

मध्य प्रदेश MADHYA PRADESH

A 117009

This stamp paper forms part of arbitral award in the Arbitration
Matter No. F20/M-0001/2013 (Ord No. F20/M-0006/2009) between

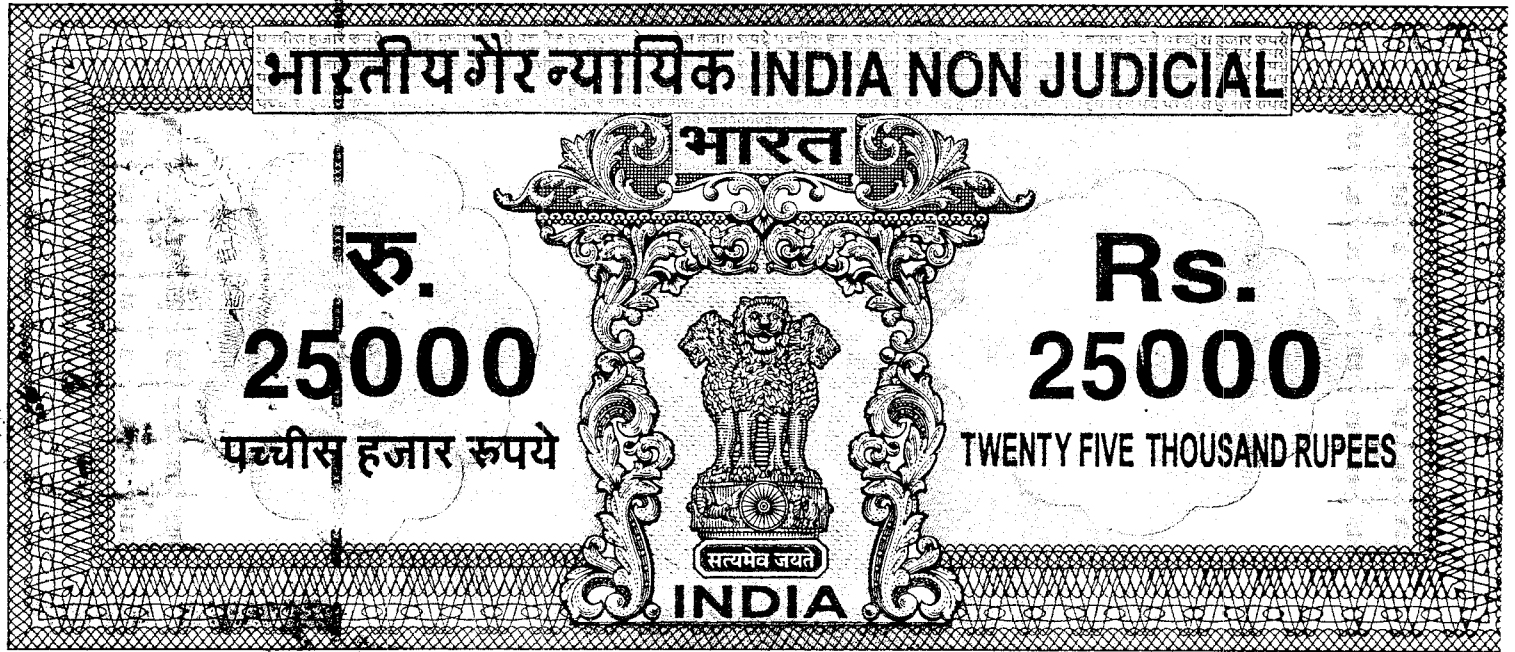
Legit Share Trading Pvt Ltd — Applicant
and

Foresight Securities Ltd — Respondent

R.S. Gang
(R.S. Gang)

(S.A. Khare)

(T.S. Shrivastava)



मध्य प्रदेश MADHYA PRADESH

A 117010

This stamp is for form part of arbitral award in the Arbitration
Matter No. F20/I-0001/2013 (Old No. F20/M-0025/2009) between

