

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
*Before Mr. Justice F. I. Rebello.*  
**Arbitration Petition No. 130 of 1998, decided on 7.9.1998**

VINAY BUBNA

v.

YOGESH MEHTA & ORS.

**[A] Securities Contracts (Regulation) Act, 1956 - Sec. 9 - By-laws framed by the Bombay Stock Exchange - Subordinate Legislation.**

**Held :** Section 9(4) of the Securities Contract Act requires previous publication of the by-laws before they can come into force. Publication is another incidence of subordinate legislation. Therefore, there is no difficulty in holding that the by-laws framed under Section 9 are subordinate legislation. Section 9 of the Securities Contract Act confer power on the Board to make by-laws pertaining to regulation and control of contracts.

**[B] Arbitration and Conciliation Act, 1996 - Sec. 10(1) - Arbitral Tribunal - Constitution by even number of members - Void being contrary to law.**

**Held :** The Act. makes it clear that parties can derogate from the provisions of the Act when it is so provided. If in a contract the parties have agreed to an odd number of Arbitrators, then that clause is saved by virtue of Section 10(1) of the 1996 Act. If the contract provided for an even number of Arbitrators then such a clause in the contract would be void being contrary to sub-section (1) of Section 10.

If the composition of the Tribunal is contrary to the provisions of Section 10 and the parties have not derogated therefrom to the extent possible it cannot be saved.

**[C] Arbitration and Conciliation Act, 1996 - Sec. 24(1) - Prayer for opportunity to lead evidence - Denial by Arbitral Tribunal - Award liable to be set aside.**

**Held :** The proviso to sub-section (1) of Section 24 is clear. If the parties before the arbitral tribunal seek to lead oral evidence it must be granted as the expression is shall hold oral hearings at the request of the parties. It may be that even in the expression 'shall' in a limited number of cases wherein in fact no evidence is required to be led, the Tribunal can reject such an application. In the instant case, however, the petitioner had pointed out the need to examine the witness. The Tribunal on the express language of the proviso to Section 24(1) could not have denied that opportunity. On that count also the Award is liable to be set aside.

**[D] Arbitration and Conciliation Act, 1996 - Sec. 34(2)(iii) - Prayer for opportunity of oral hearing - Denial by Arbitral Tribunal - Violation of natural justice.**

**Held :** The petitioner had sought opportunity of an oral hearing. That was denied to him. He had sought documents from the Stock Exchange before the

*Tribunal. He was told to approach the Stock Exchange. The Stock Exchange refused to hand over the documents. The Tribunal did not draw any adverse inference from the refusal by the Stock Exchange in making available the documents to the petitioner or directed the Stock Exchange to produce the documents. The petitioner was denied an opportunity of meeting his case.*

**Cases Cited :**

- B. N. Srivastava v. M. Srivastava, AIR 1994 SC 2562 : 1994 AIR SCW 3615 : 1994(2) Arbi. L. R. 277 : (1994) 2 Cur. L. J. 405 : 1994(2) Hindu L. R. 346 : 1994 (6) SCC 117.  
 Babaji Kondaji Garad and others v. Nasik Merchants Co-operative Bank Ltd., Nasik and others, AIR 1984 SC 192 : 1984 U. J. (SC) 239 : 1984 (2) SCC 50 : 86 Bom. L. R. 114 : 1984 C.T.J. 211 : (1984) 1 Bom. C. R. 399 : 1984 Mah. L. R. 405.  
 Co-operative Central Bank Ltd. and others, etc. v. Additional Industrial Tribunal, AIR 1970 SC 245 : 1970 Lab. I. C. 285 : 19 Fac. L. R. 56 : (1969) 2 Lab. L. J. 698 : (1970) 1 S.C.J. 295 : 40 Com. Cases 206 : 37 F.J.R 118.  
 Indramani Pyarelal Gupta and others v. W. R. Natu and others, AIR 1963 SC 274 : 65 Bom. L. R. 378 : (1963) 2 SCJ 59.  
 Hari Krishna Wattal v. Vaikunth Nath Pandya, AIR 1973 SC 2479 : 1973 S.C.D. 771.  
 Hemendra V. Shah v. Stock Exchange, Bombay and others, 1995(2) Mah. L. J. 770 : 1995(1) All Mah. L. R. 147 : (1996) 1 B.C.R. 270.  
 Kishore Jitendra Dalal v. Jaydeep Investment and others, 1996 (3) Bom. C. R. 204 : AIR 1996 Bom. 254 : 1997 (1) Civ. L. J. (Bom.) 134 : 1996 (2) Arb. L. R. 130 : 1996 (2) All Mah. LR. 191.  
 Dhanrajamal Gobindram v. M/s. Shamji Kalidas & Co., AIR 1961 SC 1285 : (1961) 2 SCA 288 : 64 Bom. L. R. 169.  
 Savitra Khandu Berad v. The Nagar Agricultural Sale and Purchase Co-operative Society Ltd., Ahmednagar, 59 Bom. L. R. 425 : AIR 1957 Bom. 158.  
 Sejal Rikeen Dalal v. Stock Exchange Bombay, AIR 1991 Bom. 30 : 1990 Mah. L. J. 860.  
 Shivchandrai Jhunhunwalla v. Mt. Panno Bibi, AIR 1943 Bom. 197 : 45 Bom.L.R. 392.  
 Textile Labour Association Ahmedabad v. The Labour Appellate Tribunal of India and other, AIR 1956 Bom. 746.  
 The Trustees of the Port of Madras v. M/s. Aminchand Pyarelal and others, AIR 1975 SC 1935 : (1976) 3 SCC 167 : (1976) 1 SCR 721.  
 V. V. Ruia v. S. Dalmia, AIR 1968 Bom. 347 : 70 Bom. L. R. 20 : 38 Com. Cas. 572.  
 Vijay Kumar M. Bohra v. Union of India & others, Arbitration Petition No. 199 of 1991.  
 Mr. SHAILESH SHAH with P. N. GUNWANI i/b. PODDAR & CO., for the Petitioner.  
 Mr. AJAY KHANDKAR with ANU EPAN, for Respondent No. 1.  
 Mr. P. N. MODY i/b. M/s. WADIA GANDHY & CO., for Bombay Stock Exchange.  
 Mr. PRAVIN SAMDANI, i/b. PUROHIT & CO., Mr. GAUTAM PATEL i/b. D. H. NANAVATI, Mr. SATISH SHETE i/b. KANGA & CO. and Mr. ANDHYARJUNIA i/b. GAUTAM MEHTA, for the Intervenors.

