

**CHAPTER - 15****ARBITRATION, DISPUTE RESOLUTION AND CONCILIATION****15.1 Definitions**

**15.1.1 'Arbitrator'** means an arbitrator selected from the panel of arbitrators.

**15.1.2 'Arbitral Tribunal'** means one or more arbitrators constituting a tribunal to adjudicate a reference to arbitration.

**15.1.3 'Arbitration and Conciliation Act'** means Arbitration and Conciliation Act, 1996 and any amendments thereto.

**15.1.4 'Applicant'** means a person who makes a reference to arbitration by filing an application as prescribed by the Exchange.

**15.1.5 'Respondent'** means a person against whom the applicant makes a reference to arbitration whether or not there exists a transaction or is a claim against such person.

**15.1.6 'Panel of Arbitrators'** means a body of arbitrators, constituted by the Relevant Authority from time to time.

**15.2 Arbitration Subject to the Arbitration and Conciliation Act**

The Bye-laws and Regulations relating to arbitration shall be consistent with the provisions of the Arbitration and Conciliation Act. The provisions not included in these Bye-laws but found in the Arbitration and Conciliation Act shall be deemed to be applicable, as if they were part of these Bye-laws.

**15.3 Reference to Arbitration Other than Between Company And Investor or Affected person**

All claims, differences or disputes between the clearing members interse, trading members interse, between a clearing member and a trading member, between a clearing member and a non-trading member, between a trading member and a non-trading member, arising out of or in relation to trades, contracts and

transactions executed on the ATS of the Exchange or reported to the Exchange and made subject to the Rules, Bye-laws and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation or fulfillment and/or the rights obligations and liabilities of the parties thereto and including any question of whether such trades, contracts and transactions have been entered into or not shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations that may be in force from time to time.

Provided these bye-laws shall not in any way affect the jurisdiction of the Exchange on the clearing member or trading member, through whom such a non-trading member has dealt with or traded in regard thereto and such clearing member or trading member shall continue to remain responsible, accountable and liable to the Exchange in this behalf.

#### **15.4 Reference to Arbitration Between Company and Investor or Affected Person**

All claims, differences or disputes between a company and any of the parties defined hereunder shall be submitted to arbitration in accordance with the provisions of these Bye-laws and Regulations that may be in force from time to time.

Definition: For the purpose of these Bye-laws, the term 'parties' shall mean an investor or an affected person, who has acquired a security of a company and / or has subscribed to any issue made by a company and shall include trading members, clients of trading members, sub-brokers and participants, by whatever name called.

#### **15.5 Causes of Arbitration with the Company**

The claims, differences or disputes between a company and any party may be:

**15.5.1** arising out of or in relation to transfer, non-transfer, delay in transfer, non-receipt of dividend, interest, securities and/or any other corporate entitlements, delay in conversion into demat or non-demat or keeping in abeyance any one or more of the aforesaid actions;

**15.5.2** arising from and in connection with any one or more of the actions mentioned in Bye-law 15.5.1 above, which affects the right to ownership of securities and / or any entitlement thereon, or

**15.5.3** arising out of or in relation to issue or non-issue of company objections / duplicate company objections, delay in issue of company objections and / or non-submission of valid, requisite and supporting papers / documents thereto

Provided that all the causes/actions mentioned under Bye-laws 15.5.1, 15.5.2 and 15.5.3 arise out of or in relation to or with reference to the provisions in the Bye-laws, Rules and Regulations of the Exchange and / or with reference to Good/Bad Delivery Guidelines, Depository Guidelines, provisions under the Companies Act and/or any other guidelines or circulars issued by the Government or statutory bodies and/or any depository.

#### **15.6 Matters Between Company and Investor or Affected Person or Parties**

The company and the parties referred to in Bye-law 15.4 shall be deemed to have entered into an arbitration agreement in writing for all matters arising out of claims, differences or disputes between the company and any of the parties.

#### **15.7 Trades, Contracts and Transactions Subject to Arbitration**

In all trades, contracts and transactions, which are made or deemed to be made subject to the Rules, Bye-laws and Regulations of the Exchange, the provisions relating to arbitration as provided in these Bye-laws and Regulations shall form and shall be deemed to form part of the trades, contracts and transactions and the parties shall be deemed to have entered into an arbitration agreement in writing by which all claims, differences or disputes of the nature referred to in Bye-law 15.5 shall be submitted to arbitration in accordance with the provisions of these Bye laws and Regulations that may be in force from time to time.