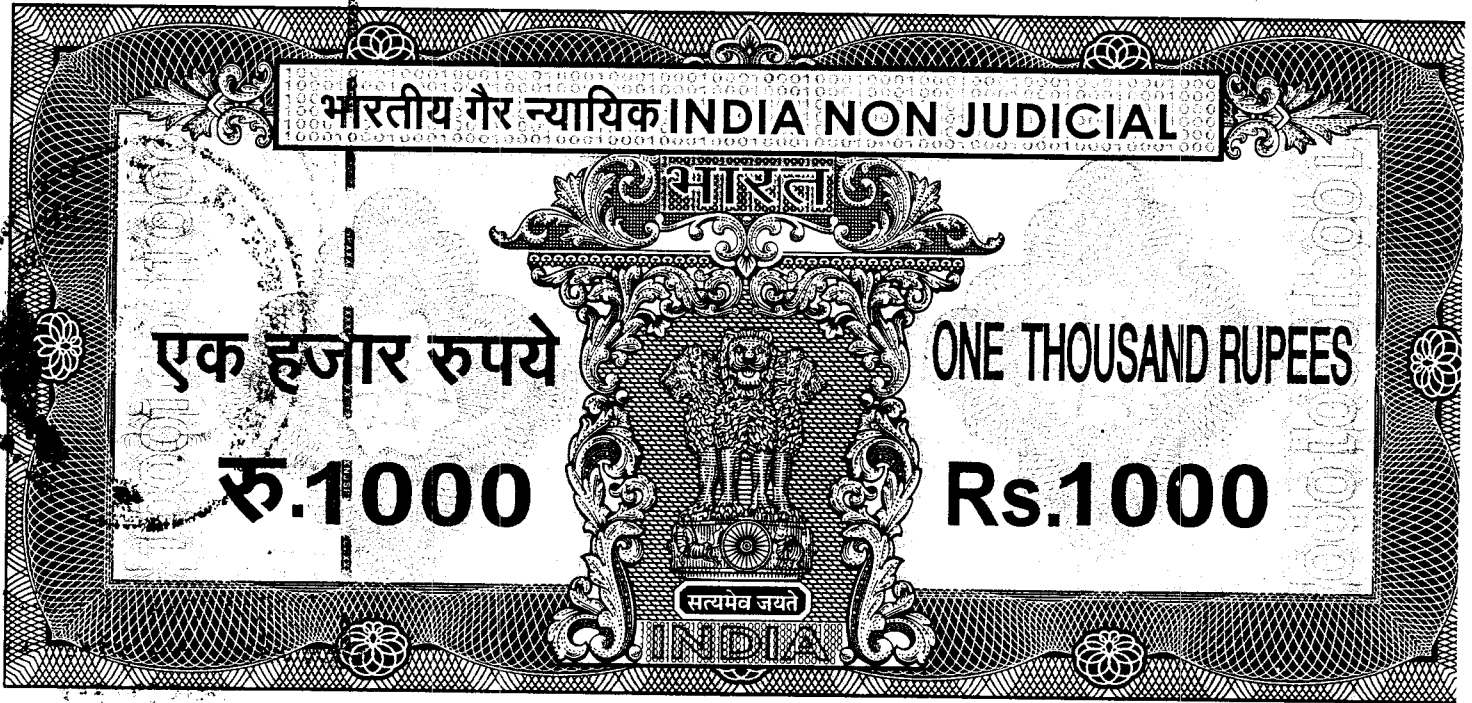
Raja Shares Trading Pvt Ltd — Applicant
and

Foreigner Securities Ltd — Respondent

R. S. Gang
(R. S. Gang)

C. P. Khare
(C. P. Khare)

C. S. Sharma
(C. S. Sharma)




मध्य प्रदेश MADHYA PRADESH

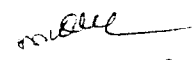
N 826022


This stamp paper forms part of arbitral award in the Arbitral
Matter No. F&O/I-0001/2013 (Old No. F&O/M-0026/2009) between

Raga Shares Trading Pvt Ltd — Applicant
and

Forsight Securities Ltd — Respondent


(R.S. Ganguly)


(S.P. Khare)


(C.I.S. Shrivastava)



