

+ **OMP Nos. 63/2007**

Date of decision: 17th March, 2009

Through: Mr Jagdeep Kishore, Advocate

DYNA SECURITIES LIMITED Respondent

Through: Mr Milanka Chudhary, Advocate.

OMP.No. 64/2007

Through: Mr Jagdeep Kishore, Advocate

DYNA SECURITIES LIMITED Respondent

Through: Mr Milanka Choudhary, Advocate

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. Both these petitions under Section 34 of the Arbitration and Conciliation Act, 1996 raise identical issues of facts and law and are taken up together for consideration.
2. The challenge is to the arbitral awards both dated 6th November, 2006 of an Arbitral Tribunal constituted under the

National Stock Exchange of India Byelaws, to the effect that the reference to the Arbitral Tribunal of the claims of each of the petitioners was beyond the period of six months prescribed in Byelaw 3 of Chapter XI. The Arbitral Tribunal thus rejected the reference without expressing any opinion on the merits of the matter and about the right of the petitioners to re-agitate the matter by filing civil suit and enforcing their rights, if any.

3. The factual controversy is relevant. Each of the petitioners had instituted suits in this court for recovery of monies from the respondent. The applications under Section 8 of the Act came to be filed in the said suits and which were disposed of vide common order dated 25th November, 2005. It was the contention of the respondent who was the defendant in the said suits that under the byelaws, there is arbitration clause and all matters and settlement have to be settled by the forum prescribed therein. The counsel for the petitioners who were the plaintiffs therein gave his no objection to abide by the terms of the arbitration clause as contained in the byelaws, subject to the court fees paid by the petitioners in the suits being refunded in accordance with the provisions of Section 89 of the CPC read with Section 16 of the Court Fees Act. The suits were disposed of with the directions that the petitioners would be entitled to approach the National Stock Exchange of India (NSE) under the provisions of the byelaws and as and when such request was received the NSE shall appoint an arbitrator as the petitioners had already filed the suits in the form of claims. Directions were also issued to the NSE to appoint an arbitrator within a month from that date and to the petitioners to approach the NSE by filing statements

of claim and copy of the order to enable the NSE to expeditiously comply with the directions.

4. The petitioners thereafter approached the NSE and the Arbitral Tribunal was constituted in accordance with byelaws of the NSE. The respondent filed a reply to the claim/petition of the petitioners and in which it was, inter alia, contended that under byelaws 3 of Chapter XI, all claims, differences or dispute are required to be submitted to arbitration within six months from the date on which the claim, difference or dispute arose or shall be deemed to have arisen; that the said period of six months had elapsed in the present case.

5. The Arbitral Tribunal vide awards aforesaid, inter alia, rejected the contention of the petitioners that the reference to arbitration being under Section 89 of the CPC, the objection on the ground of byelaw aforesaid could not be raised and, inter alia, held that the order aforesaid of this court had expressly provided that the appointment of the arbitrator shall be in accordance with the byelaws and thus the arbitration was under the byelaws and not on reference under Section 89 of the CPC. The tribunal also rejected the contention of the petitioners that the period of limitation could not be curtailed by an agreement and the law of limitation giving three years time to prefer the claim must prevail. It was held that byelaw 3 only gives limited period to enforce the claim by virtue of arbitration through NSE; it in no event curtails the period of limitation prescribed under the general law; a claim to enforce a right is distinct from a claim to make references to arbitration and

though the period of limitation cannot be curtailed by agreement but the parties are free to fix any period for making a reference to arbitration by their contract. The plea of the petitioners that such a contract was void owing to Section 28 of the Contract Act was negatived relying upon **Gas Authority Vs Spie Capag** (1994) 1 Arbitration Law Reporter 431 holding that the parties were free to restrict the period in this regard. The arguments of the counsel for the petitioners that the respondent could not be permitted to blow hot and cold inasmuch as the reference to arbitration was at the insistence of the respondent was also rejected holding that there could be no estoppel against the statute/rules inasmuch as the byelaws had been framed under Section 9 of the Securities Contracts (Regulations) Act, 1956. Though neither was any application preferred by the respondent under Section 16 of the Arbitration Act nor a decision within the meaning of Section 16(5) of the Arbitration Act given, but the awards however refer to Section 16 to observe that under the said provision the question raised by the respondent could be gone into inasmuch as if the period of limitation to adjudicate the dispute through the premise of NSE is barred, the Arbitral Tribunal held that they could not go further in that regard. On facts, the Arbitral Tribunal found the references to be beyond six months.