**ORAL JUDGMENT (Per F. I. Rebello, J.)**

Petitioner in this petition impugns the award dated 22nd January, 1998. The Award is challenged on several grounds. The principal contention is that the constitution of the Arbitral Tribunal was contrary to Section 10 of the Arbitration & Conciliation Act, 1996 (hereinafter shall be referred to as the Arbitration Act, 1996). Similar points have been raised in various other petitions which came up before me. In that light, on 4th August, 1998 by an order the petitioner was also directed to join the Bombay Stock Exchange as party-respondent in the proceedings as the issue involves the Bombay Stock Exchange who were referring the matters to arbitration based

on their By-laws. As similar point also arose in the other petitions Counsel appearing in other proceedings were also allowed to intervene and advance arguments in the present petition. By notice dated 4th August, 1998 parties were also informed that the petition would be finally disposed of. In the light of that the following order :-

Admit. Respondents waive service. To be heard forthwith.

2. In the present petition the three contentions raised by the petitioner are as under :-

1. The constitution of the Arbitral Tribunal is contrary to the provisions of Section 10 of the Arbitration Act, 1996.
2. The petitioner had sought to lead oral evidence in terms of Section 24 of the Arbitration Act, 1996. The same was denied to him and consequently also the award is liable to be set aside under Section 34 of the Act of 1996.
3. The Award is in violation of the principles of natural justice and fair play in as much as the petitioner was denied documents and further also was denied the right of oral hearing. It is contended that this would be against the public policy of India and/or denial of a reasonable opportunity to present his case and consequently also the Award is liable to be quashed and set aside.

3. I will first deal with the first contention in respect of which arguments have been advanced by the parties including intervening Counsel. I would formulate the questions to be decided as under :-

- (a) Whether an Arbitral Tribunal having even number of members constituted under By-laws framed by the Bombay Stock Exchange under the Securities Contracts (Regulation) Act, 1956 is in contravention of the provisions of Section 10 of the Arbitration Act, 1996?
- (b) Whether the constitution of such Arbitral Tribunal is saved by Section 2(4) of the Arbitration Act, 1996?
- (c) Whether such an award is liable to be set aside under Section 34(2)(a)(v) of the Arbitration Act, 1996 ?

These questions arise thus -

4. The Bombay Stock Exchange pursuant to the powers conferred under Section 9 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the Securities Contract Act) is empowered with the previous approval of the Securities & Exchange Board of India to make By-laws for the regulation and control of contracts. The Bombay Stock Exchange at the commencement of the Securities Contract Act had already framed By-laws. In other words they were pre-existing By-laws. There is no dispute for the moment as I will point out later on that these By-laws though pre-existing are saved under the provisions of the Securities Contracts Act. The By-laws also provide for settling disputes between member and member and/or member and non-member. The By-laws also provide for the constitution of an Arbitral Tribunal and the procedure to be fol-

lowed by the Arbitral Tribunal. It provides for the number of Arbitrators to be appointed in respect of the dispute, depending on the parties. In the present case we are concerned with the dispute between a member and non-member.

Under the Arbitration Act, 1996 if there is a provision for arbitration provided under any other Act that will be deemed to be an Arbitration Agreement for the purpose of the Arbitration Act, 1996. Ordinarily in every matter pertaining to Arbitration as provided under the Arbitration Act, 1996 it will be the procedure as laid down in the Arbitration Act, 1996 that will have to be followed. Section 2(4) of the Arbitration Act, 1996, however, provides that if there is a provision for arbitration under any other enactment such arbitration would be deemed to be an arbitration agreement as if that enactment were an arbitration agreement. Further the provisions of the Arbitration Act, 1996 would apply except in so far as the provisions of Arbitration Act, 1996 are inconsistent with that other enactment or Rules made therein.

5. At the outset it may be mentioned that in so far as the facts of the present case are concerned the petitioner by letter dated 23rd July, 1997 had pointed out to the Arbitral Tribunal that the appointment of a third Arbitrator was absolutely necessary and that matter ought to be decided first. The Tribunal held that it was properly constituted and proceeded with the Arbitration proceedings. In the petition before this Court this ground has not been specifically taken. In para 28 of the petition the grievance made was to the manner of appointment. However, in para 40 it is contended that the learned Arbitrators ignored the provisions of the Arbitration and Conciliation Act, 1996 as also the Rules, By-laws and Regulations 1957 framed by the Stock Exchange and travelled beyond the provisions of the Rules, By-laws and Regulations of Mumbai Stock Exchange. It is true that in the matter of an arbitration petition as held by the Apex Court in the case of *B. N. Srivastava v. M. Srivastava*,<sup>1</sup> after the period of limitation has expired, normally the petitioner should not be allowed to add new grounds. However, considering the fact that the Arbitral Tribunal in its Award itself has noted that the petitioner had challenged the powers of the Tribunal the petitioner is permitted to raise the said point. Even otherwise in the other petition such points have been so raised. Without digressing further from the facts in this petition, the facts pertaining to the other challenges also being referred to. The petitioner before the Tribunal had sought opportunity of examining one Mr. Nimesh Shah, Proprietor of Multiple Investments as a witness. The Arbitral Tribunal in its Award has stated that the Tribunal felt no necessity to examine in depth a third person as the arbitration proceedings is a summary proceeding where the relevant documents are fully examined. It was further noted that Nimesh

1. AIR 1994 SC 2562 : 1994 AIR SCW 3615 : 1994(2) Arb. L. R. 277 : (1994) 2 Cur. L. J. 405 : 1994(2) Hindu L. R. 346 : 1994 (6) SCC 117.