मध्य प्रदेश MADHYA PRADESH

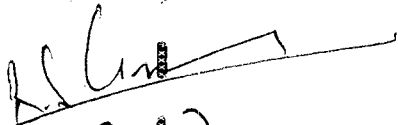
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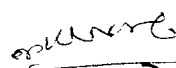
This stamp paper forms part of arbitral award in Arbitration Matter
No F&O/E-0001/2013 (Old No. F&O/M-0026/2009) between


Raga Share Trading Pvt Ltd — Applicant

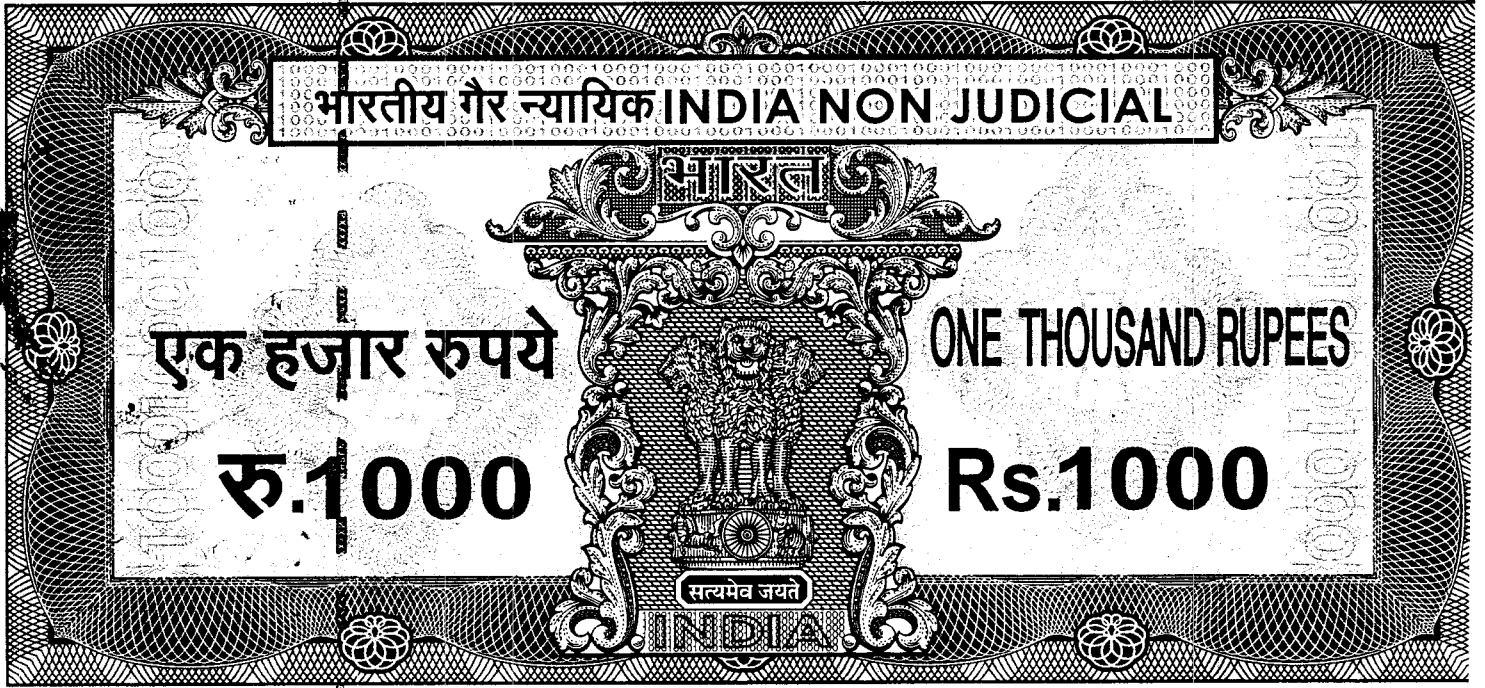
and

Farsight Securities Ltd — Respondent


(C.R.S. Gang)


(S.P. Khare)


(C.I.S. Shrivastava)