6. The aforesaid awards led to the filing of these petitions under Section 34. The counsel for the respondent did not dispute that if Section 28 of the Contract Act was applicable, the byelaw 3 aforesaid restricting the period for reference of disputes to six months would be void to that extent. It was, however, his submission that Section 28 is applicable only to contracts/agreement. It was his contention that the byelaw 3 aforesaid is a special or a local law within the

meaning of Section 29(2) of the Limitation Act, 1963 and thus nothing in the Schedule to the Limitation Act would apply and the limitation for preferring a claim would be governed by the said special/local law contained in the byelaws and not by the period prescribed in the Schedule to the Limitation Act.

7. Reliance was placed on the meaning of byelaw as described in para 1323 **Volume 28 of Halsbury's Law of England 4th Edition**, **Kruse Vs Johnson** (1898) 2 Q.B. 91, **Chandrika Jha Vs State of Bihar** (1984) 2 SCC 41, **HCG Stock and Share Brokers Ltd Vs Gaggar Suresh** (2007) 2 SCC 279, **S&D Securities (P) Ltd Vs Union of India** (2004) 62 CLA 303 (Calcutta) and **Nirav Securities (P) Ltd Vs Mrs Prabhuta Motiram** (2002) 39 SCL 372 (Bombay). Per contra, the counsel for the petitioners has argued that the petitioners could not be left remediless and if held not entitled to pursue the claim under the byelaws, ought to be permitted to continue the suits earlier filed and of which though permitted to withdraw the court fees have not done so. Reliance was placed on the proceedings of the Law Commission of India leading to the Amendment of Section 28 of the Contract Act and to the judgments of the National Consumer Disputes Redressal Commission in **Real Laminates Pvt Ltd Vs The New India Assurance Com Ltd** and in **M/s New India Assurance Co Ltd Vs K.A Abdul Hameed** and also on **DDA Vs Happy Himalaya Construction Company** 2009 1 AD (Delhi) 383.

8. Though the respondent has in its reply and during the arguments not raised any plea as to the maintainability of the petitions under Section 34 of the Arbitration Act but the order sheet shows that on 30th April, 2007 the matter was posted next for

arguments on the question of maintainability of the petitions. Though no arguments appear to have been addressed thereafter on maintainability but I presume that the court must have ordered for hearing on maintainability for the reason of the awards being in the nature of decision under Section 16 (5) of the Arbitration Act. If the order is treated as under Section 16 of the Arbitration Act, an appeal there against under Section 37 (2) of the Arbitration Act and not an application under Section 34 would lie. However, since the said appeal also would have, as per the roster, been heard on the original side only, I do not deem it appropriate to deal further with this aspect.

9. I will take up first the argument of the counsel for the petitioners of the petitioners being entitled to pursue the suit if found not entitled to pursue the arbitration. In my view, it is not the legislative intent. Even if the contention of the counsel for the respondent is to be upheld, of Section 28 of the Contract Act being not applicable to the byelaws which are special or local law, it cannot be held that a claim which has become barred under the procedure agreed to between the parties can be agitated in a civil court. If the parties are found to have mandatorily agreed to the resolution of their disputes by arbitration, then the parties would be governed by the laws/rules of that arbitration only and it cannot be said that if the claim has become barred by time before the arbitrator, the party would have the remedy of a civil suit. If such interpretations were to be given it would make the arbitration agreement a contingent agreement and which is not permissible in law. In **Wellington Associates Ltd Vs Kirit Mehta** AIR 2000 SC 1379, though exercising powers under Section 11(6) of the Act it was held that an arbitration clause, to constitute an arbitration agreement within the

meaning of Section 7, the arbitration should be agreed to be resorted to mandatorily and as a sole remedy without requiring any fresh consent of the parties.

