

**In the matter of Arbitration under the Bye-laws, Rules & Regulations of National Stock Exchange of India Ltd.**

**BEFORE THE PANEL OF APPELLATE ARBITRAL TRIBUNAL  
COMPRISING  
OF**

<b>Mr. J. S. Saluja</b>	<b>Presiding Arbitrator</b>
<b>Mr. Deepak Shah</b>	<b>Co-Arbitrator</b>
<b>Mr. Paresh M. Joshi</b>	<b>Co-Arbitrator</b>

**Appeal A. M. No. : F&O/M-0036/2014**

**BETWEEN**

**Vasanti Share Brokers Limited**  
Bhupen Chambers, Rn 58-B,  
4th Floor, 9,  
Dalal Street, Fort,  
Mumbai - 400 001

**Appellant**  
**(Trading Member)**  
**(Original Respondent)**

पिंकट फ्लोवरकरी

एने डेना बैंक / For DENA BANK  
एने डेना बैंक / Capital Market Branch

**AND**  
**IL&FS Securities Services Limited**  
IL&FS House, 14, Raheja Vihar,  
Chandivili  
Andheri (East)  
Mumbai - 400072

**Respondent**  
**(Clearing Member)**  
**(Original Applicant)**

Dena Bank Capital Market,  
Branch 17, Kothrud Circle,  
Mumbai-400023.  
D-557PQVHC.R.10220100.218-218

**Appearances:**

**Appellant:** Mr. Prathmesh kamat, Advocate (Counsel)  
Mr. Yashodhan Gavankar, Advocate  
Mr. Vishal Tanwar, Authorized Representative  
Mr. Kinjal Shah, Authorized Representative

**Respondent:** Mr. Shailesh Mendon, Advocate  
Mrs. Smruti Kanade, Advocate  
Mr. Vikram Chibber, S V President  
Ms. Mangala Deshmukh, Legal Counsel &  
Corporate Affairs Member

Paresh M. Joshi

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**APPEAL:**

1.1 This is an Appeal filed by the Appellant/Constituent (Original Respondent) seeking to set aside the Award dated 12-03-2015 passed by the Arbitral Tribunal allowing the Arbitration Reference Application claim for Rs.75,33,962.85 of the Applicant directing the Constituent/Appellant to pay the said claim amount along with interest @ 12% p.a. on the said claim amount from the date of Arbitration Application i.e. 31-07-2014 till the date of payment/realization.

**BACKGROUND:**

2.1 The Respondent/Clearing Member (Original Applicant) M/s. IL & FS Securities Services Ltd. filed an arbitration reference application on 31-07-2014, claiming a sum of Rs.75,33,962.85/- (Rupees Seventy Five lacs Thirty three Thousand Nine Hundred Sixty two and paise eighty five only) with interest at 18% p.a. on the principal amount, against the Appellant-Constituent (Original Respondent) for failure on their part to re-transfer the shares, of Cipla Ltd 1000 nos, Infosys Ltd 1063 nos, L & T 1920 nos, Reliance Industries Ltd 950 nos and Tata Steel Ltd. 1125 nos which during the process of liquidation of the cash deposits and the collaterals given by the Appellant/Constituent to the Respondent/Clearing Member, were inadvertently and erroneously transferred to the Appellant/Constituent's Depository Account- Client ID 1205250000000-458 DP ID 52500.

2.2 The Lower Arbitral Tribunal after considering the reply/rejoinder filed by the parties and documents relied upon by both parties allowed the claim of the

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Respondent/Clearing Member (Original Applicant) for Rs.75,33,962.85/- (Rupees Seventy Five lacs Thirty three Thousand Nine Hundred Sixty two and paise eighty five only) with interest at 18% p.a. on the principal amount, against the Appellant-Constituent (Original Respondent), by an Award dated 12<sup>th</sup> March, 2015 and directed the Appellant/Constituent to pay the said claim amount along with interest @12% from the date of arbitration application i.e. 31-07-2014. Being aggrieved, the Appellant/Constituent has filed the present Appeal dated 15-4-2015 praying to quash and set aside the said Impugned Award dated 12-03-2015 and to stay the execution and implementation of the impugned award until final hearing and disposal of the present Appeal.