Shah is the sub broker and the applicant would have to independently proceed against the said broker for any relief and cannot club the issue of a sub broker in this matter. The said ground has been taken as ground (d) in the Arbitration proceedings. The petitioner had also contended that he was denied opportunity of leading evidence. The Arbitral Tribunal in its award has noted that the petitioner had moved an application on 22nd July, 1997 with direction to be issued to the Stock Exchange for furnishing certain particulars. The Arbitral Tribunal directed the petitioner to move the Bombay Stock Exchange in that regard. The ground is formulated as Ground (g) (viii). An incidental challenge to the same is also taken by way of ground (c). It was also contended by the petitioner that he had asked for a personal hearing, but the same was denied to him.

6. With this background the first question has now to be considered. For the purpose of considering the said question it will be necessary to look into the provisions of the Arbitration Act, 1996, the Arbitration Act, 1940 and the Securities Contracts (Regulation) Act, 1956. The relevant provisions to the extent that they are necessary are being reproduced herein below. Sub-sections (4) and (5) of Section 2 of the Arbitration Act, 1996 reads as under :-

"2(4). This Part except sub-section (1) of Section 40, sections 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 thereunder.

(5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this part shall apply to all arbitration and to all proceedings relating thereto."

The next relevant provisions is Section 4 of the said Act, which reads as under :-

4. Waiver to right to object - A party who knows that —

- (a) any provision of this Part from which the parties may derogate, or
- (b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

The other relevant Section for the purpose of discussion is Section 34(2)(a)(v) of the said Act, which reads as under :-

"The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part."

The last Section which needs to be quoted is sub-section (4) of Section 43, which reads as under :-

"Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted."

8. We may now refer to the provisions of the Arbitration Act, 1940. The first relevant provision is Section 2(a) of the definition clause, which reads as under :-

"(a) "arbitration agreement" means a written agreement to submit present or future differences to arbitration, whether an Arbitrator is named therein or not."

The next relevant Section is Section 28 which deals with the power to enlarge time for making the Award. The said Section reads as under -

"28. Power to Court only to enlarge time for making award. - The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time for making the award.

(2) Any provision in an arbitration agreement whereby the Arbitrators or Umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."

For the sake of discussion it is essential that two other Sections be referred and which are very relevant for the purpose namely Section 46 and 47. They are reproduced herein below :-

"46. Application of Act to statutory arbitration - The provisions of this Act, except sub-section (1) of Sec. 6 and Secs. 7, 12, 36 and 37, 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 this Act is inconsistent with that other enactment or with any rules made thereunder".

47. Act to apply to all arbitrations - Subject to the provisions of Sec. 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act apply to all arbitrations and to all proceedings thereunder."

9. By-laws have been framed under the Securities Contracts (Regulation) Act, 1956. The entire argument is based on the assumption that the arbitration agreement as provided under the By-laws framed pursuant to Section 9 and the clauses therein will prevail to the extent that they are inconsistent with the provisions of the relevant section of the Arbitration Act, 1996 including section 10. For that purpose, the relevant Sections of the Act, which need to be referred to are Section 2(g), the definition clause which define Rules as under -

"rules" with reference to the rules relating in general to the constitution and management of a stock exchange, includes, in the case of a stock exchange which is an incorporated association, its memorandum and articles of association."

Section 7A of the Securities Contracts (Regulations) Act, 1956 confers a power on a recognised Stock Exchange to make rules restricting voting rights, etc. Amongst other rules, Rules can be made to restrict voting rights of members only in respect of any matter placed before the stock exchange. Restriction on the right of the member to appoint another person as his proxy to attend and vote at the meeting and also for such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a), (b) and (c) of sub-section (1) of Section 7.

Section 8 is the power conferred on the Central Government to direct rules to be made and/or to make rules itself after consultation with the Governing bodies of the stock exchanges generally or with the governing body of any stock exchange in particular for matters specified in Section 3(2). In case the Governing Body fails to make Rules as directed power is conferred under Sub-section (2) on the Central Government.

Section 9 in so far as we are concerned is the relevant section. Section 9(1) reads as under :-

"Any recognised stock exchange may, subject to the previous approval of the Securities and Exchange Board of India, make by-laws for the regulation and control of contracts."

The relevant parts of sub-section (2) of Section 9 namely sub-clauses (b), (k) and (n) are reproduced herein below :-

(b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house.

(k) the regulation of the entering into, making, performance, rescission and termination, of contracts, including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts.

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

Sub-section (4) of the same Section reads as under: -

"Any by-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*;

Provided that if the Securities and Exchange Board of India is satisfied in any case that in the interest of the trade or in the public interest any by-laws should be made immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication."

Section 30 is the Section which empowers the Central Government by notification in the *Official Gazette* to make Rules for the purpose of carrying into effect the objects of the Act.

10. In support of their contention, the Bombay Stock Exchange through their Counsel as also other learned Counsel supporting the stand taken by the Bombay Stock Exchange contend as under -

- (a) Section 2(4) of the Arbitration Act, 1996, it is contended, is in *para materia* with Section 46 of the Arbitration Act, 1940. This Court, it is contended, has examined and explained the scope and extent of Section 46. By virtue of the said interpretation it has been held that Arbitration Agreements under Section 46 is a statutory agreement and as such the provisions of the Contract in terms of the by-laws framed will apply and prevail over the provisions of Act of 1940 and in similar circumstances must also prevail over the provisions of Arbitration Act, 1996, as the language is the same.
- (b) While interpreting Section 2(4) stress has to be laid on the words "*under the Act*". Once it is contended that the Arbitration is under the Act then it is the agreement framed under the by-laws of the Securities Contracts Act which will prevail and not Section 10 of the Arbitration Act, 1996.

