

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

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COMMERCIAL ARBITRATION PETITION (L) NO. 32954 OF 2024
WITH
INTERIM APPLICATION (L) NO. 37483 OF 2024

ABB India Limited

...Petitioner

Versus

Sunil Hariram Jaisingh And Ors.

...Respondents

Mr. Nand Kishore *i/b S L Partners, Advocate for Petitioner.*

Mr. Prakash Shah, *Senior Advocate a/w. Mr. Rushin Kapadia, Rinku Valanju, Hemant Dharap & Hiral Shah i/b. R V Legal, Advocates for Respondent No.1.*

CORAM: SOMASEKHAR SUNDARESAN, J.

RESERVED ON: MARCH 17, 2026

PRONOUNCED ON: JUNE 9, 2026

Judgement :

Context and Factual Background:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (*"the Act"*), challenging an Arbitral Award dated August 6, 2024 (*"Impugned Award"*).

2. The Petitioner, ABB India Limited (**“ABB”**) has been directed in the Impugned Award, to reinstate shareholding of the Respondent, Sunil Hariram Jaisingh (**“Jaisingh”**) to the extent of 1,550 shares of ABB and 310 shares of Hitachi Energy India Ltd (**“Hitachi”**) (which had emerged as ABB Power Products & Systems Ltd. pursuant to demerger of an undertaking), within a period of 15 days. Failing such restoration, monetary compensation equivalent to the market value of such shares as of the date of uploading the Impugned Award is to be paid by ABB to Jaisingh.

3. The Impugned Award has been passed by a three-member Arbitral Tribunal appointed by an independent online arbitral institution that facilitates and administers online dispute resolution (**“ODR”**), empanelled with the BSE Limited (**“BSE”**) under the Securities and Exchange Board of India’s (**“SEBI”**) ODR framework for disputes in the securities market.

4. Jaisingh was the Claimant in the arbitration while ABB was the first Respondent. The other parties in the arbitration proceedings were Respondent No. 2, Tata Consultancy Services (**“TCS”**) and KFIN Technologies Limited (**“KFIN”**), each of which was the Registrar and Transfer Agent (**“RTA”**) handling the share transfer registration activity for ABB, whose shares are listed on the BSE.

5. Admittedly, the proceedings have been conducted with no participation by TCS and with KFIN filing only a written defence, without otherwise participating in the proceedings. Moreover, the Statement of Defence by ABB (as indeed an additional affidavit from Jaisingh that crystallised the claim) was permitted to be filed, both documents were taken on record only after hearing in the matter was concluded, with the Learned Arbitral Tribunal not permitting any hearing thereafter. The Learned Arbitral Tribunal found it unnecessary to conduct a personal hearing after completion of pleadings, primarily citing deadline for completion of the arbitration under SEBI's ODR Master Circular dated July 31, 2023 (updated as of December 28, 2023) (*"Master Circular"*).

6. Jaisingh's late father one Mr. Hariram Hemraj Jaisingh held 175 shares in ABB when he passed away on November 17, 1988. According to the records, sometime in 1992 (the specific date is unclear) Jaisingh applied for transfer or transmission of these shares to his name. The Application is said to have been "made through" his Advocate one Mr. Amar Talreja. A registered Will dated February 27, 1981, the original Share Certificates and the Death Certificate are said to have been presented by Mr. Talreja to TCS, the then RTA of ABB. TCS replied by a letter dated March 13, 1992, addressed to Mr. Talreja, returning the Application along with the original Share Certificates and asking for the Probate of the Will in order to effect the transmission.

7. Mr. Talreja is said to have informed Jaisingh about the receipt of the letter dated March 13, 1992, requesting Jaisingh to comply with the requirements. After that, Jaisingh is purported to have been “*occupied in his family matters, financial and professional responsibilities*”. The Learned Arbitral Tribunal has recorded that “*thereafter*” Mr. Talreja informed Jaisingh that the original Share Certificates had been misplaced by Mr. Talreja in his office and he was not able to trace them. The date of such intimation is also unclear. Admittedly, Jaisingh has brought nothing to bear on his reaction to the news about return of the Share Certificates by TCS or on his reaction to Mr. Talreja’s intimation that the Share Certificates were misplaced.

8. Miraculously, “*while vacating his office in 2021*” Mr. Talreja is said to have found the original Share Certificates in his office and informed Jaisingh by a letter dated February 6, 2021, and also returned them to Jaisingh. Mr. Talreja is said to have affirmed this in an Affidavit dated April 20, 2021. On February 17, 2021, Jaisingh wrote to KFIN, the then RTA for ABB, enclosing copies of the original Share Certificates, the Registered Will of his late father, the Death Certificates of his late father and mother and his Aadhaar card. At this stage too, there was no Probate of the Will – that would eventually come about over three years later, on June 24, 2024.