2.3 Based on the selection of the Central Arbitrator Appointment Process (CAAP), NSE appointed the present Arbitral Panel Tribunal consisting of Mr. J. S. Saluja, Mr. Deepak Shah and Mr. Paresh M Joshi vide its letter ref. no. NSE/WRO/ARBN/F&O/M-0036/2014/24385 dated 29-04-2015 for adjudication of the present Appeal.

### **STATEMENT OF CASE AND PROCEEDINGS**

3.1 The Appellant/Constituent, Original Respondent, is a trading member on the Future & Options Segment of the National Stock Exchange of India Ltd ("NSEIL") and is engaged in the business of stock broking. The Appellant/Constituent is the original Respondent in the Arbitration bearing reference no. A.M. No. F&O/M-0036/2014. The Respondent is a clearing member of the National Stock Clearing Corporation Ltd. ("NSCCL") and is engaged in the business in the nature of professional clearing member on the Equity and

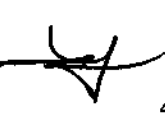

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Currency Derivative Segment of National Stock Exchange of India Ltd ("NSEIL") and is a member of the National Stock Clearing Corporation Ltd. ("NSCCL").

3.2 The Appellant filed present Appeal before the Appellate Arbitral Tribunal on 15-4-2015 against the award dated 12-3-2015 passed by the Lower Arbitral Tribunal under the Rules, Regulations and Bye-laws of the National Stock Exchange of India Ltd. ("NSE") with circulars issued there under, for setting aside the Award dated 12-03- 2015 on various grounds set out in the Appeal in para 4 (a) to (j).

3.3 The Respondent Clearing Member filed their detailed reply dated 29-4-2015 along with the compilation of document before the Lower Arbitral Tribunal to the Appeal opposing the Appeal stating that the instant appeal is completely misconceived, both, in fact and in law, and devoid of substance, is liable to be dismissed with costs. More so, the Respondent Clearing Member has denied that the Award passed by the Lower Ld. Arbitral Tribunal is without due and correct interpretation of provisions relating to the arbitration mechanism contained in the Rules, Regulation and Bye-Laws of the NSCCL and/or that the impugned Award is passed on account of gross misinterpretation as to the jurisdiction clause of the Chapter X of the NSCCL Bye-laws and is a nullity and non-est, as baldly alleged by the Appellant and completely denied the averments and statements in the appeal.



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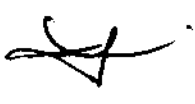
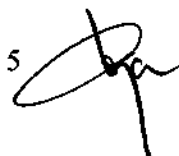

## **PROCEEDINGS**

3.4 The hearing proceedings was conducted on 25-06-2014 after giving sufficient notice to the parties. During the course of the hearing, it was made clear that this Appellate Arbitral Tribunal would look into only infirmity, if any, in the Award of the lower Ld. Arbitral Tribunal and directed the parties to focus only on the grounds of appeal. Besides, the present Appellate Arbitral Tribunal in Appeal would exercise only Appellate jurisdiction both on facts and on law and that too only upon material brought on record, which was agreed the parties.

3.5 The Appellant/Constituent, at the outset submitted that the Ld. Panel of Arbitrators while passing the impugned award grossly erred in interpreting the jurisdiction clause of the NSCCL Bye-Laws. The clause 1 of chapter X of the NSCCL, Be-Laws is reproduced hereunder

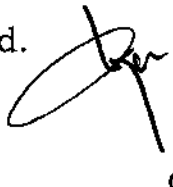
**“ All claims, disputes, differences arising between Clearing Members and Constituents or between Clearing Member inter se and arising out of or related to deals admitted for clearing and settlement by the Clearing Corporation in respect of F & O Segment or with reference to any anything done in respect thereto or in pursuance of such deals shall be referred to and decided by arbitration as provided in the Rules, Byelaws and Regulations of the National Stock Exchange of India Ltd if the deal originated from it or in pursuance thereof. ”**

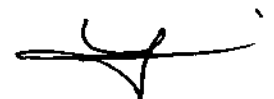
The Appellant further submitted that the Panel of Arbitrators to have jurisdiction to adjudicate the dispute between the Clearing Member and Constituent on F&O segment, the dispute must arise out of usual course of transaction between the clearing member and the

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trading member, and that such a transaction must arise during the course of trading and cannot be an independent transaction. Besides, the Respondent Clearing Member stated in para 3 (vii) of their statement of claim stated that during the process of liquidation of the cash deposit/collaterals of the Appellants/Constituent, in a complete independent and unrelated transaction, the Respondent Clearing Member, inadvertently transferred shares of different companies to the Appellant's depository Account. Therefore, the Lower Ld. Arbitral Tribunal ought to have observed that the dispute between the Appellant and the Respondent is not amenable to arbitration under the frame work of NSCCL Byelaws.

