its consent for re-constitution of the Appellate Tribunal. A letter dated 28.01.2015 for re-constitution of the Appellate Tribunal after 10.02.2015 was also signed by the petitioner. The Appellate Award was issued on 31.07.2015.

78. Clause 6.5 of the SEBI Circular dated 11.08.2010 reads as under:

> *"6.5 The appeal shall be disposed of within three months from the date of appointment of appellate panel of such appeal by way of issue of an appellate arbitral award."*

79. Bye-Law 19(b) of the NSE Bye-Laws reads as under:

> *"19 (b) The Appellate Arbitrator shall consist of three arbitrators who shall be different from the ones who passed the Arbitral Award appealed against and such Appellate Arbitrators shall dispose of the appeal by way of issue of an Appellate Arbitral Award within three months from the date of appointment of the Appellate Arbitrator."*

80. Clause 6.6 of the SEBI Circular dated 11.08.2010 reads as under:

> *"6.6 The Managing Director/ Executive Director of the stock exchange may for sufficient cause extend the time for issue of appellate arbitral award by not more than two months on a case to case basis after recording the reasons for the same."*

81. The petitioner argued that the Appellate Award was passed beyond the legally mandated time limits as prescribed under Bye-law 19(b) of the NSE Bye-laws as it was rendered beyond the three-month period from the appointment of the appellate tribunal. Further, the petitioner argued that the extension sought by only one arbitrator rather than unanimously by the three appointed arbitrators is violative of Section 29(1) of the Arbitration Act.

82. The Appellate Award was issued on 31.07.2015. Even if the NSE had the authority to extend the mandate and to reconstitute the Appellate Tribunal, the Appellate Award was to be made within the 3-month timeline, i.e. till 10.05.2015 and not thereafter.

83. The respondent No. 1 argued that the timelines in the NSE Bye-Laws are directory rather than mandatory, as there are no specified consequences for

non-compliance and no specific provision for automatic expiry of the mandate of the arbitral tribunal.

84. It is pertinent to note that the Hon'ble Supreme Court in ***Union of India v. U.P. State Bridge Corporation Limited, (2015) 2 SCC 52,*** observed the following four pillars of the arbitration. The relevant paragraph reads as under:

> *"14. Speedy conclusion of arbitration proceedings hardly needs to be emphasised. It would be of some interest to note that in England also, Modern Arbitration Law on the lines of UNCITRAL Model Law, came to be enacted in the same year as the Indian law which is known as the English Arbitration Act, 1996 and it became effective from 31-1-1997. It is treated as the most extensive statutory reform of the English arbitration law. Commenting upon the structure of this Act, Mustill and Boyd in their Commercial Arbitration, 2001 companion volume to the 2nd Edn., have commented that this Act is founded on four pillars. These pillars are described as:*
>
> ***
>
> *Section 1 of the Act sets forth the three main principles of arbitration law viz. (i) speedy, inexpensive and fair trial by an impartial tribunal; (ii) party autonomy; and (iii) minimum court intervention. This provision has to be applied purposively. In case of doubt as to the meaning of any provision of this Act, regard should be had to these principles."*
>
> *(Emphasis supplied)*

85. The Hon'ble Supreme Court in the case of ***Pathapati Subba Reddy (Died) by LRs & Ors. (supra)*** has held as under:

> *"7. The law of limitation is founded on public policy. It is enshrined in the legal maxim "interest reipublicae ut sit finis litium" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals."*

86. Further, the Hon'ble Supreme Court in the case of ***H. Guruswamy & Ors. (supra)*** has held as under:

> *"17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."*

87. In ***NBCC Limited (supra)***, the arbitration proceedings had lingered on for 9 years. The Hon'ble Supreme Court held that the said delay defeated the notion of the whole process of resolving the disputes through arbitration. The decision of the High Court in fixing a time schedule within which the arbitration should be concluded was upheld. The relevant paragraph is extracted as under:

"14. Arbitration is an efficacious and alternative way of dispute resolution between the parties. There is no denying the fact that the method of arbitration has evolved over the period of time to help the parties to speedily resolve their disputes through this process and in fact the Act recognises this aspect and has elaborate provisions to cater to the needs of speedy disposal of disputes. The present case illustrates that in spite of adopting this efficacious way of resolving the disputes between the parties through the arbitration process, there was no outcome and the arbitration process had lingered on for a considerable length of time which defeats the notion of the whole process of resolving the disputes through arbitration. The contention of the appellant therefore cannot be justified that since the dispute was highly technical in nature, it had to be dealt with elaborately by the arbitrator and thus, he was justified in being late. The High Court had thus correctly fixed the time for the arbitration to be concluded within a period of six months from the appointment of the fourth arbitrator Shri A.K. Gupta considering the time that had been spent for the arbitration process prior to Mr Gupta's appointment."

(Emphasis supplied)

88. The Coordinate Bench of this Court in the case of ***Harji Engineering Works Private Limited (supra)*** has held as under:

"20. It is natural and normal for any arbitrator to forget contentions and pleas raised by the parties during the course of

arguments, if there is a huge gap between the last date of hearing and the date on which the award is made. An Arbitrator should make and publish an award within a reasonable time. What is reasonable time is flexible and depends upon facts and circumstances of each case. In case there is delay, it should be explained. Abnormal delay without satisfactory explanation is undue delay and causes prejudice. Each case has an element of public policy in it. Arbitration proceedings to be effective, just & fair, must be concluded expeditiously. Counsel for the respondent had submitted that this Court should examine and go into merits and demerits of the claims and counter claims with reference to the written submissions, claim petition, reply, document etc. for deciding whether the award is justified. In other words, counsel for the respondent wanted the Court to step into the shoes of the Arbitrator or as an appellate court decide the present objections under Section 34 of the Act with reference to the said documents. This should not be permitted and allowed as it will defeat the very purpose of arbitration and would result into full fledged hearing or trial before the Court, while adjudicating objections under Section 34 of the Act. Objections are required to be decided on entirely different principles and an award is not a judgment. Under the Act, an Arbitrator is supposed to be sole judge of facts and law. Courts have limited power to set aside an award as provided in Section 34 of the Act. The Act,

therefore, imposes additional responsibility and obligation upon an Arbitrator to make and publish an award within a reasonable time and without undue delay. Arbitrators are not required to give detailed judgments, but only indicate grounds or reasons for rejecting or accepting claims. A party must have satisfaction that the learned Arbitrator was conscious and had taken into consideration their contentions and pleas before rejecting or partly rejecting their claims. This is a right of a party before an Arbitrator and the same should not be denied. An award which is passed after a period of three years from the date of last effective hearing, without satisfactory explanation for the delay, will be contrary to justice and would defeat justice. It defeats the very purpose and the fundamental basis for alternative dispute redressal. Delay which is patently bad and unexplained, constitutes undue delay and therefore unjust."

(Emphasis supplied)

89. On perusal, it can be concluded that the above cited judgments underscore that the law of limitation in arbitration is fundamentally grounded in public policy, aiming to ensure that litigation does not extend indefinitely. The arbitrators are obligated to convene and conclude proceedings expeditiously. Failure to do so, may lead to consequences ranging from judicial intervention to the termination of the arbitral mandate or the setting aside of the award. In essence, the courts have made it clear that any unjustified delay undermines the efficacy and cost-effectiveness of arbitration,

rendering prolonged proceedings contrary to the fundamental objectives of dispute resolution.