#### **15.8 Jurisdiction**

All parties to a reference to arbitration under these Bye-laws and Regulations and the persons, if any, submitting claims under them, shall be deemed to have submitted to the exclusive jurisdiction of the courts in \_\_\_\_\_

or any other court, as may be prescribed by the Governing Board or Managing Director or Relevant Authority for the purpose of giving effect to the provisions of the Arbitration and Conciliation Act, these Bye-laws and Regulations.

### **15.9 Construction of References**

For the purpose of the Arbitration and Conciliation Act, in all claims, differences or disputes which are required to be submitted to arbitration in accordance with the provisions of these Bye-laws and Regulations, wherever the Arbitration and Conciliation Act leaves the parties free to determine a certain issue, the parties shall be deemed to have authorized the Managing Director or Relevant Authority to determine that issue.

### **15.10 Administrative Assistance**

For the purpose of the Act, in all claims, differences or disputes which are required to be submitted to arbitration in accordance with the provisions of these Bye-laws and Regulations, the parties shall be deemed to have agreed for administrative assistance of the Relevant Authority in order to facilitate the conduct of the arbitral proceedings.

### **15.11 Trading Members Liable for Transactions Executed on the ATS**

The provisions of these Bye-laws shall become applicable to all claims, differences and disputes between the parties mentioned therein for all trades, contracts and transactions executed on the ATS of the Exchange and made subject to the Bye-laws, Rules and Regulations of the Exchange provided such trades, contracts and transactions had been entered into between the parties mentioned therein upto and including the date on which the clearing member or trading member was either declared a defaulter or expelled or has surrendered his clearing membership or trading membership.

#### **Explanation :**

Rules, Bye-laws and Regulations and circulars, orders, directions, or rulings issued by the Exchange or Clearing Agency shall form part of all trades, contracts and transactions.

**15.12 Companies Liable For Securities Listed On the Exchange**

The provisions of these Bye-laws shall become applicable to all claims, differences and disputes between a company and the parties referred to in Bye-law 15.4 and the liabilities of the company shall remain till the date upto which the company and the concerned securities of the company remain listed on the Exchange.

**15.13 Reference of the Claims, Differences or Disputes**

Save as otherwise specified by the Governing Board or Managing Director or Relevant Authority, if the value of the claim, difference or dispute is more than such value, as may be specified in the relevant Regulations on the date of application, then such claim, difference or disputes shall be referred to an arbitral tribunal comprising of odd number of arbitrators who are more than one, as may be decided by the Regulatory Authority from time to time and if the value of claims, difference or dispute is upto the value referred to above, then the same shall be referred to an arbitral tribunal comprising a sole arbitrator.

Provided no claim, difference or dispute which is less than such value, as may be specified in the relevant Regulations on the date of the application, shall be allowed to be submitted to arbitration by the Exchange and the same may be decided administratively by the Managing Director or Relevant Authority from time to time.

**15.14 Limitation Period for Reference to Arbitration**

All claims, differences or disputes referred to in the Bye-laws above shall be submitted to arbitration within six months from the date of the transaction or from the date on which the client claims to have given instruction/order to buy or sell a security or from the date on which the client claims to have paid money or given a security, whichever is earlier, provided where the claim/complaint is not settled/resolved through the process of the Investors' Grievance Cell of the Exchange within three months of the receipt of the claim / complaint, the Exchange shall in such cases advise the concerned client to refer the case to arbitration. The time taken in dispute resolution and/or conciliation proceedings,

if any, initiated and conducted in accordance with the provisions of the Arbitration and Conciliation Act and these Bye-laws and the time taken by the Managing Director or Relevant Authority or the investors' Grievance Cell to administratively resolve the claims, differences or disputes shall be excluded for the purpose of determining the limitation period of six months under the Rules, Bye-laws and Regulations of the Exchange. Any claim made or any difference/dispute raised by any complainant/aggrieved person, after expiry of the time limit specified herein, shall become time-barred for the purpose of availing of the remedy under the Rules, Bye-laws and Regulations of the Exchange and may not, however, be invalid for seeking remedy under appropriate civil laws.