मध्य प्रदेश MADHYA PRADESH


N 826024

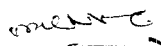
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No. F20/F-0001/2013 (Old No F20/M-0026/2009) between


Raga Shares Trading Pvt. Ltd — Applicant

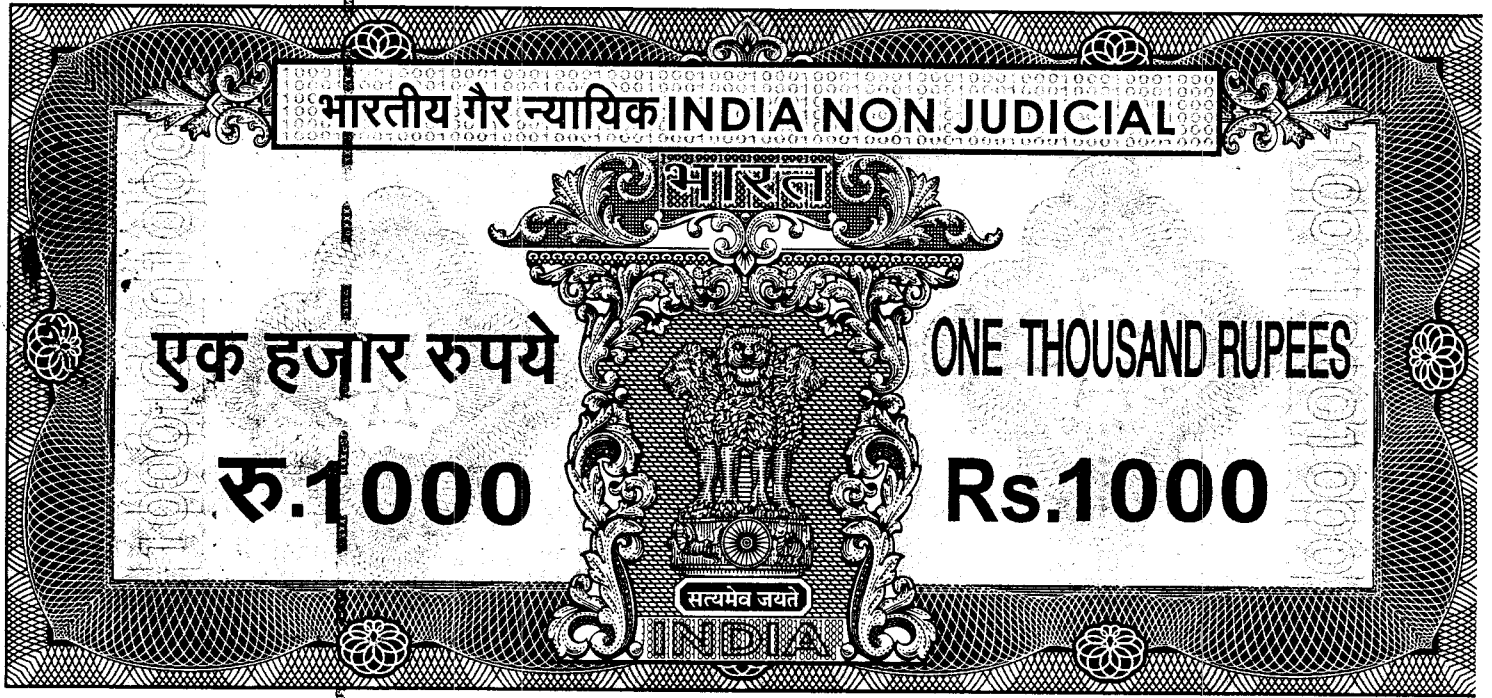
and

Foresight Securities Ltd — Respondent


C.R.S. Ganguly


(I.P. Khare)


C.T.S. Shrivastava



मध्य प्रदेश MADHYA PRADESH

N 826025

This stamp paper forms part of arbitral award in Arbitration matter
No. F&O/I-0001/2013 (Old No F&O/19-0026/2009) between