9. KFIN responded, intimating that it had taken charge of the RTA role only in 2005, from TCS. By that stage, the shares in question were said to have already been transferred and the folio number ending with the digits 1050 reflected NIL holding, as per the data migrated from TCS to KFIN. It was indicated that duplicate Share Certificates had been issued and those shares had also been dematerialised in 1998-99, and that therefore, the Share Certificates enclosed by Jaisingh were no longer valid. Jaisingh protested by an email dated December 10, 2021, claiming that any such transfer would be illegal because the same had been effected without his consent or knowledge, and that too when the original Share Certificates were still in his possession (admittedly, they had been reported as misplaced by Mr. Talreja).

10. Meanwhile, multiple corporate actions including issuance of bonus shares and a stock split (changing the face value from Rs. 10/- per equity share to Rs. 2/- per equity share) had been effected by ABB. Moreover, a demerger had been effected in 2020. This had led to the 175 shares of ABB having a face value of Rs.10/- each now constituting 1,550 shares of ABB of face value of Rs.2/- per share along with 310 shares of Hitachi, pursuant to the demerger.

11. In other words, in the three decades between 1992 (when the Share Certificates were returned by TCS to Jaisingh) and 2021 (when Jaisingh started pursuing his entitlement to transmission afresh), not only had multiple

events taken place to change the shareholding but also the shares had changed hands. KFIN and ABB investigated the matter and examined when the shares got dematerialised. It transpires that the 175 shares had been dematerialised by a number of institutional investors including Unit Trust of India, on two dates namely, August 1, 1998 (25 shares) and March 6, 1999 (150 shares).

12. Jaisingh demanded to know whether a Probate had been demanded before issuing duplicate Share Certificates that were eventually dematerialised, contending that the originals were lying in the office of Mr. Talreja. Jaisingh filed multiple complaints with the Securities and Exchange Board of India ("**SEBI**"), starting with a letter dated March 31, 2023, all of which were replied to by ABB with the contention that the complaint was time-barred, fell within criminal law jurisdiction owing to an evident fraud, and in any case, was outside the purview of SEBI. SEBI eventually closed the complaints.

13. This led to Jaisingh invoking the ODR framework stipulated under the Master Circular. Initially, conciliation proceedings were taken up. A conciliator under the same ODR platform examined the matter and closed the case, clearly holding that ascertainment of fraud was the essence of the matter and the conciliation was not possible. Thereafter, Jaisingh filed a claim in arbitration before the same institution. ABB filed an Application under

Section 16 of the Act, objecting to the jurisdiction of the Arbitral Tribunal and also contending that even a deemed Arbitration Agreement would not lead to a non-arbitral dispute (owing to fraud) becoming arbitrable.

14. A few dates in the course of the conduct of the arbitration would be relevant for adjudication of this Petition. They are set out below:

- A] The Learned Arbitral Tribunal was constituted on May 18, 2024;
- B] On May 22, 2024, the respondents were directed to file their Statement of Defence by May 29, 2024;
- C] On May 27, 2024, ABB sought extension of time until June 5, 2024 and requested postponement of a hearing scheduled for June 6, 2024 to June 8, 2024;
- D] On May 29, 2024, the extension of time to file a Statement of Defence was granted and hearing was scheduled for June 7, 2024;
- E] On June 5, 2024, ABB filed an Application under Section 16 of the Act, which has been assailed by Jaisingh as a dilatory tactic, and by the Learned Arbitral Tribunal as consuming the 60-day period purportedly available under the Master Circular to conclude arbitration;

F] A hearing was held on July 9, 2024, and the Section 16 Application was heard. ABB asked for ruling on Section 16 Application, after which, it would file the Statement of Defence;

G] The Learned Arbitral Tribunal thought it fit to grant one week's time i.e. until July 15, 2024 to ABB to file its Statement of Defence, but ruled that no further hearing would be held in the matter;

H] Admittedly, a “final claim” was filed by Jaisingh as part of his “additional submissions” dated July 13, 2024 i.e. after the final hearing held on July 9, 2024. It is in these additional submissions that the computation of how 175 ABB shares of face value of Rs.10 each has become 1550 shares of face value of Rs.2 each, and 310 shares of Hitachi, was explained, and a claim for compensation based on closing prices of July 12, 2024, was made in the sum of Rs.~1.65 crores; and

I] The Statement of Defence was filed on July 15, 2024 by ABB after the additional submissions and this was taken on record. Evidently, the crystallisation of the compensation claim and the Statement of Defence came about after July 9, 2024, which was also held as a sacrosanct last date of hearing by the Learned Arbitral Tribunal after which it would not convene again, citing a 60-day deadline that it had to meet under the Master Circular.

Analysis and Findings:

15. I have heard at significant length, Mr. Nand Kishore, Learned Advocate on behalf of ABB and Mr. Prakash Shah, Learned Senior Advocate on behalf of Jaisingh. With their assistance I have examined the material on record. The matter was initially heard last year but owing to the efflux of time it was felt necessary to give the parties an option to have the matter released or to schedule a refresher hearing. Learned Advocates for the parties, upon instructions from their clients unanimously confirmed that they desired a refresher hearing without releasing the matter. They were therefore heard afresh and judgement was reserved.

16. Having heard the parties and having examined the record, in my opinion, the Impugned Award is entirely untenable not only because of the nature of the findings contained therein being findings which no reasonable judicial mind could have returned but also owing to the manner of conduct of the arbitral process by the Learned Arbitral Tribunal.