(emphasis supplied)\*

- (c) The law as explained in contention (a) has been followed in the trade and by this Court without any interruption over the years. In the event two views are possible, merely because another view is also possible should not be a reason for this Court to depart from the well settled principle.

It is further contended that if the argument on behalf of the petitioners is accepted it will lead to chaos in the functioning of the Stock Exchanges. The figures in respect of the various arbitration proceedings filed between members and members and members and non-members in the year 1996-1997 and 1997-1998 upto date have been placed before the Court for its consideration.

(d) If Section 10 applies then a similar construction will have to be given also to Section 7 of the Act which provides for an agreement in writing between the parties.

11. On behalf of the petitioners these contentions are answered as under:-

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\* Here italicised.



- (a) What is saved by Section 2(4) of Arbitration Act, 1996 is what is provided under the enactment or rules. Anything provided under the By-laws which are inconsistent with the Act of 1996 is not saved.
- (b) There can be no waiver of the provisions pertaining to constitution of Arbitral Tribunal under Section 4 of the Arbitration Act, 1996. The Section itself provides that what can be waived namely those provisions from which parties may derogate.
- (c) The by-laws framed under the Securities Contracts Act are not in the nature of subordinate legislation.

12. For the purpose of answering these contentions, learned Counsel have taken me through the definition of the expression "By-laws", "enactment" the expression "under" and various judgment of the Apex Court as also of this Court. I will, therefore, first consider whether the by-laws framed partake of subordinate legislation. That can be best stated as explained by Subba Rao, J. as he then was, in his judgment (on merits on the point involved it was a minority judgment) in the case of *Dr. Indramani Pyarelal Gupta and others v. W. R. Natu and others*,<sup>1</sup> In paragraph 4 subordinate legislation was defined as under -

"Subordinate or delegated legislation takes different forms. Subordinate Legislation is divided into two main classes namely, (i) statutory rules, and (ii) by-laws or regulations made (a) by authorities concerned with local Government and (b) by persons, societies, or corporations."

Subordinate legislation has thus been divided into two categories (1) statutory rules and (2) By-laws or Regulations made (a) by Authorities concerned with local Government and (b) societies, persons or Corporation. In the case of *The Trustees of the Port of Madras v. M/s. Aminchand Pyarelal and others*,<sup>2</sup> the Apex Court noted with approval the meaning of "By-laws as set out in *Halsbury's Laws of England*. The Apex Court in para 22 has observed as under :-

"A by-law has been said to be an ordinance affecting the public or some portion of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance."

Reference may not be made to some of the definitions of by-laws as given in "Cite by Word or Phrase" by West Publishing Company 1968. With reference to by-laws by a Corporation it is defined as under -

"In modern times the term "by-laws" is employed to denote the private laws of corporations or other boards or bodies. Their history is briefly this : Where the Danes acquired possession of a shire in England, the township was often called a "by" and, as they enacted laws of their own, they were called "by-laws" or "town laws"."

1. AIR 1963 SC 274 : 65 Bom. L. R. 378 : (1963) 2 SCJ 59.

2. AIR 1975 SC 1935 : (1976) 3 SCC 167 : (1976) 1 SCR 721.

Another definition of the word is given as under :-

"A "by-laws" is a rule or law adopted by a corporation or association for the regulation of its own action and concerns, and of the rights and duties of its members among themselves. The term has a peculiar and limited signification, being used to designate the orders and regulations which a Corporation, as one of its legal incidents, has power to make, and which is usually exercised to regulate its own action and concerns, and the rights and duties of its members amongst themselves."

In the case of *Co-operative Central Bank Ltd. and others, etc. v. Additional Industrial Tribunal*,<sup>1</sup> the Apex Court was considering the By-laws of a Co-operative Society. The Apex Court in para 10 of the judgment has observed as under :-

"It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to by-laws of the nature that a Co-operative Society is empowered by the Act to make. The by-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute."

The Apex Court in the same paragraph thereafter further observed as under :-

"The by-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law."

In the case of *Babaji Kondaji Garad and others v. Nasik Merchants Co-operative Bank Ltd., Nasik and others*,<sup>2</sup> the Apex Court again considering the By-laws of a Co-operative Society in para 15 was pleased to observe as under :-

"They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the by-law if not in conformity with the statute in order to give effect to the statutory provision the rule or by-law has to be ignored. The statutory provision has precedence and must be complied with."

13. A Single Judge of this Court in the case of *Sejal Rikeen Dalal v. Stock Exchange Bombay*,<sup>3</sup> has taken a view that a writ can be issued against the B. S. E. In other words it is other authority.

1. AIR 1970 SC 245 : 1970 Lab. I. C. 285 : 19 Fac. L. R. 56 : (1969) 2 Lab. L. J. 698 : (1970) 1 S.C.J. 295 : 40 Com. Cases 206 : 37 F.J.R 118.
2. AIR 1984 SC 192 : 1984 U. J. (SC) 239 : 1984 (2) SCC 50 : 86 Bom. L. R. 114 : 1984 C.T.J. 211 : (1984) 1 Bom. C. R. 399 : 1984 Mah. L. R. 405.
3. AIR 1991 Bom. 30 : 1990 Mah. L. J. 860.

14. It is thus clear from a perusal of the definition of By-laws" as explained by judicial pronouncements and definitions, in judicial dictionaries that By-laws fall in two categories one made by person, societies or corporations and the other by local Government, or statutory authorities. Wherever they have been made in the exercise of a statutory power as generally binding or affecting the public, or some portion of the public, imposed by some authority and accompanied by some sanction or penalty for its non observance it partakes of subordinate legislation.