Rage Shares Trading Pvt Ltd — Applicant

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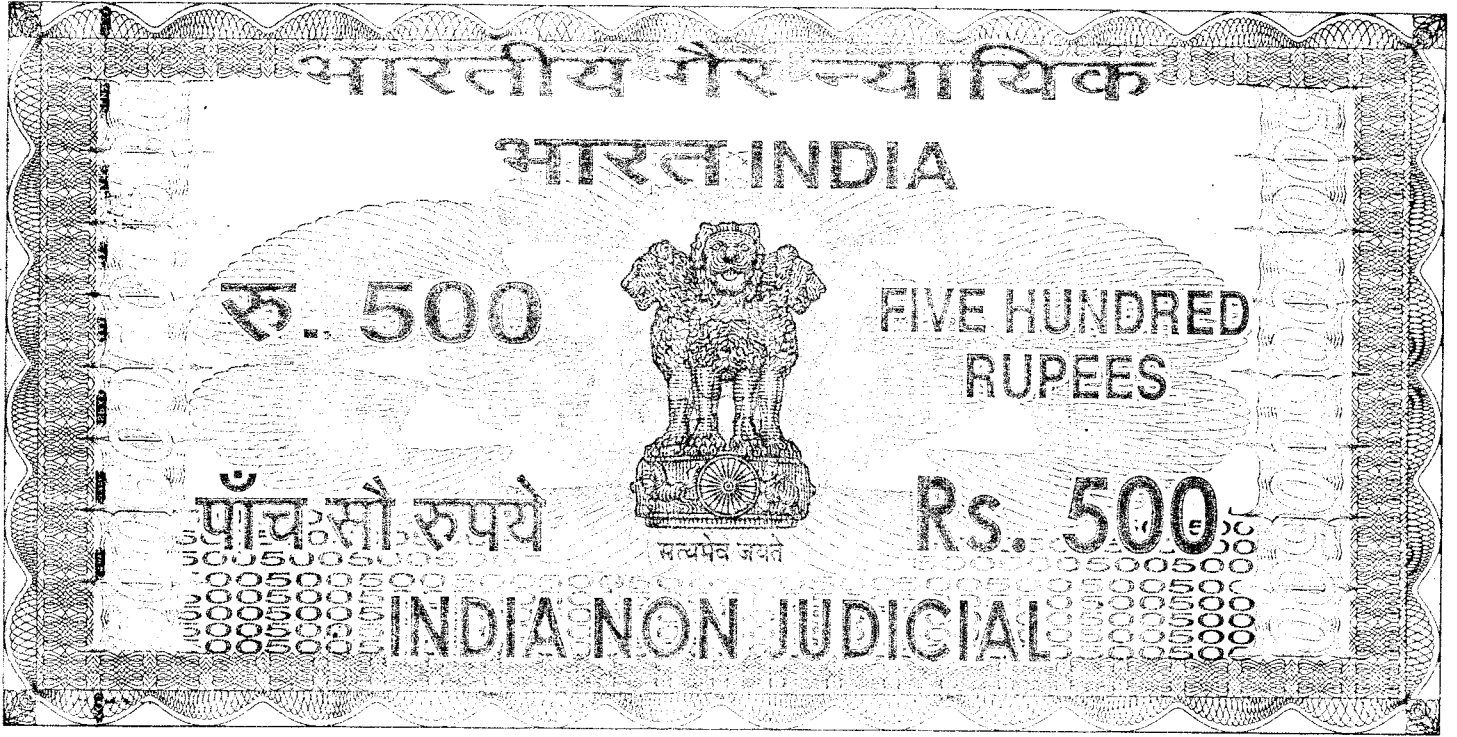
Forsight Securities Ltd

— Respondent

[Signature]
(R.S. Garg)

[Signature]
(S.P. Khase)

[Signature]
(I.S. Shrivastava)



मध्य प्रदेश MADHYA PRADESH

N 142068

This stamp paper forms part of arbitral award in Arbitration
No. F20 /I-0001/2013 (Old F20/M - 0026/2009) between

Raga Shares Trading Pvt Ltd — Applicant

and

Forsight Securities Ltd — Respondent

R. S. Gang
(R. S. Gang)

CS. P. Khare
(CS. P. Khare)

Shri. S. Shrivastava
(I. S. Shrivastava)

original

Before the Arbitral Tribunal, Indore

Arb. Case No. 0026 of 2009

Raga Shares Trading Private Limited,
Raga Complex, Nagar Nigam Road,
Marhatal, Jabalpur.