17. In a nutshell:

A] Pleadings were completed after a hearing was held in the matter and that too on just the Section 16 Application (on July 9, 2024). Pleadings were not shut out and were permitted. The Statement of

Defence was filed on July 15, 2024, while an additional submission was pleaded but no issues were framed, no evidence was led, and a summary judgement was rendered in a dispute that the Learned Arbitral Tribunal itself held to be “complex”;

B] The Statement of Defence contained some tangential distractions but it also contained some pertinent issues that ought to have been framed as an issue and examined. The issue of limitation is often a mixed question of fact and law, and by framing an issue of limitation by factoring in just the developments of 1992, whether limitation would begin in February 2021 was not even framed and considered;

C] The issue of whether transmission of shares could be adjudicated in arbitration or whether it lay in the domain of the National Company Law Tribunal (*“NCLT”*) under the Companies Act, 2013 (*“2013 Act”*) was not framed or answered despite a specific objection being raised by ABB. Whether Jaisingh ought to have approached the Company Law Board (*“CLB”*) under the Companies Act, 1956 (*“1956 Act”*) was considered and was answered by stating that the cause of action to approach the CLB did not arise then. But when the cause of action arose pursuant to the knowledge gained in February 2021 and whether such

cause of action ought to have taken Jaisingh to the NCLT and not to arbitration has not been answered;

D] The manner of consideration of how fraud took place and at whose end, and who would be responsible for it, has been answered in a manner that no reasonable judicial assessment would do. A summary ruling of strict liability on a listed company to reinstate shares on the occurrence of a fraud, leaving it to the company to make claims against its agents has been rendered, making the Impugned Award totally absurd, irrational and perverse.

Conduct of Proceedings – Natural Justice and Absurdity:

18. What is admitted and writ large on the face of the record is that the only hearing conducted by the Learned Arbitral Tribunal was on July 9, 2024, by which time, the Statement of Defence was not even filed. The Learned Arbitral Tribunal permitted the Statement of Defence to be filed by July 15, 2024 and before that took on record additional submissions by Jaisingh, which essentially quantified his claim for compensation on the basis of closing market price as of July 12, 2024. However, the Learned Arbitral Tribunal did not think it necessary to hear the parties after these additional pleadings came on record. The Learned Arbitral Tribunal went on to grant compensation on the basis of closing market price as of the date of upload of the Impugned

Award on the ODR platform's website i.e. accepting the approach made in the additional affidavit with the only change being to the date on which the closing price would be reckoned for purposes of computing the compensation amount (and that too, if ABB failed to restore the ABB and Hitachi shares).

19. All of this was done without leading any evidence or assessment of evidence to adjudicate contributory negligence on Jaisingh's part or his mitigation efforts. In a nutshell, effectively what the Learned Arbitral Tribunal has done is adjudicate a claim in tort in a summary manner, all in the name of a purportedly mandatory deadline under the Master Circular, without even indicating the trigger date to compute such deadline.

20. It may be pertinent to mention that the Statement of Defence raised a number of other issues, some of which were tangential while others ought to have been dealt with. Among the tangential were ABB's contention about Jaisingh having a sister and his claim of being the sole legal heir was wrong. To Jaisingh's contention that his sister had relinquished her claims to the ABB shares, ABB had retorted that the relinquishment was not in the form of a formal Deed of Relinquishment. Even if this were to be considered tangential, among the relevant issues raised by ABB, was the issue of a 29-year delay in seeking the transmission of shares. ABB had contended that the statutory remedy against refusal to effect transmission was under the Companies Act,

1956 and CLB had to be approached within 60 days from the date of refusal to effect transmission, which it contended took place in March 1992. Jaisingh had contended that in March 1992 there was no refusal and the share certificates had simply been returned, only seeking the Probate of the Will after which the transmission would be effected. This ought to have led to the question as to what the statutory remedy was when the actual refusal took place in February 2021, triggering the jurisdiction of the NCLT under the 2013 Act. With no hearing being held after the hearing on the Section 16 Application on July 9, 2024, the issue of whether a rejection of 2021 could be pursued in 2024 was not even framed or examined. This line of enquiry was not at all undertaken and only the question of whether there was a firm rejection in 1992 was answered. If only a hearing had been conducted after completion of pleadings, issues could have been framed and these issues could have been structured for adjudication.

21. An important element of what has transpired is that a grievance rejected by SEBI and by the conciliator on the ODR platform, on grounds that would point to jurisdictional doubt, was actually adjudicated by the Learned Arbitral Tribunal conducting arbitration by brushing aside jurisdictional objections in a summary manner. The arbitration has been conducted in a summary process on a clean slate as if nothing had transpired before the arbitration commenced.

22. The prime reason for the hurried adjudication by the Learned Arbitral Tribunal is the deadline of 60 days contained in the Master Circular, that it claimed to be bound by. The refusal to schedule a hearing after July 9, 2024 and the failure to frame issues after completion of pleadings are both based on the premise that the Learned Arbitral Tribunal ought to have rendered an award in 60 days. Yet, the Learned Arbitral Tribunal has not even indicated when the 60-day deadline would commence. Even under the statutory timeframe under Section 29A of the Act, the timeframe of one year for the mandate of an Arbitral Tribunal commences from the date on which pleadings are completed. There is no indication of how the mandate period was computed by the Learned Arbitral Tribunal.