10. A Division Bench of this court in ***U.O.I. Vs. Bharat Engineering Corpn.*** ILR (1977) 2 Delhi 57 was faced with a question, “can there be an “arbitration agreement” which reserves the right of reference to only one party? Or, in other words, which only one party can invoke?” Justice T.P.S. Chawla concluded that the provisions of the 1940 Act did not visualize an arbitration agreement which only one party can invoke and hence that the law, neither Indian, nor English, nor American does not contemplate an arbitration agreement which is contingent or conditional or confers an option.

11. Another Full Bench of this court in ***Ved Prakash Mithal Vs. U.O.I.*** AIR 1984 Delhi 325 was faced with a clause of arbitration of administrative head of Chief Engineer of CPWD and further providing that if for any reason that was not possible, the matter is not to be referred to arbitration at all. The question arose whether in the face of such agreement, the court was empowered to appoint the arbitrator. The judgment of Division Bench in ***Bharat Engineering Corp.*** (supra) was not cited before the Full Bench. The Full Bench held that the purpose of Section 20 of the 1940 Act was to effectuate the intention of the parties of arbitration of disputes and the parties could not have agreed to exclude the power of court under Section 20.

12. I do not find any change in the 1996 Act to make the dicta of Division Bench or Full Bench inapplicable. If it were to be held that

upon expiry of limitation for reference of claims to arbitration, a party had an option of approaching the civil court, it would vest a discretion in the party to either opt for arbitration by preferring the claims within the period of limitation or to allow the said period of limitation to lapse and thereafter approach the civil court. Such discretion would be contrary to the arbitration being mandatory and a sole remedy. Thus, I do not find any merit in the contention of the counsel for the petitioners or for that matter even the observations made in para 17 of the award that upon the arbitration being time barred the petitioners may be entitled to maintain the suit. The petitioners must sink or sail under the agreed adjudicatory procedure.

13. The counsel for the petitioners though feebly had also sought to challenge the finding of the Arbitral Tribunal that the arbitration was not by reference under Section 89 of the CPC but under the byelaws of the NSE. The said contention of the counsel for the petitioners also does not find favour with me. The parties did not make a new contract of reference of dispute to arbitration. The application under Section 8 of the Act was filed on the ground that the subject matter of the suit was the subject matter of an arbitration agreement and the counsel for the petitioners as aforesaid had conceded to the said position. Section 89 of the CPC was invoked merely to avail of a refund of court fees.

14. I also do not find the rejection by the Arbitral Tribunal of the plea of the petitioners of the respondent being not entitled to blow hot and cold, to be not erroneous though for different reasons. If the subject matter of the suit is the subject matter of an arbitration agreement, then on application being made in accordance with Section 8 of the Act, the

court has no option but to refer the matter to arbitration. Merely by filing an application under Section 8 of the Act, the applying party is not precluded from taking up any defence available to it. Section 16 (2) of the Arbitration Act is clear in this regard and provides that a party shall not be precluded from raising a plea on the jurisdiction, existence or validity of the arbitration agreement merely because he has appointed or participated in the appointment of an arbitrator.

15. That brings me to the core question for adjudication in the present case, i.e. whether the Byelaw 3 of Chapter XI providing for claims, disputes and differences to be submitted for arbitration within six months from the date on which the claim, difference or dispute arose is a local/special law within the meaning of Section 29(2) of the Limitation Act or is a contract to be governed by Section 28 of the Contract Act. The plea of the byelaws being a law is raised for the reason of the byelaws having been framed under Section 9 of the Securities Contracts (Regulation) Act, 1956 (Securities Act). The said Act was enacted to prevent undesirable transactions in securities, by regulating the business of dealing therein and for providing certain other matters connected therewith. The recognition to the stock exchange is given under the said law. Section 9 thereof, inter alia, provides:

“9. Power of recognized stock exchange to make byelaws –

(1) Any recognised stock exchange may, subject to the previous approval of the Securities and Exchange Board of India, make bye-laws for the **regulation and control of contracts.**

2. In particular and without prejudice to the generality of the foregoing power such byelaws may provide for –

(n) the method and procedure for the settlement of claims or disputes, including settlement by arbitration;

(3) The bye-laws made under this section may -
(a) specify the bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (1) of section 14;

(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication, as may be prescribed, and, when approved by the Securities and Exchange Board of India, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and shall have effect as from the date of its publication in the Gazette of India.”