.....Applicant

Vs.

Farsight Securities Limited,
17-A/55, Triveni Plaza,
W.E.A. Gurudwara Road,
Karolbagh, New Delhi-110 005

.....Respondent

Award

(Passed on 16.9.2013)

We have been appointed as arbitrators by the National Stock Exchange for adjudication of disputes between the parties.

Un disputed facts

(2) There was an Agreement dated 8.1.2007 (Ex.A.) between applicant Raga Shares Trading Private Limited and respondent Farsight Securities Limited. According to this agreement the applicant became the Trading Member and the respondent became the clearing member. The applicant Company had trading on the basis of this agreement upto the end of December, 2007. The applicant Company had two sister Companies Raga Securities & Finance Private Limited and Raga Finvest Limited (hereinafter to be referred to as "Finvest". Shri Ram

R.S. G

Adarsh

Muller

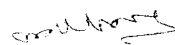
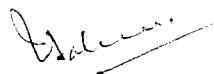
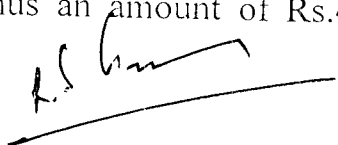
Asrani was the Director of these three Companies. He was having the accounts of these three Companies with the respondent. The two other Companies were "constituent"- sub-broker of the respondent. Shri Ram Asrani executed the documents Annexure R-1 to R-7. He also executed letter of authority dated 2.4.2007 authorising the respondent as under:

"I/We authorise you to set-off outstanding in any of my/our accounts against credits available arising in any other accounts maintained with you irrespective of the fact that such credits in the accounts may pertain to transactions in any segment of the Exchange and/or against value of each margin or collateral shares provided to you by me/us."

(3) The applicant Company transferred an amount of Rs. 15,00,000/- on 23.11.2007 and Rs.20,00,000/- on 29.11.2007 to the respondent and these were credited to the account of Finvest. At the close of the "Trading Member-clearing Member" relationship there was a debit balance of Rs. 5,81,536/- in the account of the applicant Company which was transferred to Finvest. The applicant gave 1,25,000 shares of Binani Cement on 3.12.2007 and 50000 shares on 18.12.2007 as margin/securities. The respondent returned 1,50,000 shares to the applicant and retained 25000 shares as a margin in the account of Finvest.

Applicant's case

(4) In the statement of claim it is stated that the respondent was liable to pay the amount of Rs. 5,11,14,549/- and it has paid Rs. 4,65,00,000/- as per statement of Account dated 27.12.2007 (Ex.C) and thus an amount of Rs.44,16,956/- is due from the respondent. The



applicant has further claimed an amount of Rs.27,25,000/- as value of 25000 shares at the rate of Rs.109/- per share. According to the rejoinder the “authority letters” were given only for “accounting purpose”, and are prior to the agreement dated 8.1.2007 (Ex.A). The other accounts were closed on 31.3.2007. It is stated in the rejoinder that 1,75,000 shares were given by the applicant Company and, therefore, all these shares were to be returned to the applicant. 25000 shares could not be retained in the account of Finvest, similarly the amount of Rs.35,00,000/- paid by the applicant could not be credited in the account of Finvest. The debits shown in the account of Finvest are fictitious and the respondent did not send any contract note/bill after 31.3.2007 as that account was not in operation after 31.3.2007. The respondent had never informed about any penalty imposed by the National Stock Exchange. The debit balance of Rs.5,81,536/- in the account of the applicant could not be transferred to the account of Finvest.