Provided where a company fails or refuses to submit or abide or comply with any award in arbitration, such company shall render itself liable for suspension of trading in its security. The other party in whose favour the arbitration award has been given shall be entitled to institute legal proceedings to enforce the award.

#### **15.15 Penalty on Failure to Submit to or Abide by Award in Arbitration**

A trading member/clearing member, who fails or refuses to submit to or abide by or comply with any award in arbitration between clearing members, between a clearing member and a trading member, between a clearing member and a non-trading member, between trading member or between a trading member and a non-trading member, as may be provided in these Bye-laws and Regulations, shall be declared a defaulter or expelled by the Relevant Authority, as is applicable, and thereupon the other party shall be entitled to institute legal proceedings to enforce the award under the Civil Procedure Code in the same manner as if it is a decree of the court.

#### **15.16 Selection of Arbitrators**

The procedure for selection of arbitrators shall be in accordance with the provisions, as may be specified by the Relevant Authority from time to time.

#### **15.17 Procedure for Appointment of Arbitrators**

The procedure for appointment of arbitrators, in each case, by the applicant and the respondent, or the Exchange shall be, as may be provided in the relevant Regulations from time to time.

**15.18 Vacancy in the Office of the Arbitrator**

At any time before making of the arbitral award, if the office of the arbitrator falls vacant for any reason whatsoever, including any vacancy due to the illness or death of the arbitrator or termination of the mandate of the arbitrator by the Managing Director or Relevant Authority, or for any other reason, the vacancy shall be filled in by the Managing Director or Relevant Authority by following the same procedure as specified by the Exchange for appointment of the arbitrator.

**15.19 Recorded Proceedings and Evidence**

Unless otherwise agreed upon by the parties, any arbitrator who has been appointed by the Managing Director or Relevant Authority to fill the vacancy of the office of the arbitrator may rely on the proceedings and evidence recorded earlier or may conduct any hearing afresh for any hearing previously held.

**15.20 Order or Ruling of Previous Arbitrator**

An order or ruling of the arbitrator made prior to the termination of his mandate shall not be invalid solely because his mandate has been terminated;

Provided that when the termination has been effected pursuant to Bye-laws 15.21 and 15.22.4, the order or ruling of the arbitrator made prior to termination of his mandate shall become invalid, unless otherwise agreed upon by parties.

**15.21 Disclosure by Person to be Appointed as Arbitrators**

Every person, who is approached in connection with his possible appointment as an arbitrator, shall disclose to the Managing Director or Relevant Authority in writing, any circumstances likely to give rise to justifiable doubts as to his independence and impartiality. If the person discloses any circumstances, which, in the opinion of the Managing Director or Relevant Authority, are likely to give rise to justifiable doubts as to his independence and impartiality, then he shall not be appointed as an arbitrator in respect of such case.

**15.22 Termination of Mandate of the Arbitrator**

The mandate of the arbitrator shall terminate if;

**15.22.1** The arbitrator withdraws from office for any reason; or

- 15.22.2** In the opinion of the Managing Director or Relevant Authority, which shall be final and binding on the parties, the arbitrator becomes de jure or de facto unable to perform his functions or for other reasons, fails to act without undue delay, including failure to make the arbitral award within the time period prescribed; or
- 15.22.3** the mandate of the arbitrator is terminated by the Managing Director or Relevant Authority upon receipt of written request for the termination of the mandate of the arbitrator from both the parties to arbitration; or
- 15.22.4** the arbitrator discloses any circumstances referred to in Byelaws 15.21 which in the opinion of the Relevant Authority are likely to give rise to justifiable doubts as to his independence and impartiality; or
- 15.22.5** the arbitral proceedings are terminated as provided for herein.

### **15.23 Place of Arbitration**

The place of arbitration shall be any office of the Exchange, as may be notified by the Exchange from time to time, or any such other place, as may be designated by the Exchange or the Regulatory Authority from time to time.