It may at this stage be noted that the various Benches of this Court have proceeded on the footing that the contracts (By-laws) made under the Securities Contracts Act are statutory in character. The question as to whether the by-laws made under Section 9 are in the nature of Articles of Association of a Company or subordinate legislation need not detain us for long as in my opinion that has already been answered by the Apex Court in the case of *Dr. Indramani Pyarelal Gupta & others* (supra).

In that case the Apex Court was considering the Forward Contract (Regulation) Act, 1952. Power was conferred under Section 12 of the said Act to frame By-laws. The Apex Court on construction of the various provisions of the Act arrived at the conclusion that those partook of subordinate legislation as such held the By-laws to be statutory in character.

Attention may also be drawn to Section 9(4) of the Securities Contract Act which requires previous publication of the by-laws before they can come into force. Publication is another incidence of subordinate legislation. Therefore, in my view there is no difficulty in holding that the by-laws framed under Section 9 are subordinate legislation. Section 9 of the Securities Contract Act confer power on the Board to make by-laws pertaining to regulation and control of contracts. A number of decisions of this Court have termed the contracts so framed as statutory in character.

15. That leaves us with the next contention whether the interpretation of Section 46 of the Arbitration Act, 1940 by Judgments of this Court will apply in interpreting Section 2(4) of the 1996 Act. There can be no dispute on one aspect namely that the language of Section 2(4) of the Arbitration Act, 1996 and the language of Section 46 of the Arbitration Act, 1940 are in para material and similarly provisions of section 2(5) of 1996 Act and Section 47 of 1940 Act. What will have to be considered is whether the previous judgments conclude the issue in so far as points which have been canvassed before this Court. There was no provision like Section 10 of the Arbitration Act, 1996. However, Section 28 provided for extension of time in the Arbitration Act, 1940 and has been considered and interpreted. Judgments of this Court are principally based on the view taken by a Division Bench of this Court in the case of *Shivchandrai Jhurjhunwalla v. Mt. Panno Bibi*.<sup>1</sup> In that case what was under consideration was the by-laws framed

1. AIR 1943 Bom. 1997 : 45 Bom. L. R. 392.

under the Bombay Cotton Contracts Act by virtue of Section 4(7) read with Sections 5 and 6. A learned Single Judge of this Court was dealing with the challenge to the Award. Three contentions were raised therein, namely (1) the reference to arbitration was beyond the period of limitation. (2) without the consent of the parties neither the Chairman of the Association nor the Umpire had jurisdiction to extend time for the Umpire to make his Award and (3) the Respondent not having obtained representation to the estate of the landlord was not entitled to conduct execution proceedings or refer the dispute or apply for a decree in terms of the award. What is of importance is the second contention. Section 28 of the 1940 Act was pressed into service. It was contended the reading of Section 28 would show that the Court is empowered to enlarge time for making the award where the time originally fixed had expired. In the case before the learned Single Judge the time was not extended by the Court. An application was made by the Umpire to the Chairman of the Association to extend time as it was provided in the by-laws. In that context Section 46 came up for consideration. The learned Single Judge then proceeded to hold that the by-laws framed under Section 6 being statutory in character by reason of the provisions of Section 4(7) of the Cotton Contract Act will prevail. Whether by-laws are rules never came up for consideration. The question whether the expression by-laws fall within the expression enactment or rules also did not come up for consideration or was considered.

The next judgment cited is an unreported judgment in the case of *Vijay Kumar M. Bohra v. Union of India & Others*, passed by Srikrishna J., on 10th December, 1991. in Arbitration Petition No. 199 of 1991. Here again the question was about Section 28(2) and Section 46. The learned Judge relying in the case of *Shivchandrai Jhunhunwalla* (supra) held that the contentions raised do not deserve any merit as the by-laws are statutory in character and as such they would prevail over the provisions of the Arbitration Act. The next Judgment is the judgment of Variava, J., in the case of *Hemendra V. Shah v. Stock Exchange, Bombay and others*,<sup>1</sup> Here again what was under consideration was the contention that the claims were time barred and that the stock exchange had not extended the time. Reliance was placed on Sections 37 and 46 of the Arbitration Act, 1940. The matter again proceeded on the footing that the by-laws are statutory in character and must prevail. A contention was raised therein that the expression 'enactment' had not been considered in earlier judgments. The point was not dealt with on the finding that in another Judgment it has been held that the by-laws are statutory in character. The last Judgment referred to is in the case of *Kishore Jitendra Dalal v. Jaydeep Investments and others*,<sup>2</sup> The question therein raised was Sections 28 and 46 of the Arbitration Act, 1940. Reference in that judgment was made to the case of

1. 1995(2) Mah. L. J. 770 : 1995(1) All Mah. L. R. 147 : (1996) 1 B.C.R. 270.

2. 1996 (3) Bom. C. R. 204 : AIR 1996 Bom. 254 : 1997 (1) Civ. L. J. (Bom.) 134 : 1996 (2) Arb. L. R. 130 : 1996 (2) All Mah. LR. 191.

*Hari Krishna Wattal v. Vaikunth Nath Pandya*,<sup>1</sup> Here again the learned Judge proceeded on the footing that Rules and by-laws of the Exchange are Statutory Rules and By-laws. The learned Judge then proceeded to pose a question "However, the question which still requires consideration is whether in view of Rules and By-laws of the Exchange being statutory, sub-section (2) of Section 28 of the Act would apply to the facts of the present case."

The question thereafter was answered that By-laws would prevail. Whether by-laws fall within or outside the expression enactment or rules was not considered. Reference was also made to the Judgment in the case of *V. V. Ruia v. S. Dalmia*,<sup>2</sup> In this case also the issue pertaining to the statutory character of the by-laws framed by B. S. E. was under consideration. Several contentions were raised therein namely that the By-laws were by-laws previous to the coming into force of the Securities Contracts Act and also that they were not published. The learned Single Judge held that they were saved and in so far as pre-Act By-laws are concerned, the Act did not contemplate for its publication. The learned Judge also held that the By-laws were statutory in character. Similar observations are found in the following judgments.