23. I have dealt with the facet of fraud involved in the matter separately. Suffice it to say, the Learned Arbitral Tribunal has itself stated that the matter in hand is “complex” and yet it chose to adopt a summary adjudication by simply directing ABB to restore the shares including shares in Hitachi, failing which, compensation would have to be paid on the basis of the market value as of the date of the award and not as of the date on which the cause of action can be said to have arisen.

24. All the foregoing point to a serious shortcoming in justice delivery as a matter of process, rendering the Impugned Award to be an outcome that can

hardly be considered to be just, judicial and adhering to basic principles of natural justice. This to my mind, presents a perversity and patent illegality that renders the Impugned Award unsustainable.

Limitation, Delay and Laches:

25. The question of whether the statutory remedy under company law represented the exclusive means of adjudicating the issues involved is one facet of this matter but another facet is simply whether Jaisingh's claim was barred by limitation or vitiated by inordinate delay and laches. One cannot contend that the cause of action for seeking transmission arose in 2021 – it arose in 1988 upon the demise of Jaisingh's father. Jaisingh applied for the transmission in 1992 which was returned in March 1992. There is nothing to account for Jaisingh's silence since then. The probate came about in June 2024. In 2021, KFIN refused to effect transmission indicating that the share certificates were by then invalid, the underlying shares already having been dematerialised in 1998-99. What transpired between 1988, when Jaisingh's father died and 2021 deserved consideration.

26. When precisely Jaisingh applied for transmission of the shares is itself unclear, since his father passed away in 1988. It is stated that he applied in 1992 and that TCS returned the Application on March 13, 1992, asking for the Probate of the Will to take any further steps. The original share certificates

were admittedly not in Jaisingh's possession right since 1992. Evidently, TCS, the then RTA returned the said ABB Share Certificates to Mr. Talreja, Jaisingh's lawyer in March 1992. After that Talreja is said to have informed Jaisingh that he had misplaced the share certificates. This would have necessitated Jaisingh applying for duplicate shares. There is no sign of the Share Certificates being in the possession of either Talreja or with Jaisingh until February 2021, when Talreja is said to have miraculously found the share certificates while clearing out his office. While action on Jaisingh's part suddenly moved forward from this stage and the Learned Arbitral Tribunal has accepted this version purely on the basis that Talreja has filed an affidavit to this effect, there is simply no analysis of why Jaisingh did not react to the admitted reporting by Talreja that the Share Certificates had been misplaced.

27. If the Share Certificates had been lost by Talreja, it was incumbent on Jaisingh to pursue issuance of duplicate certificates. The Learned Arbitral Tribunal has noted that Jaisingh was busy attending to his personal and professional work – a flimsy explanation that cannot justify his complete silence despite knowledge of the Share Certificates having been lost. ABB has brought to bear public notices issued by it through this period about frauds in share certificates including notices to the BSE. This being a matter of public knowledge, Jaisingh's silence is inexplicable. During such silence, duplicate Share Certificates are said to have been issued and also dematerialised.

Instead of factoring in such laxity and contributory negligence on Jaisingh's part, the Learned Arbitral Tribunal has simply found fault with ABB alone and dismissed its explanations about the situation in hand, even commenting that ABB's grievances with TCS and KFIN could not come in the way of Jaisingh's entitlement to the shares.

28. In effect, the issue of limitation, which is necessarily a mixed question of fact and law has not been adjudicated judicially. There has been no consideration of the element of Jaisingh's admitted awareness of the Share Certificates having been misplaced. There is no adjudication of Talreja's role. ABB's suspicions about Jaisingh and Talreja have been brushed aside as an afterthought. Talreja's affidavit has been implicitly accepted. Neither of them have been subjected to cross examination. All in all, what the Learned Arbitral Tribunal has done is completely missed assessing limitation in a holistic and judicious manner.

Fraud and Non-Arbitrability:

29. About six years after the Share Certificates were returned by TCS to Talreja, they were dematerialised and came to be held by multiple institutional holders. Admittedly, the material on record indicates that ABB followed up with these institutional holders and it was found that the shares had been acquired by them through hand delivery transactions organised by Dolat

Capital Market Private Limited. This would point to somebody having made use of the Share Certificates either after getting duplicate Share Certificates issued or on the basis that the shares purportedly treated as original were themselves duplicate Share Certificates — clearly a matter that requires investigation. No one's role can be ruled out in such a factual matrix. There clearly has arisen a fraud in connection with the ABB shares. The role of Jaisingh, Talreja, TCS and its officials and ABB would all need to be investigated.