- 3.6 The Appellant further submitted that the deal pursuant to F&O segment between the Appellant and the Respondent was already settled by the Appellant by effecting valid delivery of shares and thus could be said to have come to an end and therefore, the claim in question could not have been treated to be in pursuance of a deal executed on F&O segment. Appellant further contented that irrespective of any liability owed by the Appellant to the Respondent or otherwise, the proper remedy available to the Respondent Clearing Member was a recovery suit and not arbitration within the framework of the NSCCL regulations and byelaws. The Appellant further contented that despite raising the objection in terms of jurisdiction at the time of the hearing of the arbitration, the Lower Ld. Arbitral Tribunal did not decide the issue of the jurisdiction appropriately and that on this ground, the Appellant's present Appeal ought to succeed.

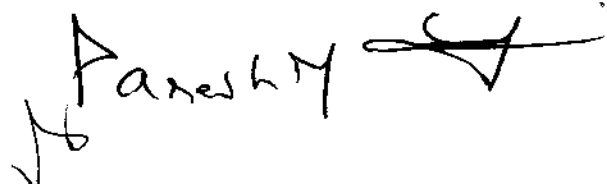


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3.7 The Appellant further contented that no issues were framed and no evidence was led and no cross examinations was permitted and the matter was heard summarily to arrive at the impugned award. More so, the Lower Ld. Arbitral Tribunal did not grant opportunity to the Appellant to counter the documents filed and relied upon by the Respondent Clearing Member. More particularly, the emails relay report and related documents submitted by the Respondent Clearing Member were not duly proved by the Respondent in terms of Section 65A of the Indian Evidence Act, 1872. The Appellant further contended that it is trite law that any facts alleged by a person on the basis of which, claims any reliefs, must be duly proved in the manner laid down in the Indian Evidence Act, 1872. Further the documents relied upon by the Respondent Clearing Member were not marked in evidence or proved either by producing primary or secondary evidence. The Appellants further submitted that though Arbitration proceedings are meant to provide speedy redressal of the disputes, the basic principles of the law of pleading and evidence could not be disregarded while deciding the reference. The Appellant in support of his argument, placed reliance on Bombay High Court Order/judgment passed by the Ld. Single Judge in the matter of Sahyadri Earthmovers v/s L & T Finance Ltd, 2011 (6) Bom.C.R. 393, which held that 'Arbitral tribunal is not Court. Any Lacuma in procedure do not vitiate award unless it is in breach of principle of natural justice by aggrieved parties. Order-communication of Arbitrator shows he has applied procedure and given full opportunity to petitioner as required to conduct arbitration proceedings in accordance with law. **No fault found with procedure, so adopted.**



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3.8 The Appellant submitted that the entire procedure is gross abuse of the process of law and as such caused grave prejudice to be Appellant's right to fair adjudication. Therefore, the present Appeal ought to be allowed and the impugned award dated 12-3-2015 is liable to be quashed and set aside.

3.9 The Respondent Clearing Members, at the outset submitted that there is no infirmity/error/lacuna in the impugned award. Whatsoever and the present Appeal therefore is completely misconceived both, in fact and in law, and devoid of substance, and is liable to be dismissed with costs. It was further submitted that the Appellant Trading Member sometime in March, 2014 was facing financial difficulties, as such, failed to meet its margin obligation under the Agreement dated 25-4-2008 and failed to settle its dues with the Respondent Clearing Member. Despite, various communications calling upon the Appellant Trading Member to meet the margin requirements, Appellant did not respond to any of the communication. Hence, the Respondent left with no alternative, initiated the process of liquidation of the cash and collateral securities, provided by the Appellant to the Respondent and accordingly notified vide letters dated 11-3-2014 and 13-3-2014 to the NSCCL about the same. The Respondent further submitted that during the process of liquidation/encashment of the collateral security provided by the Appellant, the Respondent sold some of the collateral shares/securities through one Network Stock Broking Ltd on 15-3-2015. Based on the said sale, the Respondent executed an on-market transfer instruction to be sold to Network Stock Broking Ltd and in the process an off market electronic