A Division Bench of this Court in the case of *Textile Labour Association Ahmedabad v. The Labour Appellate Tribunal of India and others*,<sup>3</sup> was considering the provisions of the Bombay Industrial Relations Act, 1946 and the provisions of the Arbitration Act, 1940. The Court was construing the provisions of Section 46 of the Arbitration Act, 1940. The Division Bench has noted as under :-

"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 Sec. 46 intends it to be. We are dealing with an arbitration under S. 66, where parties by a written submission go to the arbitration of a private party.

This is not a case where the State refers the dispute to arbitration and the statutory provision itself constitutes an arbitration agreement. But even assuming that S. 46 applied Mr. Buch has failed to satisfy us that there is anything in the provisions of the Arbitration Act with regard to the setting aside of an award which is inconsistent with the provisions contained in Chapter XI, Bombay Industrial Relations Act."

The next judgment on which reliance was placed was in the case of *Savitra Khandu Berad v. The Nagar Agricultural Sale and Purchase Co-operative Society Ltd., Ahmednagar*,<sup>4</sup> was considering the question in that case whether the Indian Limitation Act applies to the claims referred to for adjudication under section 51 of the Bombay Co-operative Societies Act. The

1. AIR 1973 SC 2479 : 1973 S.C.D. 771.

2. AIR 1968 Bom. 347 : 70 Bom. L. R. 20 : 38 Com. Cas. 572.

3. AIR 1956 Bom. 746.

4. 59 Bom. L. R. 425 : AIR 1957 Bom. 158.

Division Bench noted that Section 46 of the Arbitration Act expressly excludes Section 37 in its application to statutory arbitrations. The Division Bench thereafter observed as under :-

"But in an arbitration proceeding where the source of the authority of the Arbitrator is a statute, and not an agreement between the contending parties, a condition that the Arbitrator must decide the dispute according to the law of limitation cannot in the absence of a statutory provision be implied. The legislature has by S. 46 of the Arbitration Act expressly excluded from the operation of S. 37 statutory arbitration and if notwithstanding that express exclusion the provisions of the Indian Limitation Act are applied, the Court would in effect be rendering the exclusion clause ineffective."

16. A perusal of all the judgments, however, disclose one aspect that none of the learned Benches considering the matter, took into consideration the expression 'enactment or rules' in Section 46 as found under 1940 Act or for that matter under the 1996 Act. The judgments proceeded on the footing as if the by-laws are Rules and have been saved. In my view, therefore, none of the judgments will be of any assistance in answering the contention. This is more so as the attention of the learned Judges, who have decided the matter after 1963 was not invited to the judgment of the Apex Court in *Dr. Indramani Pyarelal Gupta & Others* (supra). I will advert to the judgment later on. Also my attention was invited to the judgment of the Apex Court of *M/s. Dhanrajamal Gobindram v. M/s. Shamji Kalidas & Co.*<sup>1</sup> The Apex Court therein was considering the question of a provision for arbitration. It was contended that the by-laws framed by the East India Cotton Association were statutory by-laws as it was a recognised institution under the Forward Contracts Regulation Act, 1952 and/or that Section 46 of the Arbitration Act, 1940 was applicable. Various contentions were raised therein to challenge the Award. The challenges have been formulated in para 4 of the judgment. The matter earlier was decided by a learned Single Judge, who dismissed the petition. In Appeal the matter was remanded back. The discussion therein is found in para 6 and paragraphs 23 to 26 of the judgment. I am not adverting to the various aspect as in my view though in that judgment it was held that it was a statutory contract and if the procedure was inconsistent with the Arbitration Act it would prevail, nevertheless the point in issue, namely, whether the provisions are saved under the enactment or Rules was not in issue at all.

That leaves us with the main judgment which has to be considered namely the judgment in *Dr. Indramani Pyarelal Gupta & Others* (supra). Before proceeding with the judgment I may refer to the expression "enactment" as pointed out in *Words and Phrases* from the publication of *Butterworths by John B. Saunders, Second Edition*. The word "enactment" has been described as under :

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1. AIR 1961 SC 1285 : (1961) 2 SCA 288 : 64 Bom. L. R. 169.

"Whilst all statutes are properly referred to as enactments, the word "enactment" may equally well be used to describe a particular provision in a statute. It is also used at times to include Church Assembly, Measures, or particular provisions thereof, and subordinate legislation.

"The word "enactment" does not mean the same thing as Act "Act" means the whole Act, whereas a section or part of a section in an Act may be an enactment.

"In some contexts, the word "enactment" may include within its meaning not only a statute but also a statutory regulation."

17. With this background the judgment referred to may now be considered. The Apex Court was considering the provisions of Forward Contracts (Regulation) Act, 1952. By-law had been framed by the East India Cotton Association in the matter of Forward Contract in Cotton including hedge contract. The Government in exercise of the powers under Section 12 of the Act made a new by-law 52AA in substitution of the previous by-law. A notification came to be issued under the new by-law banning hedge contracts. The validity of the notification and the by-laws were challenged. One of the contentions was that the Forward Markets Commission was in law incapable of recipient of the power conferred by the by-laws. Reference in that context was made to some provisions of the Act which are essential and are being reproduced below -

"3(1) The Central Government, may by notification in the *Official Gazette* establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act."

The next provision is Section 4. The relevant portion is Section 4(f) which reads as under :-

"4. The functions of the Commission shall be.

.....  
 .....  
 .....

(f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed."