90. In addition, the use of the word "*shall*" in Bye-Law 19(b) of the NSE Laws read with Clause 6.5 of the SEBI Circular dated 11.08.2010 suggests that the time frame of three months for the appellate tribunal to make and publish the award is mandatory. Even if the three-month time frame is considered to be directory, Clause 6.6 of the SEBI Circular dated 11.08.2010 emphasises that the appellate tribunal cannot be granted an extension for a period of more than two months. Hence, in the present case, the reconstituted Appellate Tribunal could not have passed the Appellate Award beyond the period of three months from 10.02.2015, as there was no further extension granted to the reconstituted Appellate Tribunal. Any award passed thereafter is violative of the intent, purpose and spirit of the NSE and SEBI rules and regulations.

91. If the interpretation of the respondent No. 1 is to be accepted, then, the same will render Bye-Law 7(b) of the NSE Bye-Laws otiose. Bye-Law 7(b) reads as under:

> *"(b) in the opinion of the Relevant Authority, the arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay including failure to make the arbitral award within the time period prescribed by the Relevant Authority. Such a decision of the Relevant Authority shall be final and binding on the parties;"*

92. It can be inferred that the NSE Bye-Laws aim to prevent undue delay and thus, prescribe for time limits as well as consequence of the non-compliance

with such timelines. Merely inaction of the relevant authority (being NSE and SEBI) will not legitimize the delay on behalf of the Appellate Tribunal.

93. The decision of the Hon'ble Supreme Court in ***Harinarayan G. Bajaj v. Rajesh Meghani, (2005) 10 SCC 660 (para 15)***, highlights that "*the arbitration proceedings as provided in the Bye-laws and Regulations are subject to the provisions of the Arbitration and Conciliation Act, 1996, to the extent not provided for in the Bye-laws and Regulations [Bye-law (14)]*" and further outlines that the disputes "*shall be submitted to arbitration in accordance with the provisions of these Bye-laws and Regulations. [Bye-law (1)]"*. This reinforces that any deviation from established procedural timelines invalidates the proceedings.

94. Hence, despite the absence of an automatic expiry clause for the mandate of the arbitral tribunal under NSE Bye-Laws, Bye-law 7(b) empowers the Relevant Authority to terminate an arbitrator who fails to act within the prescribed time, thereby indirectly limiting the mandate of the arbitral tribunal. It can be seen that the intent and spirit of the NSE Bye-Laws is similar to the Arbitration Act as the NSE Bye-Laws also impose specific timelines for issuing awards.

95. The respondent No. 1 has relied on the decision of the Bombay High Court in ***M/s Snehdeep Auto Centre v. Hindustan Petroleum Corporation Limited, Appeal No. 143 of 2012*** and the decision of the Madras High Court in ***Indian Oil Corporation Ltd. v. Devi Constructions, (2009) 2 CTC 791 (DB)***, to urge that the petitioner had waived his rights to object to the expiration of the mandate of the Appellate Tribunal as he participated in the proceedings by filing further submissions on 01.04.2015.

96. The decision of ***M/s Snehdeep Auto Centre (supra)*** was correctly distinguished by the Bombay High Court in the decision of ***Bharat Oman Refineries Limited v. M/s Mantech Consultants, 2012 SCC OnLine Bom 669,*** wherein it was held as under:

> *"30. The object and the scheme of the Arbitration Act is to secure expeditious resolution of disputes. Its foundation is based upon National and International Commercial Arbitration practice. The Arbitrator is required to adjudicate the disputes in view of the agreed terms of contract and the agreed procedure. All are bound by the agreed terms. Therefore, the Arbitration proceedings should be governed and run by the terms. The Arbitrator, therefore, cannot go beyond the Arbitration Agreement clauses. We all need to respect the legislative intent underlying the Act. The speedy and alternative solution to the dispute just cannot be overlooked. Delay occurred, if any, may destroy the arbitration scheme itself.*
>
> *31. In view of the agreed clause itself, after lapse of agreed time, the Arbitrator looses his jurisdiction as per the mandate of Sections 14 and 15 of the Act. Such defect is incurable. The implied consent cannot confer jurisdiction once the agreed period is lapsed. There is no provision to raise objection to the constitution of the Arbitral Tribunal except Sections 14 and 15 of the Act. But, once the Arbitration is closed for award, that stage also goes and the parties have no choice but to wait for the award. There was no reason and/or occasion for the*