### **15.24 Fees and Charges**

The fees for arbitration and the charges for submitting to and for regulating the proceedings of the reference prescribed in the relevant Regulations shall be payable in advance and when there is a failure, neglect or refusal on the part of a party or parties to pay accordingly, the other party shall be responsible for making such payment in advance without prejudice, however, to its right, if any, to recover the same from such party or parties failing, neglecting or refusing to pay. It shall be a condition precedent to the hearing of any reference that the prescribed fees and charges shall have been paid in advance to the Exchange by the party or parties to the reference. The Exchange shall collect all such fees and charges and make the necessary payments for regulating the proceedings of the reference, provided that the sum collected shall not be greater than the sum to be paid, and provided further that the fees and charges payable by the other party shall not be collected from a client, who may lodge a claim against a trading member, whether active or inactive or a trading member who has been declared a defaulter or has been expelled from the trading membership if there



is no adequate asset vesting in the Committee for Settlement of Claims Against Defaulters and such defaulter/expelled trading member has not paid the fees.

#### **15.25 Appearance by Counsel, Attorney or Advocate**

In arbitral proceedings where both the parties to the dispute are clearing members or trading members, the parties shall not be permitted to appear by counsel, attorney or advocate. In case one of the parties is a sub-broker or a client, the sub-broker or the client may be permitted to appear by counsel, attorney or advocate. If the sub-broker or the client chooses to appear by counsel, attorney or advocate, then the clearing member or trading member may also be entitled to appear through his counsel, attorney or advocate, after obtaining necessary approval from the arbitral tribunal.

Provided in any arbitral proceeding between the company and any party, the company may be entitled to appear through its counsel, attorney or advocate only after the other party has chosen to appear by counsel attorney or advocate.

#### **15.26 Set-off and Counter Claim**

On a reference to arbitration by one party, the other party or parties shall be entitled to claim a set-off or make a counter claim against the former party provided such set-off or counter claim arises out of or relates to trades, contracts and transactions made subject to the Rules, Bye-laws and Regulations of the Exchange and subject to arbitration as provided herein and provided further such set-off or counter claim is presented, together with full particulars, at or before the first hearing of the reference but not afterwards unless specifically permitted by the arbitral tribunal.

Provided in a reference by any party against the company, the other party being company shall not be entitled to claim the set off or make a counter claim against the former party.

#### **15.27 Proceedings**

The arbitral tribunal may, however, proceed with the reference notwithstanding any failure to file a written statement by the respondent within the time, as may be prescribed for this purpose in the relevant Regulations from time to time and

may also proceed with the reference in the absence of any or all the parties who after due notice fail or neglect or refuse to attend at the appointed time and place. The arbitral tribunal may require the documents and submissions recorded during the process of conciliation or the proceedings conducted by the Dispute Resolution Committee or by any other Committee, as the case may be, to be placed before it for its consideration.

The arbitral tribunal may not proceed with the reference where the applicant has failed to file a written statement within the stipulated time and may dismiss the case summarily, unless the respondent consents to proceed.

### **15.28 Adjournment of Hearings**

The arbitral tribunal may adjourn the hearing from time to time upon the application of any party to the reference, on not more than two occasions for each party or suo moto, provided, however, that when the adjournment is granted at the request of one of the parties to the reference, the arbitral tribunal may, if deemed fit, require such party to pay the fees and costs in respect of the adjourned hearing borne by the other party and in the event of such party failing to do so, may refuse to hear him further or dismiss his case or otherwise deal with the matter in any way the arbitral tribunal may think just.

### **15.29 Written Statements By Parties and Hearing**

A reference may be decided by the arbitral tribunal on the written statements of the parties and the documents produced by them. Any party may however require the arbitral tribunal to give him hearing. In that event, the party shall be heard and the other party or parties shall have a similar privilege of being heard.

### **15.30 Permission Necessary For Witness or Evidence**

No party shall be entitled, without the permission of the Arbitral tribunal, to insist on a request to the arbitral tribunal to hear or examine witness or receive oral or documentary evidence, other than what is deemed necessary by the arbitral tribunal.

**15.31 Ex Parte Decision and Summary Disposal**

If the party against whom the reference is filed be not present at the appointed time and place, the arbitral tribunal may hear and decide the reference ex parte, and if the party filing the reference be not present, the arbitral tribunal may dismiss the reference summarily.