30. The Learned Arbitral Tribunal has taken an inexplicable view that the fraud could have been at TCS' end but Jaisingh could have never had any role. The Learned Arbitral Tribunal went on to hold that a fraud by TCS as an agent would still make ABB liable, but it did not occur to the Learned Arbitral Tribunal to examine if any fraud by Talreja could have had implications for Jaisingh. The Learned Arbitral Tribunal simply held that ABB could take action against TCS and its employees (even at this distance in time) but the shares have to be restored to Jaisingh by ABB as a matter of absolute liability. ABB's suspicion of Talreja and Jaisingh has been brushed aside, despite the inexplicable silence by Jaisingh even after it is purported that Talreja had informed Jaisingh that the Share Certificates had been misplaced (read, lost) at his end.

31. The approach to TCS is even more inexplicable. The Learned Arbitral Tribunal conducted the proceedings under the aegis of the BSE's ODR framework. Yet, despite TCS being a premier listed company on the BSE, the Learned Arbitral Tribunal, which conducted arbitration under the aegis of the BSE has recorded that TCS could not even be served and service of notices by the Learned Arbitral Tribunal were returned unserved. Therefore, TCS, which had been the RTA right until 2005 was not even involved in the proceedings despite being a party. Therefore, in a matter where all the activity suspected of being a fraud took place during the tenure of TCS as the RTA, TCS was not involved even as a witness. It occurred to none to seek the assistance of the Court under Section 27 of the Act to have summons served on TCS. Evidently, the address for TCS found on its letterhead as of 1992 appears to have been served and its absence was simply explained as a party that could not be served effectively.

32. ABB had also contended that the underlying shares having already been transferred to third parties, without impleading such third parties, no order could be passed directing transmission of the said shares since third-party interests have been created. Likewise, no compensation could be granted without a trial of the bona fide to claim the same. ABB filed a police complaint seeking a probe into what actually transpired and contended that until the fraud is investigated, the question of compensation could not have been gone

into. ABB insinuated that the role of Jaisingh and Talreja in any fraud cannot be ruled out, since it is inexplicable that a claim to the shares was not raised for nearly three decades.

33. In sharp contrast, Jaisingh contended that not only did he have no role in the fraud, but also that he was not even a victim of any fraud. According to him, the fraud if any, had been played on ABB and not on Jaisingh. The Learned Arbitral Tribunal was pleased to hold that it was open to ABB to pursue action against TCS and KFIN, but not bring implications of the same into the arbitration proceedings. This is also inexplicable. If anyone is the victim of the fraud as alleged to have taken place, it would be Jaisingh. Multiple transactions in the market have taken place with the shares that have been dematerialised and institutional investors hold the shares now. ABB underwent a demerger in 2020 and ABB Power (now Hitachi) came into being. The issuer of these shares i.e. Hitachi is not even a party to the proceedings. Indeed, it inherited the register of members of ABB as it existed in 2020, but by no stretch could one contend that the implications of such a fraud are not *in rem* (on society at large) and that the fraud was simply a fraud on ABB with no role for Jaisingh or Talreja. However, for Hitachi to recognize the rectification of its register of members, at the very least, Hitachi ought to have been made a party where a direction for restoring Jaisingh's name to the register of members of Hitachi has been issued.

34. The following extracts from the Impugned Award need only be stated to show how erroneous the Learned Arbitral Tribunal's approach to fraud has been:

“3.9 We have carefully studied the observations of the Hon’ble Supreme court in these cases. In these cases, Hon’ble Supreme Court has clearly differentiated as to which fraud cases can go for arbitration and which cannot go for arbitration. A distinction has been made in the different nature of frauds and as held by the Hon’ble Supreme Court, only cases of serious allegation of fraud are to be treated as non-arbitrable and it is only civil Courts which should decide the matter. However, where there are allegations of fraud simpliciter and such allegations are merely alleged, it may not be necessary to nullify the effect of arbitration agreement between the parties and such issues can be determined by the Arbitral Tribunal. If the fraud is inter-se the parties and not in public domain, the parties can go for Arbitration.

3.10 In this case, we found that the fraud is not in public domain. There is no evidence of fraud being committed by the Applicant. Respondent No. 1, for the first time raised the alarm of fraud in June 2024, when a police complaint was filed and not earlier. There is also possibility that the fraud was committed within the staff members of Respondent No. 1 and/or Respondent No. 2. However, still these are mere counter allegations of fraud between the parties and no concrete proof of fraud having been committed by any party is on record.

3.11 Respectfully following the above Supreme Court decisions, we hold that this is not a case which is 'non arbitrable' for the reasons mentioned above. Therefore, this objection of Respondent No. 1 is also rejected.”

[Emphasis Supplied]

35. The Learned Arbitral Tribunal has accepted Jaisingh's reliance on well settled case law that bilateral frauds do not oust the jurisdiction of Arbitral Tribunals. Effectively, Jaisingh's contention that the fraud in question was one inflicted on ABB by whoever was involved and that there was no element of implications of the fraud on third parties, the dispute was held to be arbitrable. The Learned Arbitral Tribunal expected ABB to prove who had committed the fraud to be able to make the dispute non-arbitrable. This too is inexplicable. Who committed the fraud requires investigation and one cannot expect the party that points out that an evident fraud has taken place to first solve the question and identify the fraudster and then still claim that the dispute is not arbitrable because fraud is involved.