instruction was prepared to release shares of the Appellant from the Respondent's F&O back office system, as such, by inadvertence a set of shares of different companies ( as stated in para 2.1 herein above) to the Appellant. Immediately on realizing the error, on the same day i.e.15-3-2014 Respondent's representative telephoned the Appellant's representatives as well as through email dated 15-3-2014 requested the Appellant. Besides, on 18-3-2014 Respondent also addressed a letter to the NSDL informing about the said fact of erroneously transferred the subject shares to the Appellant during the sale collateral shares through their broker Net worth Stocking Broking Ltd. Respondent vide their said letter also requested the NSDL to reverse the subject shares since the Appellant was ignoring the Respondent's request to re-transfer the said subject shares to the Respondent.

- 4.0 The Respondent Clearing Member further submitted that the NSDL vide their letter dated 20-3-2014 to Central Depository Services India Ltd. "CDSIL", requested the CDSIL to reverse the said transaction and re-transfer the subject shares from the Appellant's account to the Respondent's account. Thereafter, CDSIL also called upon the Appellant to re-transfer the subject shares, but however, on 21-3-2014, the Appellant vide their letter to CDSIL, inter alia purported that the subject shares received by them were delivered by the Appellant to their clients and in view thereof, reversal of the same was not possible, since the shares were not held in the Appellant's demat account. In the meantime, since the Appellant failed to re-transfer the subject shares, the Respondent in order to discharge their pay in obligation, purchased the equivalent shares of the subject shares

from the market on 19-3-2014 and 20-3-2014 at the cost of Rs.75,33,962.85 which is evidenced by the transaction statement of the Respondent and the Contract cum bills.

4.1 The Respondent further submitted that on 24-3-2014 the Appellant transferred shares of one Alang Industrial Gases Ltd. as collateral security for the debit in the ledger account of the Respondent and requested the Respondent to hold on to the share and not liquidate the same till the debit was not cleared, as such, the Appellant admitted their liability. Subsequently, the Appellant vide letters dated 9-5-2014 and 16-5-2014 deposited additional shares of the said Alang Industrial Gases Ltd. with the Respondent. The total shares deposited by the Appellant of Alang Industrial Gases Ltd. was 100,003 shares, which was as and by way of collateral security against their liability and hence, this amounted to a clear admission of the Appellant's liability to the extent due to the Respondent.

4.2 The Respondent thereafter, vide their Advocate's Notice dated 20-6-2014 demanded a sum of Rs.75,33,962.85 with interest from the Appellant. It was further submitted that the Appellant in their reply to the Statement of Claim put up before the Lower Arbitral Tribunal, did not dispute in any manner to the said statement of claim, save and except the jurisdiction of the Lower Arbitral Tribunal, inter alia contending that the dispute between the parties had not arisen on account of a deal executed on the NSE and the current dispute was on account of transfer of shares to an erroneous account had no correlation to the deal executed on the NSE. The Respondent Clearing Member further submitted that the principal ground of

Appellant's challenge to the said impugned award dated 12-3-2015 was that the Lower Ld. Arbitral Tribunal had no jurisdiction to entertain the claim of the Respondent and that it was out of the scope of the arbitral reference and/or the mandate of arbitration. The said impugned award was passed erroneously, without interpreting the jurisdiction clause of the NSCCL bye-laws.

- 4.3 The Respondent Clearing Member in support of their arguments/submissions, drew the attention of the Arbitral Tribunal to Section 19 and 24 of the Arbitration and Conciliation Act, 1996 which is reproduced here below for convenience

**Section 19 Determination of rules of procedure** (1)

The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 ( 5 of 1908 ) or the Indian Evidence Act, 1872 (1 of 1872 )

(2) Subject to this part, the parties are free to agree on the procedure to be followed by the tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section 2, the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

**Section 24 Hearings and written proceedings** (1)

Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.

**Provided** that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral Tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral Tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral Tribunal may rely in making its decision shall be communicated to the parties.