What therefore, was in issue before the Apex Court was the expression "under this Act, or as may be prescribed." It is in that context that the judgment may be considered. The question was whether the by-laws framed therein were to be considered as 'by the Act' or 'under the Act' or 'as prescribed'. The Apex Court noted the distinction between Act, Rules and By-laws. In para 15 the Apex Court noted that the words "Act" and "Rules" have a different connotation and cannot mean By-laws. The Apex Court further noted that it cannot be said that the By-laws involved were made 'by the Act'. The Apex Court, however, held that they would fall under the expression "under the Act". It is in the light of that the question was answered. The Apex Court noted as under :-

"The meaning of the word "under the Act" is well known. "By" an Act would mean by a provision directly enacted in the statute in question and which is gathered from its express language or by necessary implication therefrom. The words "under the Act" would in that context signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, by-laws made by a subordinate law making authority which is empowered to do so by the parent Act. The distinction is thus between what is done indirectly by rule making authorities which are vested with powers in that behalf by the Act..... That in such a sense by-laws would be subordinate legislation "under the Act" is clear from the terms of Ss. 11 and 12 themselves."

Reference may also be made to para 16 of the judgment and to the following observations -

"If without the reference to the phrase as "as may be prescribed" the words "under the Act" would comprehend powers which might be conferred under by "By-laws" as well as those under "rules" we are unable to appreciate the line of reasoning by which powers conferred by by-laws have to be excluded, because of the specific reference to powers conferred by "rules".

The Apex Court on consideration of the Sections involved therein held that the By-laws were not under the Act.

Before proceeding further I may also refer to the expression "under" in *Butterworths publication by John B. Saunders. Second Edition*, which reads as under

"In one sense every act of a body which is the creature of statute may be said to be done "under" or by virtue of the statute creating it. In another sense the acts of such a body may be said to be done "under" or by virtue of some provision granting a general jurisdiction to act in relation to a variety of matters. But the expression is also quite commonly used in relation to a particular act, when the general jurisdiction to act is assumed, to designate the more particular power to do that particular act. It is rash to attempt to substitute a different expression for the more simple and usual one used, but in this connection "under" is perhaps more aptly translated by the expression "pursuant to" than by the phrase "by virtue of". It is necessary to have regard to the context to determine in which sense the word is used."

In the judgment, from the language used, the Apex Court held that the by-laws are not by the Act, they were also not as prescribed but fell "under" the Act. At this stage it may be mentioned that the Apex Court was not considering the Arbitration Act, 1940 or Section 46. Expression "under the Act" in the Forward Contracts Act was under consideration.

18. Coming back to the Act of 1996 and sub-section (4) of Section 2 of the 1996 Act, the said Section which has been reproduced earlier by me can be split up as under :-

This part except sub-section (1) of Section 40 , Sections 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 thereunder.”

19. Let me now proceed to understand and explain the expression arbitration in “any other enactment” and/or expression “inconsistent with that other enactment or with any rules made thereunder.” The learned Counsel on behalf of the respondents contend that if it is accepted that the arbitration is under the agreement it must necessarily follow that it is that arbitration agreement which must prevail as these are provisions which would be inconsistent with the provisions of Section 10. This is based on the assumption that in the expressions “under the enactment” the word “enactment” would include rules and by-laws. To answer that question, what is required to be seen is as to what is saved by Section 2(4). Is it, the entire statutory contract under that other enactment or is it only those provisions which are inconsistent with the enactment or the Rules. Is it possible to conceive a situation that the Legislature knowing fully well of the existence of the provisions like Section 9 in the Securities Contract Act would use the expression enactment and Rules and omit the expression “by-laws”. From a literal reading of the Section itself it is impossible to accept the contention that by-laws have been saved. It is, however, pointed out that the word “under” would encompass Act, Rules and the By-laws. In other words it would encompass everything done under the provisions of Section 9 of the Securities Contract Act as saved under Section 2(4). As referred to earlier the By-law partake of subordinate legislation. Rule or by-laws can never override the provisions of an Act. If they seek to override they would be *ultra vires* the provisions of the Act. Without a saving provision as contained in sub-section 2(4) the Rules would not be saved and in so far as enactment is concerned it will have to be decided on the well settled principles of general law or special law or any other judicial interpretation which are followed in Legislative provisions. Another provision is Section 4 of the Act. Section 4 of the Act contemplates that parties can derogate from the provisions of the Act in respect of only those provisions which the Act so provides. In other words if there is no provision for derogation the parties cannot derogate. Reference may be made to sub-section (2) of Section 10. Reference may be made to sub-section (3) of Section 11 and other similar provisions for that purpose.

The expression “derogate” or “derogation” has been variously defined as under -

1. *A dictionary & Modern legal usage - Bryan A. Garner :-*

Derogation of in - it means an abrogation or repeal of a law, contract or right.

2. *Wharton's Law Lexicon.*

Derogation - the act of weakening or restraining a former law or contract.

3. *Oxford Concise English Dictionary* -

(a) derogate - 1. take away a part from, detract from (a merit, a right, etc.)

2. Deviate from (correct behaviour etc.)

(b) derogation - (1) a lessening or impairment of (a law, authority, position, dignity, etc.)

(2) determination, debasement.

4. *Black's Law Dictionary* -

Derogation - The partial repeal or abolishing of a law, as by a subsequent act which limits its scope or empowers its utility and force. Distinguished from abrogation which means the entire repeal and allurement of a law.

5. *The Law Lexicon P. Ramachandra Aiyer* -

Derogate - To lessen in estimation, to invalidate, degenerate, degrade.

The Act, therefore makes it clear that parties can derogate from the provisions of the Act when it is so provided. An illustration may suffice. If in a contract the parties have agreed to an odd number of Arbitrators, then that clause is saved by virtue of Section 10(1) of the 1996 Act. If the contract provided for an even number of Arbitrators then such a clause in the contract would be void being contrary to sub-section (1) of Section 10. In the case of B. S. E. contract between a member and non-member it provides for arbitration by the Arbitrators and the resolution in case of a difference by an umpire. *Exfacie* this clause would be contrary to Section 10(1) of the 1996 Act as parties cannot derogate from the contract unless it is held that Section 10(1) itself will not apply to such contract as the By-laws framed under Section 9 of the Securities Contract Act would prevail. To test the contention let us examine another contention that if the argument on behalf of the petitioner is accepted, then even an arbitration agreement, under other enactment would not be saved.