16. In **Halsbury** relied upon by the counsel for the respondent, it is stated that if validly made, the byelaw has the force of law within the sphere of its legitimate operation – byelaws are instrument in the nature of local enactments and are thus within the definition of local statutory provisions whether made under a public general or a local Act.

The **Queen Bench** judgment is to the effect that in determining the validity of byelaws made by public representative bodies, the court ought to be slow to hold that a byelaw is void for unreasonableness. **Chandrika Jha** (supra) is an authority for the proposition that the functions of the Registrar Cooperative Societies under the byelaws are statutory functions. **HCG Stock and Share Broker Limited** (supra) merely affirms the judgment of the single Judge and the Division Bench of the Bombay High Court in turn affirming the arbitral award holding the claims preferred in that case before the Arbitral Tribunal constituted under the byelaws of NSE to be barred by time. The Apex Court in the said judgment was not concerned with the matter for adjudication in the present case though of course this judgment shows that the Apex Court upheld rejection of the claim as barred by time under the byelaws. However, the same

cannot be taken as a precedent for adjudicating the matter in controversy here.

In **S.N.D. Securities P Ltd** (supra) a Division Bench of the Calcutta High Court held that an inference of statutory deeming has to be drawn in the scheme of the provisions of the Securities Act, Byelaws, Rules and Regulations. However, the plea of limitation also raised in that case was left open. Similarly, **Nirav Securities P Ltd** (supra) is also not a judgment on the matter for adjudication.

17. I find that the question which has arisen for adjudication in the present case was also raised before this court in **Mr. Praveen Gupta v. Star Share and Stock Brokers Ltd.** 149 (2008) DLT 72 but since the matter was decided on other aspects this question did not fall for adjudication.

18. Section 43(1) of the Arbitration Act makes the Limitation Act applicable to the arbitrations, as it applies to the proceedings in court. At the time of coming into force of Arbitration Act, 1996 w.e.f. 22nd August, 1996, Section 28 of the Contract Act as interpreted by the Apex Court, though prohibited the parties to a contract from substituting their own periods of limitation in place of the period laid in general law of limitation, permitted the parties to substitute their own periods of prescription i.e., to say the parties were free to provide that if a party does not sue within specified period, then the rights accruing under the contract shall be forfeited or extinguished or that a party shall be discharged from all liability under the contract. Most of the arbitration agreements also contained such clauses of forfeiture/extinguishment of rights unless arbitration was commenced within a period shorter than that under the Limitation

Act. Since arbitration was / is a specie of contract, on the interpretation of then Section 28 Contract Act such clauses were valid. The legislature, while enacting the 1996 Arbitration Act, while providing for applicability of Limitation Act, also empowered the court under Section 43(3), to relieve against such forfeiture in cases of undue hardship.

19. In my view the arbitral awards in the present case rejecting the contention of the petitioners of Section 28 of the Contract Act on the basis of the judgment in **Gas Authority** (supra) of prior to the amendment to Section 28 of the Contract Act suffers from fallacy. I may notice that the Arbitral Tribunal has not held Section 28 to be not applicable for the reason of byelaw being a special law within the meaning of Section 29(2) of the Limitation Act.

20. However, soon after the coming into force of Arbitration Act, 1996 w.e.f. 22nd August, 1996, Section 28 of the Contract Act was amended w.e.f. 8th January, 1997. The purport and effect of the amendment was to make contracts providing for such forfeiture/extinguishment of rights or permitting the parties to prescribe their own periods of prescription, void to that extent. After the said amendment, the arbitrators are to themselves apply the amended Section 28 of the Contract Act and Section 43(3) of the Arbitration Act, 1996 cannot be understood as vesting such power in court only, notwithstanding amendment to Section 28. I have recently in **Punj Lloyd Ltd Vs National Highways authority of India** OMP 340/2008 and Arbitration Application 14/2008 decided on 17th February, 2009 dealt with this aspect.

21. Section 2(4) of the Arbitration Act, makes Part-I of the said Act (except Sections 40(1), 41 and 43) applicable to every arbitration under any other enactment also as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in insofar as the provisions of the part-I are inconsistent with that other enactment or with any other rules made thereunder. The effect of exclusion of Section 43 would be that the provisions of Limitation Act would not be applicable to arbitrations under any other enactment.