**15.32 Disputed Matter to be Arbitrated Only Once**

If after duly informing the arbitral tribunal, the parties to the arbitration themselves enter into any arrangement to completely settle the matter so submitted for arbitration, then such parties or any other person claiming through them shall not be entitled to initiate the arbitration proceedings for a second time with regard to the same matter and the Relevant Authority shall have the power to reject and/or refuse such reference to arbitration.

**15.33 Settlement**

**15.33.1** The arbitral tribunal may, with the agreement of the parties, use mediation, conciliation or any other procedure at any time during the arbitral proceedings to encourage settlement.

**15.33.2** If, during the proceedings, parties settle the dispute, the arbitral tribunal shall terminate the proceedings and record the settlement in the form of an arbitral award on agreed terms, which shall have the same status and effect as any other arbitral award on the substance of the dispute.

**15.34 Interim Arbitral Award and interim Measures**

The arbitral tribunal is empowered to make an interim arbitral award and/or provide interim measures of protection. The arbitral tribunal may require a party to provide appropriate security in connection with an interim award and/or measures.

**15.35 Arbitral Award**

The arbitral tribunal shall make the arbitral award within three months from the date of entering upon the reference and the time to make the award may be extended from time to time by the Managing Director or Relevant Authority on an application by either of the parties or the arbitral tribunal, as the case may be,

provided however, such extension shall not in aggregate exceed three months from the date of expiry of the three months referred to herein. For the purpose of this Bye-law, the arbitral tribunal shall be deemed to have entered upon a reference on the date on which the arbitral tribunal holds the first hearing.

### **15.36 Arbitral Award**

Every award shall be made in writing and shall be signed by the arbitral tribunal.

**15.36.1** The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given; or

**15.36.2** the award is on the terms agreed upon between the parties; or

**15.36.3** the award shall state its date and the place of arbitration and the award shall be deemed to have been made at that place.

### **15.37 Award to Classify Award Amount**

Whether the award is interim or otherwise, the Arbitral Tribunal shall clearly specify as to whether the amount/securities awarded relate to a transaction executed on the ATS of the Exchange or to any order/instruction to buy or sell a security or to the money paid or security deposited with the trading member / clearing member in respect of any order/instruction to buy or sell the security or for any reason other than those specified herein.

### **15.38 Award to Adjudge Interest**

Where an award is for the payment of money, the arbitral tribunal may adjudge in the award the interest to be paid on the principal sum adjudged for any period prior to the institution of the arbitration proceedings and may also adjudge the additional interest on such principal sum for the period from the date of the institution of the arbitration proceedings to the date of the award and also the interest on the aggregate sum so adjudged at such rate from the date of the award to the date of payment . The rate of interest that may be stipulated in the award shall be the Bank Rate, as may be fixed by the Reserve Bank of India from time to time, plus penal interest not exceeding four percent per annum.

**15.39 Intimation of Award**

After the award is made, a signed copy of the award shall be delivered to each party.

**15.40 Award Binding on Parties and Their Representatives**

The parties to the reference shall in all matters abide by and forthwith carry into effect the award of the arbitral tribunal which shall be final and binding on the parties and their respective representatives, notwithstanding the death of or legal disability occurring to any party before or after the making of the award and such death or legal disability shall not operate as a revocation of the reference or award or shall not affect the rights under the award of the awardee in any manner, whatsoever.

**15.41 Correction in and Clarification on Award**

**15.41.1** Within such days as may be specified by the Exchange from the receipt of the arbitral award:

**15.41.1.1** any party to an arbitration agreement, with notice to the other party, may request the arbitral tribunal to correct any computational error, any arithmetical error, any clerical or typographical error or any other error of a similar nature occurring in the award, or

**15.41.1.2** any party, with notice to the other party, may request the arbitral tribunal to give a clarification on any specific point or part of the award.

**15.41.2** If the arbitral tribunal finds the above request to be justified, it shall make the correction or provide the required correction and clarification to the parties concerned. The correction and clarification provided shall form part of the award.

**15.41.3** The arbitral tribunal may, on its own, correct the errors within such number of days from the date of the making of the award, as may be specified by the Exchange in the relevant Regulations from time to time and inform the parties accordingly.

**15.41.4** Any party, with notice to the other party, may request the arbitral tribunal, within such number of days from the date of receipt of the

award, as may be specified in the relevant Regulations from time to time, to make an additional award as to the claims presented in the arbitral proceedings, but omitted from the arbitral award.