36. With no probe of any nature whatsoever and no trial of any disputed facts, the Learned Arbitral Tribunal has returned a firm finding that there is no evidence of fraud being committed by Jaisingh. Implicit in this finding is that Jaisingh's agent Talreja is given a clean chit. However, when it comes to TCS as an agent of ABB, the Learned Arbitral Tribunal holds that there is a possibility that the fraud was committed by staff members of ABB and TCS. But these are dismissed as "*mere counter allegations of fraud between the parties*". The Tribunal expected "*concrete proof of fraud having been committed by any party*" to be brought on record, with no understanding of how a fraud takes place and the possibility of a fraud affecting the vital

interests of the parties. The Learned Arbitral Tribunal ruled out the possibility of fraud having been committed by either party being even in the realm of the possible. Based on such summary, arbitrary and irrational findings, the Learned Arbitral Tribunal has held that the element of fraud cannot be considered to be of a public nature and that the dispute is arbitrable. This is a finding that no reasonable judicial mind could have ever returned.

37. The conciliator on the ODR platform had taken a view that fraud was involved at the heart of the matter and the dispute could not be resolved by conciliation. However, with nothing to explain how this view is wrong, the Learned Arbitral Tribunal took a diametrically opposite view, and went on to adjudicate the dispute without hearings after completion of pleadings, without assessment of contributory negligence or absence of mitigation, and simply put a premium on laxity by giving Jaisingh the present value of ABB and Hitachi shares as compensation, should ABB not deliver such shares to Jaisingh.

38. Under Indian company law, a company cannot buy its own shares except to effect a buy-back under the 2013 Act. Therefore, purely for argument's sake, while ABB could buy Hitachi shares from the market to honour the Impugned Award, by no stretch can ABB buy its own shares and have them transferred to Jaisingh. In any case, the shares to which Jaisingh

claims title, which claim has found favour with the Learned Arbitral Tribunal are now in the hands of other shareholders. If those shares are to be returned, such shareholders have to be heard. Such an implication of the fraud that has taken place, regardless of how exactly it has transpired, has wide implications for persons way beyond the parties to the statutory arbitration agreement under the BSE bye-laws and the Master Circular.

39. Jaisingh complained that, even till date, ABB had not disclosed who sought issuance of the duplicate Share Certificates or how TCS issued such duplicate Share Certificates. Therefore, according to him, any element of fraud was for ABB to address, by engaging with its RTAs, without holding up the grant of Jaisingh's entitlement in connection with the Share Certificates. Jaisingh contended that, since there was a registered Will in respect of which Probate had also been granted (in 2024), he had succeeded to all the entitlements of his late father and was therefore a shareholder. Giving Jaisingh a clean chit, in Paragraph 9.3.4 of the Impugned Award, the Learned Arbitral Tribunal held thus:

“9.3.4. It is beyond our comprehension that why a person holding the original share certificates along with Registered Will and now Probate of the Will also, indulge in fraud in such way that firstly shares legitimately belonging to him are transferred to third parties and thereafter he would make claim to the company for again getting the ownership of those shares. There may be some merit in the arguments of Respondent No. 1 that as to why the Applicant was sitting idle and did

nothing for a long period of 29-30 years. But it will not absolve Respondent No. 1 and his agents from their duty to safeguard the interests of legitimate owner of shares and will not give a liberty to them to pass on the benefit of transmission of shares to third parties without valid documents. Further no documentary proof or other evidence has been brought on record of the involvement of the Applicant in the fraud.”

[Emphasis Supplied]

40. Against this backdrop, the contents of Paragraph 1.3. to 1.5 are noteworthy and are extracted below:

“1.3 The Respondent No.2 wrote letter on March 13,1992, to the Advocate of the Applicant asking for additional document i.e. Probate of the Will and returned the Original Share certificates to the Advocate of the Applicant.

1.4 The Advocate of the Applicant informed him about of receipt of letter dated March 13,1992, along with the Original Share Certificates and asked the Applicant to comply with the requirements. After that the Applicant got occupied in his family matters, financial and professional responsibilities.

1.5 Thereafter, Advocate Mr. Talreja informed the Applicant that these Original Share Certificates were misplaced in his office as he was not able to trace them.”

[Emphasis Supplied]

41. Evidently, the Tribunal misses the point that Jaisingh was on notice that the Share Certificates were lost by Talreja, and has held that Jaisingh was in possession of the original Share Certificates, along with the Will and now the Probate. The irreconcilable gap between these two findings is what points to a suspicion of fraud where the role of Jaisingh or Talreja cannot be ruled out.

The question of who committed the fraud and who inexplicably was sleeping over his rights is a matter that certainly necessitated investigation. Even if it did not entail a criminal investigation, it needed a civil trial to determine how contributory negligence would affect a claim for damages and whether such claim was liable to be dismissed on that ground.

42. Instead, the Tribunal has perversely taken the view that, while there is some merit in ABB's complaint that Jaisingh was sitting idle for 30 years, ABB cannot be absolved of liability arising from the duty of its agents to safeguard the interests of shareholders. The Tribunal expected documentary evidence and proof of Jaisingh's involvement in the fraud before relieving ABB from liability to compensate for the consequences of that fraud, irrespective of who may have perpetrated it.