4.4 The Respondent Clearing Member further submitted that the Arbitral Tribunal is governed by the NSCCL and NSE bye-laws / regulations, was only required to follow the procedure prescribed therein. Admittedly, the procedure prescribed under the bye-laws/ regulations of the NSCCL do not provide for the Arbitral Tribunal to conduct a detailed trial in the matter, after considering oral evidence in the matter. Therefore, from a review of the bye-laws / regulations of the NSCCL it is evident that the arbitral Tribunal has full autonomy to determine the procedure of the arbitration. Moreover, there is no requirement on the Arbitral Tribunal to examine witnesses and/or adhere to the provisions of the Civil Procedure Code (CPC) and the Evidence Act.

4.5 The Respondent Clearing Member further submitted that an examination of the Statement of Defense filed by the Appellant clearly show that the Appellant had not disputed any facts stated by the Respondent in their

Statement of Claim. The Appellant thus had not disputed any facts and had only raised an objection with regard to the jurisdiction of the Tribunal and that no triable issues were raised by the Appellant, which warranted the Lower Arbitral Tribunal to conduct a detailed trial in the matter after considering oral evidence and documentary evidence. It was further submitted that the dispute in the present case was decided on the basis of the documents produced before the Lower Arbitral Tribunal and that the Lower Ld. Arbitral Tribunal correctly passed the impugned award, after considering the documents on record. In support of this argument, the Respondent placed reliance of the judgment of the Calcutta High Court in the case of **Videsh Sanchar Nigam Ltd. vs. Shapoorji Pallonji & Co. Ltd. 2007 (Supp.) Arb LR 313 (Calcutta)** which held that the arbitral tribunal is neither strictly required to frame issues, nor is a procedure of trial as laid down by the CPC required to be adhered to in arbitration. The only requirement, which the Arbitral Tribunal was required to follow was that the procedure in the proceedings be fair, equitable and reasonable keeping in view the principles of natural justice, fair play and equity as held in the case of **Punjab State Industrial Development Corpn. vs. Sunil K. Kansal, 2103(1) Arb LR 327 (P&H) (DB)**

It was further submitted that no application was preferred by the Appellant before the Lower Ld. Arbitral Tribunal for leading evidence and/or cross-examination of Respondent's representatives. The only request made by the Appellant before the Lower Ld. Arbitral Tribunal was for an adjournment of the hearing on the ground that the Reply/Statement of Defense filed in the matter was not comprehensive/satisfactory. This request was

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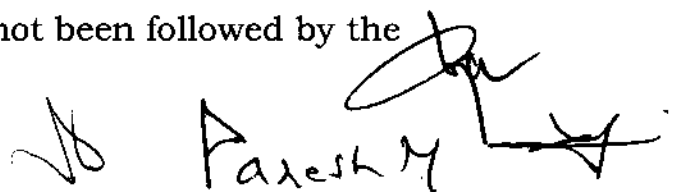
rejected by the Lower Ld. Arbitral Tribunal on account of the same being made belatedly.

- 4.6 Both Parties concluded their arguments. Matter was closed for Orders and parties were directed to file their written submission on or before 06-07-2015 and the same was filed with the Exchange on 06-07-2015 and taken on record.

**FINDINGS:**

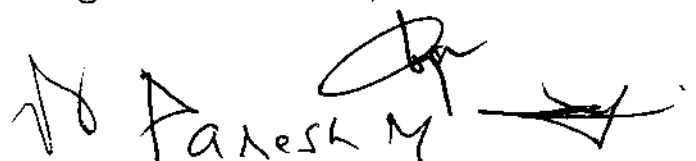
- 5.1 We have extensively heard the parties on afore stated date and have carefully gone through the Appellant's Appeal, reply of the Respondents, and the compilation of documents in support of submission made by both the parties. We have also perused the Impugned Award dated 12-03-2015 of the lower Ld. Arbitral Tribunal allowing the Respondent's claim of Rs. 75,33,962.85 along with interest @12% p.a. from date of application i.e. 31-07-2014 till realization of payment, against the Appellant-Constituent (Original Respondent) for failure on their part to re-transfer the shares, of Cipla Ltd 1000 nos, Infosys Ltd 1063 nos, L & T 1920 nos, Reliance Industries Ltd 950 nos and Tata Steel Ltd. 1125 nos which during the process of liquidation of the cash deposits and the collaterals given by the Appellant/Constituent to the Respondent/Clearing Member, were inadvertently and erroneously transferred to the Appellant/Constituent's Depository Account-Client ID 1205250000000-458 DP ID 52500.
- 5.2 Further, we observe that save and accept the issue of jurisdiction, the Appellant Trading Member have miserably failed to assail the impugned award on any