**15.41.5** If the arbitral tribunal finds the request made under Bye-law 15.41.4 to be justified, it shall make the additional arbitral award within such number of days from the date of receipt of such request, as may be specified in the relevant Regulations from time to time.

#### **15.42 Honouring of Arbitral Awards**

The Exchange shall on receipt of an arbitral award against a trading member or a clearing member follow such procedure with respect to honouring of the award, as may be provided in the relevant Regulations from time to time, or as may be specified by SEBI from time to time.

Provided where the arbitral award is against the company, the Exchange may follow such procedure, as may be provided in the relevant Bye-laws and Regulations from time to time and as may be specified by SEBI from time to time.

#### **15.43 Right to Appeal**

##### **15.43.1 Award Final and Additional Risk Containment Measures Applicable**

A party to a reference who is dis-satisfied with an award of the arbitral tribunal may appeal to the appellate 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-à-vis the Exchange in terms of any action, which is required to be initiated by the Relevant Authority, as may be provided for in the Bye-laws relating to additional risk containment measures from time to time.

##### **15.43.2 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 and the appeal has been rejected and when the time for making an application to set aside the award under the relevant provisions 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 a trading member or a clearing member.

#### **15.44 Setting Aside of Award and Fresh Reference**

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

**15.44.2** Whenever an award made under these Bye-laws and Regulations is set aside by the court, the matter shall again be referred to arbitration, as may be provided in these Bye-laws and Regulations from time to time and the claims, differences and disputes shall be decided by a fresh reference to arbitration.

Where the Court has for the time being set aside the award and made the reference to the Arbitral Tribunal, only such a reference shall be decided by a fresh reference to arbitration as directed by the Court.

#### **15.45 Cost**

**15.45.1** Unless otherwise agreed upon by the parties, the cost of arbitration shall be fixed by the arbitral tribunal.

**15.45.2** The arbitral tribunal shall specify the party entitled to cost, the party who shall pay the cost, the amount of cost or method of determining that amount, and the manner in which the cost shall be paid.

**Explanation:** For the purpose of this Bye-law, cost means reasonable cost relating to the fees and expenses of the arbitrators and witness, legal fees and expenses, any administration fees of the institution supervising the arbitration, and any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

#### **15.46 Notices and Communications How to be Served**

Notices and communications to a trading member or to a clearing member or a non-trading member or to a company or an investor or an affected person shall be served in any one or more or all of the following ways and any such notice or communication hereunder shall be served at his ordinary business address and/or at his ordinary place of residence and/or his last known address:

- 15.46.1 by delivering it by hand;
- 15.46.2 by sending it by registered post;
- 15.46.3 by sending it under certificate of posting;
- 15.46.4 by sending it by express delivery post;
- 15.46.5 by sending it by telegram/fax/internet;
- 15.46.6 by affixing it on the door at the last known business or residential address;
- 15.46.7 by oral communication to the party in the presence of a third person;
- 15.46.8 by advertising it at least once in any daily newspaper published at the place where the Exchange is located; or
- 15.46.9 if no address is known, by a notice posted on the notice board of the Exchange or displayed on the ATS of the Exchange or on the website of the Exchange.

#### **15.47 Service by Hand Delivery When Complete**

A notice or communication served by hand shall be deemed to have been received by the party on the production of a certificate to that effect signed by the person delivering the notice or communication and the same shall constitute due and proper service of notice.

#### **15.48 Service by Fax / Internet When Complete**

A notice or communication served by fax or internet shall be deemed to have been received by the party at the time when the same, in the ordinary course, has been transmitted to the fax number and / or the internet address specified by such party

#### **15.49 Service by Post or Telegram When Complete**

A notice or communication served by post or telegram shall be deemed to have been received by the party at the time when the same, in the ordinary course of post or telegram, has been delivered. Production of a letter of confirmation from the post office or of the post office receipt for the registered letter or telegram or of a certificate of posting shall in all cases be conclusive proof of the posting or despatch of such notice or communication and shall constitute due and proper service of notice.



**15.50 Service by Advertisement or by Notice on Notice Board When Complete**

A notice or communication published in a newspaper or posted on the notice board of the Exchange or displayed on the ATS of the Exchange or on the Website of the Exchange shall be deemed to have been served on the party on the day on which it is published or posted or so displayed.