respondent to raise any such objection before the Arbitrator under Section 16 of the Act and/or even before the Court under Section 14 of the Act. Once the matter is closed for judgment/order, a call for stamp-paper is nothing, but a ministerial procedure. It cannot be stated to be judicial proceedings to be attended by all the parties. Even otherwise, how party can presume that the arbitrator would not follow the mandate of the arbitration agreement, once the agreed period is over. The arbitrator could have and/or might have, after expiry of two years, and as extendable by consent one year more, refused to pass Award or terminated the arbitration proceedings suo motu. Any judgment and/or order cannot be presumed or assumed by the parties after closing of the matter unless actual order is passed and/or circulated to the parties.

32. The delay by the Arbitrator, to pass the award in such fashion itself, in our view, is a misconduct as contemplated under the Act. It is also illegal as it is not in pursuance of the agreed clause and is in breach of terms. The Arbitrator himself must refuse to continue first and/or ask for extension if parties want to. The permission and/or consent which is required to be in writing as per the agreement clauses cannot be deemed to have been granted on the basis of alleged unilateral waiver by only one party.

***

37. In Snehadeep (Supra) the Written statement was filed before the Arbitrator, though period was expired. Both the parties, participated, before the Arbitrator, even after expiry of mandatory period. The facts are totally different here. The clause also very distinctive in the present case. There is no conflict of law in view of clear distinguishable facts. The law is binding if facts are similar and not when facts are different. In the present case such objection was raised and the Court had decided the same. Even the challenge about mandate of Arbitration was not raised in Section 34 Petition. The fact based decision cannot be treated as precedents, specially when those are distinct and distinguishable.

38. The doctrine of "waiver" or "deemed waiver" or "estoppal" is always based on facts and circumstances of each case, conduct of the parties in each case and as per the agreement entered into between the parties. The Apex Court Judgment in NBCC Ltd. (Supra) in fact recognized the importance of imposition of time limit for the conclusion of the Arbitration proceedings. The parties have to stand by the terms of the contract including the Arbitrator."

(Emphasis Supplied)

97. On perusal, I am of the view that filing of the written submission by the petitioner cannot be construed as a waiver to the right to object to the mandate of the arbitrator. Further, it is pertinent to note that the written submissions filed by the petitioner on 01.04.2015 were with regard to the

last arbitral proceeding conducted on 26.11.2014 and further, no new grounds were raised by the petitioner in the said written submissions.

98. Another contention of respondent No. 1 is that non-issuance of an arbitral award within time was not in contravention of the Act prior to the Arbitration and Conciliation (Amendment) Act, 2015.

99. The Coordinate Bench of this Court in ***Ariba India Private Limited (supra)*** highlighted that even though the Arbitration Act (pre-amendment 2015) does not prescribe a strict fixed period for rendering awards, arbitrators are obligated to convene and conclude proceedings expeditiously. The relevant paragraphs are extracted as under:

> *"46. Merely because the Act does not fix a time limit within which the arbitral tribunal should render its award, it does not mean that the tribunal can display a casual or non-serious approach in the matter of conduct of the arbitral proceedings. It is the tribunal which has to control the proceedings by laying down definite times lines and by enforcing strict adherence to them. Of course, there may be occasional and genuine exceptional situations, when those times lines may be relaxed in the interest of justice and fair play, but by and large, those time lines should be strictly enforced even handedly and consistently by the tribunal.*
>
> *47. The reason why the act does not lay down a fixed time within which the tribunal should render the award from the time of its entering upon the reference is not to set the arbitral proceedings at large and give an unlimited time to the tribunal*