22. The question thus is, is the arbitration under the Byelaws of NSE, an arbitration under any other enactment, within the meaning of Section 2(4) of the Arbitration Act, so as to make Section 43 thereof and consequently the Limitation Act inapplicable to such arbitration.

23. Instances of Arbitration under an enactment are to be found in the Indian Telegraph Act, Antiquities and Art Treasures Act, 1972, Major Port Trusts Act, 1963, Requisition and Acquisition of Immovable Property Act, Electricity Act, National Highways Act, 1956. Search on the internet lists more than twenty five central Acts providing for statutory Arbitration in India. The Securities Act (supra) however does not provide for arbitration. It only provides for making of byelaws inter alia as to method and procedure as to settlement of disputes, including by arbitration, for the regulation and control of contracts.

24. Here, the law is not providing for arbitration. The law is only prescribing that wherever a person transacts with a stock broker being a member of a Stock Exchange, the terms and conditions of

such transaction or contract shall be as prescribed in the byelaws. So, the law here is forcing a contract to be on certain terms i.e. whether the constituent and stock broker have entered into an arbitration agreement or not, under the byelaws they are deemed to have agreed to arbitration in terms of byelaws. Whether such a contract ceases to be a contract and becomes an arbitration under an enactment?

25. A host of judgments of Bombay High Court have held the Arbitration under the Byelaws framed by Stock Exchanges under Section 9 of the Securities Act (supra) to be a statutory arbitration. Reference may be made to **Kishor Jitendra Dalal Vs Jaydeep Investments** AIR 1996 Bom. 254, **Himendra V. Shah Vs Stock Exchange, Bombay** (1997) 5 Comp LJ 193 and **Stock Exchange, Mumbai Vs Vinay Bubna** AIR 1999 Bom 266 (DB). In fact in the last of the aforesaid judgments the Division Bench after noticing the consistent view for long, also felt the need to retain it to prevent chaos.

26. I may notice that the Apex Court in **Harinarayan G. Bajaj v. Rajesh Meghani** (2005) 10 SCC 660 has in relation to the byelaws of NSE held that the arbitration proceedings as provided in the Byelaws and Regulations are subject to the provisions of the Arbitration and Conciliation Act, 1996 to the extent not provided for in the Byelaws and Regulation. Similarly, in **Bombay Stock Exchange v. Jaya I. Shah** AIR 2004 SC 55 the Apex Court in para 38 held that the *Rules, Byelaws and Regulations made by the exchange, having regard to the scheme as also the purport and object thereof, have a statutory flavor; byelaws are required to be made for regulation and control of contracts, whereas rules relate to*

in general to the constitution and management of stock exchange. Again in para 58 of the said judgment it was held that *the arbitration under the byelaws is governed by the provisions of the law of the country namely, the Arbitration Act earlier of 1940 and now of 1996.*

27. However, the question posed by me in para 23 hereinabove does not appear to have been addressed in any of the said judgments. The Apex Court however in **Jay I Shah** (supra) noticed distinction between two sets of arbitration – one between a member and non member and another between a member and another member of the exchange. It was further held that a claim by non member against a member must be considered from a different angle having regard to the fact that although the same relates to a contract, such arbitration is governed by the law of the country i.e., the Arbitration Act – a contract between a member and non member is otherwise enforceable in a civil court and by reason of existence of arbitration clause only the suit filed by a non member against a member can be stayed and/or referred to arbitration. In **Harinarayan G Bajaj** (supra) the argument was that arbitration was a right of a member of the NSE against the non member and which came to an end of cessation of membership. The Apex Court however held that right was not part of privileges of membership but arise out of contract and the parties remained parties to the arbitration agreement despite cessation of membership.

28. It would thus be seen that the Apex Court recognized the arbitration under the byelaws of NSE to be contractual, though having a statutory flavor.

29. At this stage it is apposite to paraphrase Chagla C.J. speaking for Division Bench in the **Textile Labour Association Vs The Labour Appellate Tribunal of India** AIR 1956 Bom. 746, in respect of *para materia* provisions of Section 46 of the Arbitration Act, 1940.