Provided where a notice or communication is in relation to a matter between a company and any party, a notice or communication published in a newspaper as above shall be deemed to have been served on the party the day on which it is published.

**15.51 Refusal to Accept Delivery Does Not Affect Service**

Any refusal to take delivery of the notice or communication shall, in no case, affect the validity of its service.

**15.52 Indemnity**

No party shall bring or file any suit or proceeding whatever against the Exchange, the Governing Board, Managing Director, Relevant Authority, or any employee or employees of the Exchange acting under his/its authority or against the arbitral tribunal for or in respect of any matter or thing purported to have to been done under these Bye-laws and Regulations, save and except any suit or proceeding for the enforcement of the award against the other party or parties to the reference.

**15.52.1 Parties When Not Discharged**

If any difficulty arises in giving effect to the provisions of these Bye-laws and Regulations in the conduct of arbitration, the provisions of the Arbitration and Conciliation Act shall prevail over the provisions of these Bye-laws and Regulations.

**15.53 Secretarial Duties**

The Secretary or the officer designated by the Exchange in this behalf and the employees of the Exchange acting under his authority shall;

**15.53.1** maintain a register of reference,

- 15.53.2 maintain a register of reference rejected by the Secretary or the designated officer,
- 15.53.3 receive all applications for arbitration, reference and communication addressed by the parties before or during the course of arbitration or otherwise in relation thereto,
- 15.53.4 receive payment of all costs, charges, fees and other expenses,
- 15.53.5 give notices of hearing and all other notices to be given to the parties before or during the course of the arbitration or otherwise in relation thereto,
- 15.53.6 communicate to parties all orders and directions of the arbitral tribunal,
- 15.53.7 receive and record all documents and papers relating to the references; and keep in custody all such documents and papers except those the parties are allowed to retain, for such period, as may be prescribed by the Relevant Authority from time to time,
- 15.53.8 publish the award on behalf of the arbitral tribunal,
- 15.53.9 enter the award and any changes therein in the register of references,
- 15.53.10 generally do all such things and take all such steps as may be necessary to assist the arbitral tribunal in the discharge of its functions,
- 15.53.11 maintain a register of appeals and make necessary entries therein, and
- 15.53.12 generally do all such things and take all such steps as may be necessary to implement the award of the arbitral tribunal, as may be specified by the Exchange, SEBI or any court of competent jurisdiction or a regulatory authority having jurisdiction on such matters from time to time.

#### **15.54 Arbitral Award Enforceable By/Against Legal Heirs/Representatives**

An arbitration agreement shall not be discharged by the death of any party thereto or by the incapacity of the party to act either as respects the deceased or the incapacitated party, or as respects any other party, but shall in such event be

enforceable by or against the legal heirs or legal representatives of the deceased or the party incapacitated.

### **15.55 Reference to Dispute Resolution Committee or Officer or Conciliation**

Notwithstanding anything contained in these Bye-laws, if any claim, difference or dispute between the clearing members, or between a clearing member and a trading member or between the trading members arises, in whole or in part, on one or more of the following matters, the decision on such matter or matters shall be referred to the arbitration of a Dispute Resolution Committee or Officer or Conciliation, as may be provided in these Bye-laws and the relevant Regulations from time to time for:

- 15.55.1** determination as to whether any documents constituted good delivery or bad delivery;
- 15.55.2** determination of the correctness or validity of an objection to transfer of a security raised by a company or other issuer of securities or its transfer agent;
- 15.55.3** determination of a question whether a trading member / clearing member is obliged to rectify or replace any document on the ground that it is bad delivery document;
- 15.55.4** applicability and/or interpretation of any Rules, Bye-laws, Regulations, resolutions, orders, notices, directions, decisions or rulings, by whatever name called, for determining any matter referred to above in this Bye-law, and
- 15.55.5** such other matters as may be specified by the Relevant Authority for the purposes of this Bye-law.

### **15.56 Panel of Conciliators**

The Relevant Authority may constitute a panel of conciliators consisting of not less than ten persons, of which not more than forty percent shall be drawn from the trading members/clearing members of the Exchange/Clearing Corporation who have been carrying on business for a minimum period of two years, and sixty percent from non-trading members / non-clearing members possessing expertise in the areas related to the securities market like industry, commerce, economics, finance, accounts, law, etc.