sound cogent grounds. During the course of hearing the Ld. Counsel for the Appellant clearly stated that the award is not challenged on merits and that the Lower Arbitral Tribunal award had not caused any deep prejudice to the Appellant. The only objection raised was that in light of provisions and deal coming to end the recourse if any, was a Civil Suit and not Arbitration. We observed that the Appellant had taken the false and mischievous plea of lack of jurisdiction of Lower Arbitral Tribunal solely with a view to avoid the payment obligations casted upon the Appellant which was totally undisputed. Such an approach of the Appellant towards the Respondent Clearing Member who is also an important organ security related to trade especially the settlement part of it which in our view is an unhealthy practice otherwise settlement system evolved by the Stock Exchange would go for a toss shaking the confidence of public at large in exchanges settlement mechanism and exchanges would be a brink of crisis at any point of time. We do not want Exchange failures. Approach and contentions canvassed and advocated of a Civil remedy as and by way of a Civil Suit is opposed to Public Policy and therefore the Public Policy in this limited context is to be understood as present law governing the security transaction. Further, the Appellant vehemently pressed for strict compliance of Code of Civil Procedure, 1908, Indian Evidence Act in the present arbitration system which is evolved is shocking, as admittedly no prejudice is caused to the Appellant both before the Lower Arbitral Tribunal as well the present Appellate Arbitral Tribunal, as payment obligation is not disputed. Further, the Appellant have miserably failed to canvass that Cardinal Principal of Civil Jurisprudence too, have not been followed by the

 Pankaj M. Singh

Lower Arbitral Tribunal, which has caused prejudice to the Appellant. A mere plea of lack of jurisdiction without case on merit puts a question mark that the plea is taken to avoid legitimate payment of the Respondent Clearing Member which otherwise is clearly due and payable. It speaks volumes about the core intention of the Appellant which in our view is to delay and defeat the payment legitimately due to the Respondent.

- 5.3 In view of the oral and written submissions made by the parties and after going through documents on record as also the provisions under the Arbitration and Conciliation Act 1996, we find the arguments advanced by Ld. Counsel for the Appellant, misconceived and untenable. The judgment cited by the Appellant in the case of Sahayadri Earthmovers Vs. L & T Finance Ltd. reported in 2011 (6) Bom.C.R 393 held that any lacuna in the procedure, does not automatically vitiate an award unless it is the breach of the principles of natural justice. In fact, in the present case the Lower Ld. Arbitral Tribunal has given full opportunity to the parties, as required to conduct the arbitration proceedings in accordance with law, as also under the NSCCL Bye-laws/Regulation. Hence, no fault can be found with the procedure adopted by the Lower Ld. Arbitral Tribunal. As such, reliance placed upon the said judgment of the Hon'ble Bombay High Court is therefore of no assistance to the Appellant. Besides, even the provisions under the Arbitration and Conciliation Act, 1996, more particularly Section 19 & 24 of the Arbitration and Conciliation Act, 1996 is clear and does not bind the arbitral tribunal by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. And that the Arbitral Tribunal is thus empowered to conduct proceedings in the manner, it

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considers appropriate. Hence we are of the opinion that no interference is called for in the Award dated 12-03-2015 passed by the Lower Arbitral Tribunal and therefore the Appeal need to be rejected.

## **ORDER**

6.1 The Appeal of the Appellant stand dismissed in terms of the observation made in the foregoing paragraph and we uphold the Award dated 12-03-2015 of the Lower Arbitral Tribunal.

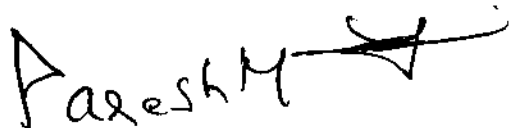
6.2 No order as to costs.

The Order is given in -3- originals, one each for the Appellant, Respondent and one for the record of NSE.

Mumbai  
Dated this 31<sup>st</sup> day of July, 2015



**Mr. Deepak Shah**  
(Co-Arbitrator)



**Mr. Paresh M Joshi**  
(Co-Arbitrator)



**Mr. Jasbir Saluja**  
(Presiding Arbitrator)