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

Date of Decision: 02.05.2025

+ **O.M.P. (COMM) 351/2020 & I.A. 14444/2021, I.A. 542/2024**

HARSHVARDHAN METALS LTD & ANR.Petitioners

Through: Mr. Tanmay Mehta, Mr. Rahul Shukla, Ms. BB Shukla, Mr. Ramandeep Singh, Advs.

versus

ISF COMMODITIES (P) LTDRespondent

Through: Dr. Anurag Kr. Agarwal, Mr. Praveen Kumar, Mr. Prateek Agarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

I.A. 1298/2020 - DIRECTIONS TO PETITIONERS TO DEPOSIT THE AWARDED AMOUNT

1. This is an application filed under Section 151 of the Code of Civil Procedure, 1908 on behalf of the respondent seeking for directions to petitioners to deposit the awarded amount.
2. Dr. Agarwal, learned counsel appearing on behalf of the respondent, relies upon Bye-Laws 15.40 of the Multi Commodity Exchange of India Ltd. ("MCX"), which reads as under:



“15.40 Right to Appeal

15.40.1. Award final and Additional Risk Containment Measure Applicable: A party to a reference who is dissatisfied with an award of the arbitral tribunal may appeal to the competent court of jurisdiction as provided in the Arbitration and Conciliation Act. The award shall be final under these Bye-Laws and Regulations of the Exchange and vis-a-vis the Exchange in terms of any action, which is required to be initiated, as may be provided for in the Bye-Laws or notifications issued from time to time. Provided that the party to the reference shall be required to deposit the amount of award with the Exchange before filing the appeal and such amount shall be kept with the Exchange in abeyance and shall be disposed of eventually as per the direction of the Court.

15.40.2. Enforceability of Award As a Decree: When the time for preferring an appeal has expired and no appeal has been preferred or the appeal has been preferred the appeal has been rejected and when the time for making an application to set aside the award under the relevant provision of the Arbitration and Conciliation Act has expired, or such application having been made, it has been refused, the final award shall be enforceable by the Exchange in the same manner as if it were a decree of the Court, if the award is against an exchange member



or a clearing member.”

3. He states that in view of Bye-Law 15.40.1, the petitioner is required to deposit the awarded amount before his appeal under Section 34 of the Arbitration and Conciliation Act, 1996 (*“the Act”*) is considered. He further states that the word *“appeal”* is a misnomer and any challenge to the arbitral award will fall within the purview of Bye-Law 15.40.1.
4. Learned counsel for the respondent has relied upon the decision in ***Dr. Indramani Pyarelal Gupta & Ors. v. W.R. Natu & Ors., (1963) 1 SCR 721*** and more particularly paragraph 15, which reads as under:

“15. A more serious argument was advanced by learned counsel based upon the submission that a power conferred by a bye-law framed under Section 11 or 12 was not one that was conferred “by or under the Act or as may be prescribed”. Learned counsel is undoubtedly right in his submission that a power conferred by a bye-law is not one conferred “by the Act”, for in the context the expression “conferred by the Act” would mean “conferred expressly or by necessary implication by the Act itself”. It is also common ground that a bye-law framed under Section 11 or 12 could not fall within the phraseology “as may be prescribed”, for the expression “prescribed” has been defined to mean “by rules under the Act” i.e. those framed under Section 28 and a bye-law is certainly not within that description. The question therefore is whether a power conferred by a bye-law could be held to be a power “conferred under the Act”.



*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 gatherable 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, bye-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 directly done by the enactment and what is done indirectly by rule-making authorities which are vested with powers in that behalf by the Act. (Vide *Hubli Electricity Company Ltd. v. Province of Bombay* [76 IA 57 at p. 66] and *Narayanaswamy Naidu v. Krishnamurthi* [ILR 1958 Mad 513 at p. 547] .) That in such a sense bye-laws would be subordinate-legislation “under the Act” is clear from the terms of Sections 11 and 12 themselves. Section 11(1) enacts:*

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Having regard to these provisions it would not be possible to contend that notwithstanding that the bye-laws are rules made by an association under Section 11 or compulsorily made by the Central Government for the association as its bye-laws under Section 12, they are not in either case subordinate legislation under Section 11 or



12 as the case may be, of the Act and they would therefore squarely fall within the words “under the Act” in Section 4(f). Indeed, we did not understand Mr Pathak to dispute this proposition.”