to conclude the proceedings and render the award. Under the Arbitration Act, 1940, section 28 empowered the Court to extend the time of the arbitrator for making the award in case the award was not made within the period of four months, which was the statutorily fixed time for making of the award, or within the mutually extended time period. It was felt that the procedure for extension of time, which required one of the parties to approach the Court for extension of time, was proving to be self-defeating and counter-productive, inasmuch, as, the petition under section 28 remained pending in the court for a very long duration before being disposed of. To ensure that the arbitration proceedings are not obstructed by one or the other party, merely by denying its consent to the extension of time for making of the award, the Act did away with the time limit of four months for making of the award from the date of the arbitrator entering upon the reference. This, however, did not mean that the arbitral tribunal was given a carte blanch, and could act casually in the matter of conduct of the arbitration. The legislative intent is that the tribunal should act without undue delay. Lest, the parties can determine the mandate of the Tribunal, and if any dispute in this regard remains, the Court can declare that the mandate of the Tribunal stands terminated.

48. For the institution of the arbitration to succeed, it is essential that the arbitrators take up the reference with all

seriousness and exhibit a sense of urgency and professionalism. It is absolutely essential that the tribunal functions efficiently, not only in terms of time, but also in terms of costs to the litigating parties, else the litigating public would not feel attracted to accept this mode of alternate dispute resolution - an alternate to the conventional dispute resolution mechanism through the process of the courts."

(Emphasis supplied)

100. The Hon'ble Supreme Court in the case of ***ONGC Limited v. Saw Pipes Limited, (2003) 5 SCC 705,*** has held as under:

"31. It is true that under the Act, there is no provision similar to Sections 23 and 28 of the Arbitration Act, 1940, which specifically provided that the Arbitrator shall pass Award within reasonable time as fixed by the Court. It is also true that on occasions, Arbitration proceedings are delayed for one or other reason, but it is for the parties to take appropriate action of selecting proper Arbitrator(s) who could dispose of the matter within reasonable time fixed by them. It is for them to indicate the time limit for disposal of the Arbitral proceedings. It is for them to decide whether they should continue with the Arbitrator(s) who cannot dispose of the matter within the reasonable time. However, non-providing of time limit for deciding the dispute by the Arbitrators could have no bearing on interpretation of Section 34. Further, for achieving the object of speedier disposal of dispute, justice in accordance

with law cannot be sacrificed. In our view, giving limited jurisdiction to the Court for having finality to the Award and resolving the dispute by speedier method would be much more frustrated by permitting patently illegal Award to operate. Patently illegal Award is required to be set at naught, otherwise it would promote injustice."

(Emphasis supplied)

101. Hence, if the delays are excessive and result in a delayed award, they would contravene the broader public policy mandate of achieving swift, just resolution of disputes. In balance, while the unamended Act does not prescribe strict time limits, the validity of such an award may still be challenged under Section 34 of the Arbitration Act if the delay is unreasonable as to defeat the purpose of arbitration and the fundamental principles of justice.

102. In the present case, the Appellate Award has clearly been passed beyond the time prescribed under Bye-Law 19(b) of the NSE Bye-Laws and Clause 6.5 of the SEBI Circular dated 11.08.2010 and thus, is violative of public policy under Section 34 of the Arbitration Act.

103. Consequently, the resulting non-compliance with statutory limits effectively renders the Appellate Award void and the Appellate Award needs to be set aside on this ground alone.

104. Since the award is being set aside on the ground of delay, I need not dwell into the factual challenges made by the petitioner.

CONCLUSION

105. For the reasons set forth above, the petition under Section 34 of the Arbitration Act is allowed and the Appellate Award dated 31.07.2015 in the matter of Shri Ram Kawar Garg v. Just Trade Securities Limited, NSE/Appeal Arbn./F&O/D-0085/2013, is set aside.

JASMEET SINGH, J

JULY 01, 2025 / *shanvi*

Click here to check corrigendum, if any