Section 7 of the Arbitration Act, 1996 provides that reference to arbitration can be made after the arbitration is in writing as contemplated under sub-section (4) of Section 7. In other words if the arbitration is in writing then only will the matter be referred to arbitration under the Act. The question that I am testing is whether Section 2(4), if the contention of the petitioner is accepted, would exclude reference to arbitration under Section 7. The answer in my mind is a clear "no". The reason being that sub-section (4) of Section 2 itself contemplates that if there is a provision for an arbitration under any other enactment then for the purpose of this act it will be deemed to be an arbitration. In that context there need not be an agreement in writing between the parties as contemplated under sub-section (4) of Section 7.

We then come to the challenges itself as contemplated by Section 34(2)(v). It reads as under :-

"34(2)(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agree-

ment was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part.”

It is therefore, crystal clear that it is only those provisions of the Act from which the parties can derogate that could be saved. The other mandatory provision cannot be waived. While considering the expression “under” what is saved is the provisions for Arbitration. Does this mean that every procedural requirement in those by-laws pertaining to arbitration are also saved. In my opinion the answer is again no. What would be saved at the highest would be the provisions which are saved by the Act and the Rules and the provisions from which the parties can derogate. By-laws cannot override the statutory provisions. In the instant case Section 10 of the Act. Once it is so held it is clear that those provisions pertaining to arbitration agreement which are under any enactment or Rules are saved. They cannot be said to be inconsistent to prevail over the provisions of the Arbitration Act, 1996. The composition of the arbitral tribunal will be governed by the provisions of Section 10 of the Arbitration Act, 1996.

20. A question arises whether if under the existing by-laws reference is made to an even number in so far as existing arbitrations are concerned and in the light of the figures submitted before this Court (there were 4017 disputes between members and non-members and as upto 31st March, 1998 and about 495 disputes as and upto 31st March, 1998) can those proceedings be saved. I am unable to find any provision in the Act to hold so. On the contrary Section 4 read with Section 34(2)(v) must hold to the contrary. If the composition of the Tribunal is contrary to the provisions of Section 10 and the parties have not derogated therefrom to the extent possible it cannot be saved.

In the light of that I have no hesitation in accepting the first contention of the petitioner that the composition of the Tribunal was inconsistent with the provisions of Section 10 of the Act. Merely because a large number of disputes were raised cannot be a ground for holding otherwise. Under Section 34 of the Arbitration Act, 1996 time to challenge the award is three months. Court has power to condone delay of only one month thereafter. Awards where the period has expired therefore, cannot be challenged. In pending proceedings defects can be remedied.

The only question was the interpretation given by this Court to Section 28 of the Arbitration Act, 1940. In the first instance such a provision is not provided in the Arbitration Act, 1996. Secondly, as I have pointed out earlier, none of those judgments took into consideration the law laid down by the Apex Court in *Dr. Indramani Pyarelal Gupta and others* (supra) considering the expression “under”. In my view, therefore, the interpretation given to Section 28 was not tested on the guidelines of the law laid down in *Dr. Indramani Pyarelal Gupta and others* (supra), I need not however, proceed further in the matter as I am not called upon to answer the issue of Section 28 herein. The point has been referred to in view of the contention

of the Stock Exchange that if the view taken under Section 10 is accepted then what about Section 28 of the Act of 1940. As long as there is no substantive provision in the new Act like Section 28 that question need not be gone into. Points which do not require to be considered for deciding the issue and are not relevant are best left alone.

21. That takes us to the next challenge namely that the petitioners were denied opportunity of leading evidence. The proviso to sub-section (1) of Section 24 is clear. If the parties before the arbitral tribunal seek to lead oral evidence it must be granted as the expression is shall hold oral hearings at the request of the parties. It may be that even in the expression 'shall' in a limited number of cases wherein in fact no evidence is required to be led, the tribunal can reject such an application. In the instant case, however, the petitioner had pointed out the need to examine the witness. The tribunal on the express language of the proviso to Section 24(1) could not have denied that opportunity. On that count also the Award is liable to be set aside.

22. That brings us to the last contention namely the issue of violation of natural justice and consequently the award being vitiated as it has denied a reasonable opportunity as contemplated by the language of Section 34(2)(iii) of the Arbitration Act of 1996 or for that matter denial of natural justice which would be against the public policy of India as contended by the petitioner. In the present case the petitioner had sought opportunity of an oral hearing. That was denied to him. He had sought documents from the Stock Exchange before the Tribunal. He was told to approach the Stock Exchange. The Stock Exchange refused to hand over the documents. The Tribunal did not draw any adverse inference from the refusal by the Stock Exchange in making available the documents to the petitioner or directed the Stock Exchange to produce the documents. The petitioner was denied an opportunity of meeting his case.

23. It was pointed out to me that the Stock Exchange itself has sought to modify the by-laws to bring it in terms of the provisions of Arbitration & Conciliation Act, 1996. That by itself is not an answer to the issues which were involved here as parties sometimes may out of abundant caution also carry out amendments. Section 9 itself confers power of SEBI in the interest of trade to dispense with publication if there are urgent circumstances so warranting that the amended by-laws be brought into force. SEBI has already granted approval to the By-laws framed by the Bombay Stock Exchange.

24. There is no express power in this Court to remit an award. The only limited power is not to proceed with the petition, but to refer the matter for arbitration to remove the objection if any which can save the award. This cannot be done in this case. In the instant case the Award has to be quashed amongst others on the ground of composition of the tribunal itself. In the circumstances, it is always open to the parties to move afresh in which event the time taken would be saved under Section 43.

25. In the light of that, petition made absolute in terms of prayer clause (a).

26. In the circumstances of the case, there shall be no order as to costs.

27. Counsel for the Respondents seeks stay of the operation of the order. Considering the view taken by me under Section 10 of the Arbitration Act, 1996 it is just and proper that the order be stayed for a period of six weeks from today.

Certified copy expedited.

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