5. He further relies upon the judgment in ***Bombay Stock Exchange v. V.S. Kandalgaonkar & Ors., (2015) 2 SCC 1*** and more particularly paragraph 33, which reads as under:

“33. It will be seen that whether a rule is made under Section 7-A, Section 8 or Section 30, all Rules made under the Act are to be laid before Parliament, making it clear thereby that Rules made under each of these provisions are statutory in nature. The fact that the Stock Exchange makes these Rules under Sections 7-A and 8 as opposed to the Central Government making them under Section 30 does not take the matter very much further. Section 3(51) of the General Clauses Act defines “Rule” as meaning

“3. (51) ... a rule made in exercise of power conferred by any enactment, and shall include a regulation made as a rule under any enactment.”

It is clear from this definition of ‘Rule’ also that Stock Exchanges who make rules in exercise of powers conferred by the Securities Contracts (Regulation) Act are equally “Rules” and therefore subordinate legislation. This makes it amply clear that the lien spoken



of by Rule 43 is a lien, conferred by Rules under a statute.”

6. Mr. Mehta, learned counsel appearing on behalf of the petitioners, draws my attention to 15.41 of the said MCX bye-law, which reads as under:

“15.41 Setting aside of Award and Fresh Reference

15.41.1 *An arbitral award may be set aside or modified by the court on an application made under relevant provision of the Arbitration and Conciliation Act, on the grounds mentioned in that provision.*

15.41.2 *Whenever an award made under these Bye-Laws and Regulations of the Exchange is set aside or modified by the court, the matter shall be disposed of in accordance with the direction of the Court.”*

7. I have heard learned counsel for the parties and perused the material available on record.
8. I am of the view that the right to appeal under Bye-Law 15.40 and the right to seek setting aside of the arbitral award and filing objections thereof under Bye-Law 15.41 have to be construed harmoniously.
9. Bye-Law 15.40.1 mandates that a party dissatisfied with an arbitral award must deposit the awarded amount with the Exchange before filing an appeal. This provision is intended to ensure that the party appealing has a financial stake in the outcome of the appeal. However, the term “appeal” as used in this context may be misleading. I am of the view that the challenge to an arbitral award



under Section 34 of the Act is not a conventional appeal but a statutory remedy to set aside the award based on limited specific grounds.

10. Further, Bye-Law 15.41 explicitly states that an arbitral award may be set aside or modified by the court on application under the relevant provisions of the Act. This provision supports the position of the petitioners that they can challenge the award without the precondition of depositing the amount. The procedural safeguards provided in Bye-Law 15.41 reinforces the notion that the court has the authority to set aside or modify awards, thereby allowing for a fair hearing without financial barriers imposed by the bye-laws.
11. There is no dispute regarding the judgments cited by the respondent, establishing the statutory nature of the bye-laws. The reliance on ***Dr. Indramani Pyarelal Gupta & Ors. (supra)*** and ***V.S. Kandalgaonkar & Ors. (supra)***, emphasize the established principle that while bye-laws may provide operational guidelines, they cannot impose conditions that contradict the statutory rights granted under the Arbitration and Conciliation Act.. Hence, the argument that the bye-law creates a requirement for deposit before any challenge to the award is made may not hold, as the Act itself does not impose such a condition.
12. In addition, Bye-Law 15.40 as well as Bye-Law 15.41 itself categorically refer to the Arbitration and Conciliation Act, 1996 and its applicability and hence, the non-applicability of the Act is a meritless averment.
13. Furthermore, if the argument of learned counsel for the respondent as



regards Bye-Law 15.40.1 is to be accepted, then, Bye-Law 15.41 will become otiose and meaningless.

14. Hence, the present application is dismissed in the aforesaid terms.

O.M.P. (COMM) 351/2020

15. List for hearing on 15.07.2025 at 2:30 p.m.

JASMEET SINGH, J

MAY 2, 2025 / (MS)

(Corrected and released on 14.05.2025)

Click here to check corrigendum, if any