“Section 46 deals with those statutory arbitrations where the statute itself is looked upon as an arbitration agreement and it may be said that as far as the case with which we are concerned it is not a statutory arbitration in the sense in which Section 46 intends it to be. We are dealing with an arbitration under Section 66 (of the Bombay Industrial Relations Act, 1946) where parties by a written submission go to arbitration by a private party. This is not a case where the state refers the dispute to arbitration and the statutory provisions itself constitutes an arbitration agreement.”

30. There is yet another aspect of the matter. Section 9(2) of the Securities Act (supra) does not provide for the byelaw to provide for limitation within which the claims under the contracts are to be preferred; it only provides for the byelaws regulating and controlling the contract, as to the method and procedure for settlement of claims or disputes. It cannot therefore be said that the byelaws, whether statutory or having a statutory flavor prescribe for preferring claims or for referring disputes to arbitration any period of limitation different from the period prescribed by the schedule to the Limitation Act. The Byelaw 3 of Chapter XI of NSE Byelaws providing time of six months for submission of claims, disputes to arbitration is for this reason also contractual and not statutory.

31. The statute of limitation is founded on public policy. It is enshrined in the maxim “*interest reipublicae ut sit finis litum*”. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The legislature has sought to

balance public interest in providing limitation on the one hand and at the same time not to unreasonably restrict a right of the party to initiate proceeding on the other (see **V.M. Salgaocar Vs Board of Trustees of Port of Marmugao** (2005) 4 SCC 613)

32. Though the law of limitation is in some respects said to be procedural law, but the Division Bench of Bombay in the **Employees' State Insurance Corpn. Vs Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd.** AIR 1967 Bombay 472 and the Full Bench of Punjab High Court in **United India Timber Works Vs Employees State Insurance Corporation** AIR 1967 Punjab 166 held the rule prescribing limitation for preferring an application, ultravires Section 96 of the Employees State Insurance Act 1948 empowering State Government to make rules inter alia in regard to "the procedure to be followed in proceedings" before Employees Insurance Courts. Justice Tarkunde speaking for Division Bench of Bombay High Court held the rule prescribing period within which application could be preferred operated at a stage prior to the commencement of proceedings and thus was outside the ambit of power to frame rules or procedure. It was further held that the legislative intent was not to empower the State Government to while framing rules prescribe the limitation for preferring claims; if such was the intention, the State Government would have been empowered to frame rules in relation to proceedings before such courts.

33. I respectfully concur with the law as laid down which squarely applies to this case. I also do not find any legislative intent in the Securities Act (supra) also to enable Stock Exchanges to while framing byelaws regulating and controlling contracts prescribe any

period of limitation for preferring claims. Thus, the byelaw to that extent is purely contractual.

34. If the Byelaw 3 of Chapter XI to the extent prescribing limitation period for reference of claims/disputes for arbitration is contractual, then, Section 2(4) of Arbitration Act prescribes that Part-I thereof will apply including Section 43 making the Indian Limitation Act applicable to arbitration. Consequently, Section 28 of the Contract Act, declaring agreements by which a party is restricted absolutely absolutely from enforcing rights under a contract by usual legal proceedings in ordinary tribunal or which limits the time within which he may thus enforce his rights, as void to that extent comes into play. Thus, the part of Byelaw 3 of Chapter XI of NSE Byelaws, to the extent prescribing limitation of six months for reference of disputes/claims to arbitration is void. The time therefore will be governed by the Limitation Act.

35. This court recently in **Pandit Construction Company Vs DDA** 143(2007) DLT 270 held the clause in works contract requiring the demand for arbitration to be made within 90 days, to be violative of Section 28 of the Contract Act and thus void.

36. Section 28 of the Arbitration Act provides for decision by Arbitral Tribunal in accordance with substantive law of India and Section 34 thereof provides for setting aside of an arbitral award, if in conflict with public policy of India, which as held in **SBP & Co. Vs Patel Engineering Ltd** 2005(6) SCC 288 means the laws of India. The awards in the present case are found to be contrary to Section 28 of the Contract Act and are set aside.

37. Consequently, both these petitions are allowed and the arbitral awards holding that the claims of the petitioners are barred by time, are set aside. The petitioners shall be entitled to approach the NSE and / or the Arbitral Tribunal

for adjudication of the claims of the petitioners. In the facts of the case, the parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

March 17, 2009
M