43. The Tribunal rightly notes in Paragraphs 9.3.5 and 9.3.6 that the factual and legal trail should be examined to get to the bottom of the matter, and is extracted below:-

“9.3.5. Further, the Respondent No.1 has still not disclosed as on what basis and to whom shares were allegedly transferred/ transmitted and dematerialised in the year 1998-99. Further, whether any Probate was obtained before such transfer which took place in 1998-99? This is very important as, for this reason alone, the Original Share Certificates were returned to the Applicant by Respondent No. 2 in the year 1992 when submitted for the first time for transfer/transmission. This legal trail must be available in its office or in the office of its RTAs. Complete details of Certificate

No. and Distinctive Nos. are available with the Respondent No. 1, as given in the photocopies of share certificates filed with us and also as given in the Police Complain dated June 4, 2024. When shares are identifiable with Distinctive Nos. it should not be difficult for Respondent No. 1 to trace down the history of earlier transfers. It is preposterous that instead of searching his own records, Respondent No.1 has written letters dated May 29, 2024, to the present holders of shares viz Emerging Market Growth Fund, Advantage Advisers India Fund INC and Unit Trust of India to assist him in finding earlier ownership of shares dematerialized. If the alleged fraud has taken place in the office of Respondent No. 1, then it is their personal matter and they are free to investigate the matter and take suitable actions.”

9.3.6. Now we consider a situation that some fraud or wrongdoing has taken place in the office of the then RTA being Respondent No. 2 when shares of the Applicant were allegedly transferred to third parties in the year 1998-99. Probability of this case is very high, and this may have happened. The Respondent No. 2 is not participating in these Arbitration Proceedings as they have closed RTA business long back and handed over all the records to Respondent No. 1/ Respondent No. 3 long back. All these records are now in possession of Respondent No.1 or Respondent No. 3. Therefore, aggrieved party in this case is Respondent No. 1 who should take action against Respondent No. 2 in case there is any fraud committed by employees of Respondent No. 2. Respondent No. 1 cannot use this petition to settle their personal score/ grievances with Respondent No. 2, if any, for that they should approach proper Court or Forum as per their choice.

9.3.10. Further, argument of the Respondent No. 1 that the present Arbitration Proceedings cannot be continued without impleading those third parties who are presently holding the impugned shares. We are of the opinion that if some third parties have fraudulently got the shares transferred in their names in the records of Respondent No.1/ Respondent No. 2, then the aggrieved party is Respondent No. 1 who is free to take any action or start any proceedings against such persons.

Respondent No. 1 cannot be allowed to take use of the present Arbitration proceedings to settle his personal grievances with those parties.

[Emphasis Supplied]

44. It is inexplicable that the Tribunal finds fault with ABB for pursuing the matter with the present holders of the shares in an attempt to trace what transpired in the matter. It is at this juncture, that the Tribunal's handling of TCS calls for comment, the Tribunal clearly holds that the possibility of fraud having occurred in the office of TCS, is very high. TCS has been treated as a party that has not been served despite it being one of India's largest listed companies. The very comprehension of fraud is not something one can agree with, necessitating intervention under Section 34 of the Act. The aforesaid extracts speak for themselves. That a third party is a beneficiary of a fraud is also acknowledged but how that can be brushed aside to render the dispute arbitrable is arbitrarily concluded.

Assessment of Damages Patently Illegal:

45. Essentially, the Impugned Award is an award of damages in tort. When assessing damages, the Court has to be mindful of whether the party seeking damages has taken any measures to mitigate the infliction of injury or suffering of damage, adjust the equities of the case and accommodate the respective facets of negligence of the parties, and then arrive at an assessment

of damages. In the course of assessing damages, Arbitral Tribunals are granted a fairly high degree of leeway and latitude, even to carry out a measure of guesswork, to broadly address facets of proportionality and return a reasonable finding on damages. Nothing of that sort has been done by the Learned Arbitral Tribunal.

46. All that the Learned Arbitral Tribunal found necessary to examine appears to be the closing price of shares of ABB and Hitachi as of July 12, 2024, i.e., the day before the Additional Written Submissions were made by Jaisingh before the Learned Arbitral Tribunal, and substitute such value with the closing price as of the date on which the Impugned Award is uploaded on the ODR Platform's system. Such an approach is against the most basic notions of policy of Indian law on damages and render the Impugned Award untenable.

47. When dealing with the contentions under Section 16 of the Act in the Impugned Award, the Learned Arbitral Tribunal has noticed a letter dated June 5, 2024, written by Stock Holding Corporation of India Ltd. to ABB, confirming that the shares held by Unit Trust of India had been purchased through a hand delivery contract from Dolat Capital Market Private Limited. While this points to an effort to understand what kind of fraud had taken place, the Learned Arbitral Tribunal has chosen to believe without reasons,

Talreja's version based on his affidavit and to completely dismiss the contentions of ABB and KFIN about the occurrence of fraud.