Respondent's case

(5) The respondent has denied that the amount of Rs. 44,16,956/- was payable to the applicant. It is stated by the respondent that the applicant continued to have trading and dealings in the account of Finvest after 31.3.2007. The authority letters remained operative even after the Agreement dated 8.1.2007 (Ex.A). The last authority letter was given by Shri Ram Asrani on 2.4.2007 (Annexure R-7) that is after the execution of this Agreement on behalf of all the three Companies. The applicant had executed stock broker and client agreement dated 19.2.2007, 25000 shares were treated as security for the transactions in the account of Finvest. The amount of Rs.35,00,000/- was paid for crediting the same in this account as the

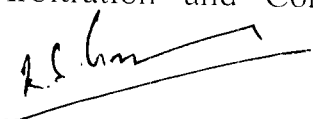
R. S. Lim

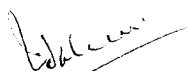
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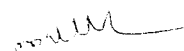
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trading in the account of the applicant as Trading member was decided to be closed by the end of November or next month. The contract notes and bills etc relating to the Finvest were regularly sent to the applicant. The intimation with regard to the penalty imposed by the National Stock Exchange 18 times was sent to the applicant. The total amount of the penalty is Rs.1,96,134/-. The debit balance of Rs.5,81,536/- was transferred from the account of the applicant to the account of Finvest as per instructions of Shri Ram Asrani and in pursuance of the authority letter. No amount is payable to the applicant. The statement of account of Finvest as on 1.2.2008 is Annexure R-12 and that of the applicant is Annexure R-14. All the accounts maintained by the respondent were available on online system and it could be viewed and downloaded. The applicant had submitted its balance-sheet and that of Finvest as on 31.3.2008 with the Registrar of Companies. It is in the balance-sheet of Finvest 1,44,487 shares of Binani Cement were reflected. These balance-sheets are Annexures C and D. At the time of hearing of the final arguments the respondent has submitted a statement showing sale of 25000 Binani Shares during the period 3.3.2008 to 7.11.2008 for a total amount of Rs. 13,02,113/-.

(6) Earlier by the Award dated 28.8.2009 the claim of the applicant was dismissed as barred by limitation period of six months. The applicant challenged this Award before Bombay High Court. The Award was set aside by the High Court by order dated 10.2.2012 and the case was remanded for fresh decision on the question of limitation. There are two circulars dated 11.8.2010 and 9.2.2011 issued by SEBI. According to these circulars the limitation period is to be reckoned as per Limitation Act, 1963. This is in conformity with Section 43 of the Arbitration and Conciliation Act, 1996 which provides that the







Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in Court. As per Section 2 (4) of this Act:

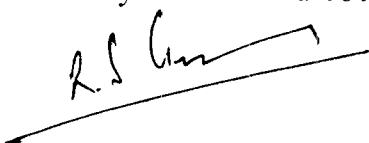
“This part except Sub-section 1 of Section 40, Section 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this part are inconsistent with that other enactment or with any rules made there under.”

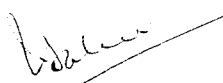
Apart from this provision there is in fact the Agreement dated 8.1.2007 (Ex.A) between the parties which contains the arbitration Clause also.

(7) After the passing of the Arbitration and Conciliation Act, 1996 there has been an amendment in the Contract Act by which Section 28(b) has been inserted from 8.1.1997 which is a under:-

“Every agreement (b) which extinguishes the right of any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.”

After the introduction of Section 28 (b) in the Contract Act the “time-bar clauses” or “Atlantic Shipping Clauses” as these were known providing shorter period of limitation have become void. That is the view taken in Pandit Construction Company Vs. DDA 143 (2007) DLT 270 by Delhi High Court. The case of National Insurance Company Vs. Sujir Ganesh AIR 1997 S.C. 2049 and the other cases cited by the learned counsel for the respondent do not have relevance as







the provision in amended Section 28(b) of the Contract Act was not the subject matter of consideration in those cases.

(8) The above legal position appears to be the reason why the SEBI through the two circulars mentioned above have done away with the shorter period of limitation given in the bye-laws. In the present case the cause of action, according to the respondent also, arose on 27.12.2007 and the applicant having presented the claim on 23.1.2009 it is within the limitation period of three years. The applicant kept the lis alive by filing an appeal before the High Court and meanwhile there was clarification of the period of limitation as three years by the two circulars. As the claim of the applicant would be deemed to be pending on 11.8.2010 and 9.2.2011 when these circulars were issued, after the remand by the High Court the applicant was not required to bring fresh claim within three years. In short, the claim is within limitation.

(9) On merits there are two points for determination (a) whether the applicant is entitled to recover the amount of Rs.44,16,956/- and (b) whether the applicant is entitled to the return of 25000 Binani shares or Rs. 27,25,000/- in lieu of these shares.

(10) Point (a)

The applicant has placed on record the statement of Account marked as Ex.C in which on 31.3.2008 a debit balance of Rs. 44,16,956/- has been shown. That is the account in the books of the applicant. The respondent has produced a copy of accounts of the applicant Company in its books and that is EX.R 14. That shows zero balance. The statement of account of Finvest is Annexure R-12 which shows a balance – 2,59,418/- as on 1.2.2008 after taking into

R.S. Gaur

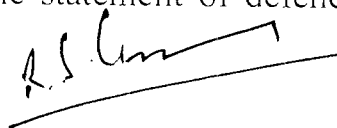
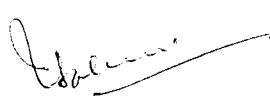
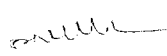
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consideration the debit balance of Rs. 5,81,536/- transferred from the account of the applicant. The amount of Rs.35,00,000/- received from the applicant Company is also found credited in the account of Finvest on 23.11.2007 and 29.11.2007. The credit of the amount of Rs.35,00,000/- in the account of Finvest instead of in the account of applicant Company Raga shares Trading Private Limited is not going to make much difference as both these accounts were of Shri Ram Asrani and he had given authority letters to adjust the balance of one account in the other. The major debit entry is of 1.2.2008 of Rs.32,78,250/- in the account of Finvest. A copy of this account Annexure R-12 was supplied to the applicant along with a copy of the statement of defence of the respondent long back but the applicant has not challenged this entry of 1.2.2008 in the account of Finvest. It is submitted on behalf of the respondent that Finvest suffered this loss and that is the reason the applicant wants to get rid of this liability. Thus if the accounts of the applicant company and that of the Finvest are considered together there is substance in the plea of the respondent that no money is payable to the applicant and that is accepted by us.


(11) Point (b)


In the pleadings of the respondent it was not disclosed that 25000 shares of Binani Cement have been sold during the period 3.3.2008 to 7.11.2008 for a total amount of Rs. 13,02,113/-. It is at the fag end of the final hearing the respondent submitted a statement showing the sale of these shares and intimation of the same to Finvest through E-mail. According to the statement of defence 25000 shares were held by the respondent as security in the account of Finvest. In the statement of defence it was not pleaded what was the reason for


  

sale of these shares when the accounts of the applicant and Finvest stood adjusted and nothing was payable to the respondent by the applicant or Finvest. The respondent submitted reply to the rejoinder of the applicant in 2013 and in this reply also it is not stated as to why there was sale of 25000 shares by the respondent. These could be held as security but could not be sold as according to the respondent also, as stated in the statement of defence, no money was to be recovered from the applicant. The respondent sprang a surprise to us at the fag end of the hearing of the case that these shares were sold in the year 2008. It was necessary for the respondent to plead what was the reason for sale of these shares which it was holding as a security only. The sale of these shares by the respondent was not justified as nothing was due to the respondent from Finvest or the applicant. Therefore, the claim of the applicant for recovery of Rs. 27,25,000/- is fully justified. The respondent is bound to pay to applicant the price of these shares as there was no reason or justification for sale of these shares.

(12) In the result it is directed that the respondent will pay the amount of Rs.27,25,000/- to the applicant as the value of 25000 Binani shares. The respondent may adjust the amount, if any, paid to the applicant on sale of these shares. The claim of the applicant for recovery of Rs.44,16,956/- is dismissed


(R.S. Garg)
Principal Arbitrator


(S.P. Khare)
Arbitrator


(I.S. Srivastava)
Arbitrator