Justice Hurried and Buried:

48. The Learned Arbitral Tribunal appears to have fallen for the adage that justice delayed is justice denied and forgotten the adage that justice hurried is justice buried. In any case, how the Learned Arbitral Tribunal has computed delay and how it infers a mandatory 60-day deadline to complete an arbitration of this nature is unexplained. The findings recorded by the Learned Arbitral Tribunal in the sub-paragraphs of Paragraph 9 of the Impugned Award, make for interesting reading. The Tribunal claims to have informed the parties that it needs time until August 10, 2024 to pass the final award in view of the complexity of the matter.

49. The Tribunal came to be constituted on May 18, 2024. The only hearing conducted in the matter was held on July 9, 2024. The Impugned Award indicates that the Tribunal informed the parties that owing to the complexity of the matter, it was not possible to decide the case within a period of 30 days and an extended period was obtained until July 18, 2024, and further time was needed until August 10, 2024. The Tribunal notes that repeated adjournments were sought by both the parties, and time was lost in the Section 16 Application. The right to file an Application under Section 16 is a statutory

right and if filed must be squarely dealt with. The Tribunal's computation of its own deadline of 60 days is also inexplicable in that the Impugned Award provides no explanation as to when it would start computing the period of 60 days.

50. In the instant case, the Statement of Defence from ABB was taken on record only on July 15, 2024, with the actual final claim from Jaisingh also being received only on July 13, 2024. Yet the Tribunal concluded its hearings on July 9, 2024 and decided that no further hearings would be granted. This is a completely irrational, arbitrary and non-judicial approach to adjudication which is entirely perverse and makes a mockery of the arbitration process.

51. The Learned Arbitral Tribunal has also gone on to issue a direction in relation to the intervening dividend and has held that full details of the dividend declared and distributed on the shares would need to be provided and that, if the amount has been paid to some other party because of the alleged negligence of ABB, the same should be reimbursed. The question as to who is to determine and return a finding on such negligence has been left entirely unanswered, forgetting the fact that these were arbitration proceedings in which such negligence was to be tried by permitting the parties to lead evidence.

52. In other words, the Tribunal has abjectly failed to properly adjudicate the matter. By contending that a sacrosanct deadline of 60 days had to be met, without even indicating how such 60-day period was being computed, the Tribunal has fallen into grave error and returned findings that are both perverse and patently illegal, rendering the Award wholly untenable.

53. Whether a dispute of the instant nature can at all form the subject matter of the ODR mechanism is a wider question that has arisen in the matter. However, it is not necessary to pronounce upon a wider question of this nature when in the facts of this case, it would suffice to hold that the fraud in issuance of share certificates lies at the heart of the proceedings, making the dispute non-arbitrable. Suffice it to say that the BSE's bye-laws in Chapter XIII – Clause D reads thus:

*“All claims, differences or disputes arising between an Issuer or its Registrar to an Issue and Share Transfer Agent and a Constituent pertaining to transfer or transmission of securities, demat or remat of securities, issue of duplicate securities, transposition of holders of securities, entitlements like corporate benefits, dividend, bonus shares, rights entitlements, credit of securities in public issue, interest/coupon payments on securities and **delay in processing or wrongful rejection of the investor’s requests and/or such other matters as specified by SEBI, shall be submitted to arbitration in accordance with BSE Limited Bye-laws”***

[Emphasis Supplied]

54. The bye-laws of a stock exchange constitute subordinate law and are tabled in Parliament, having the force of statutory provisions. While such

disputes of the nature set out in the aforesaid clause are made subject to arbitration, the law on arbitrability of disputes cannot be given a go-by. Indeed, every grievance raised by a shareholder cannot be said to be brought within the ambit of arbitration – for example, a grievance about accounting fraud by a listed company, made by a shareholder cannot be arbitrable. A shareholder who contends that a decision by the board of a listed company was taken negligently and that has resulted in losses for which damages are claimed, could arguably not be the intended beneficiary of the Master Circular. Likewise, a grievance about oppression and mismanagement cannot be made amenable to arbitration.

55. The instant case is clearly a case of fraud and also has elements of serious delays, laches and limitation, even assuming that no element of fraud was involved. Both have been handled in a manner that the outcome is neither reasonable nor judicially defensible.

56. In the result, the Impugned Award deserves to be quashed and set aside for being contrary to settled principles of law; for having awarded damages in utter disregard of the principles governing the assessment of damages; for failing to examine even the element of fraud having occurred with *in rem* consequences affecting multiple parties; and for treating the same as a

bilateral fraud without even examining who committed the fraud, while simultaneously holding that one party did not commit the fraud.

57. Therefore, the Petition is allowed, and the Impugned Award is quashed and set aside. In the course of the hearings, Jaisingh had given an undertaking that he would bring back the amounts already released to him by the BSE should this Petition be allowed. The amounts had been kept in a fixed deposit to abide by the outcome in this Petition. Now that the Petition is allowed, the fixed deposit shall be liquidated for the amounts to be brought into Court and deposited with the Prothonotary and Senior Master of this Court, within a period of four weeks from today. Such amounts shall then be released to ABB within a week of receipt of the amount.

58. With the aforesaid directions, the Petition is *finally disposed of*.

59. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]