Provided that the Relevant Authority shall have the power to increase the number of conciliators on panel from time to time, keeping in view the number of cases for conciliation.

### **15.57 Representation and Assistance**

Each party shall advise, in writing, the other party and the conciliator of –

**15.57.1** the name and address of any person who will represent or assist him,  
and

**15.57.2** the capacity in which that person will represent.

### **15.58 Number and Appointment of Conciliators**

**15.58.1** There shall be a single conciliator unless the parties have agreed that there shall be three conciliators.

**15.58.2** The conciliator(s) shall be appointed from among the panel of conciliators constituted by the Relevant Authority from time to time.

### **15.59 Submission of Statements to Conciliator**

**15.59.1** The conciliator may, upon his appointment, require each party to submit to him a brief statement, in writing, describing the general nature of the dispute, the points at issues and the amount, if any, of the claim. Each party shall send a copy of such statement to the other party.

**15.59.2** At any stage of the conciliation proceedings, the conciliator may require a party to submit to him such additional information, as he/they may deem appropriate.

### **15.60 Disclosure of Information**

When the conciliator receives some information concerning the dispute from a party, he shall disclose the substance of that information to the other party so that the other party may have the opportunity to present any explanation such party may consider appropriate;

Provided that when a party gives any information to the conciliator subject to a specific condition that it shall be kept confidential, the conciliator shall not disclose such information to the other party.

**15.61 Communication Between Conciliator and Parties**

**15.61.1** The conciliator may invite the parties in writing, to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

**15.61.2** The conciliator, in consultation with the Exchange, shall determine the place where a meeting of the parties with the conciliator is to be held.

**15.61.3 Conciliation Proceedings not to Commence**

If no reply is received by the conciliator to the invitation for initiating conciliation within thirty calendar days from the date of communication inviting conciliation or within the period specified in the invitation, whichever is earlier, conciliation proceedings in such an event shall not proceed and the party shall then be free to refer the claim/difference/dispute to arbitration, as may be provided in the relevant Bye-laws.

**15.62 Co-operation of Parties With Conciliator**

The parties shall in good faith co-operate with the conciliator and in particular shall endeavor to comply with the requirements specified by the conciliator of submitting written materials, providing evidence and attending meetings, if any.

**15.63 Suggestions by Parties for Settlement of Disputes**

Each party may, on its initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

**15.64 Admissibility of Evidence in Other Proceedings**

The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute, which is the subject of the conciliation proceedings:

**15.64.1** views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

**15.64.2** admissions made by the other party in the course of the conciliation proceedings;

- 15.64.3 proposals made by the conciliator/s for a settlement, and
- 15.64.4 the fact that the other party had indicated his willingness to accept a proposal for settlement by the conciliators.

### 15.65 Role of Conciliator in Other Proceedings

Unless otherwise agreed upon by the parties,

- 15.65.1 the conciliator/s shall not act as an arbitrator or as a representative or as a counsel or as an attorney or advocate of a party in any arbitral or judicial proceedings in respect of a dispute, which is the subject of the conciliation proceedings, and
- 15.65.2 the conciliator shall not be presented by the parties, as a witness in any arbitral or judicial proceedings.

### 15.66 Deposits

- 15.66.1 The conciliator may direct each party to deposit with the Exchange an equal amount, as an advance for the costs, which he expects, will be incurred. However, during the course of the conciliation proceedings, the conciliator, may also direct supplementary deposits in an equal amount from each party.
- 15.66.2 If the required deposits are not paid in full by both parties within seven calendars days from the date of direction by the conciliator, the conciliator may, at his discretion, suspend the proceedings or may, at his discretion, make a written declaration of termination of the proceedings to the parties, effective from the date of that declaration.
- 15.66.3 Upon termination of the conciliation proceedings by the conciliator as provided in Bye-law 15.66.2, the Exchange shall render an account to the parties of the deposits received and expenses incurred and shall return the balance amount, if any, to the parties in the ratio of their deposits, within a reasonable period of time.

**15.67 Completion of Conciliation Proceedings**

The conciliation proceedings for the settlement of any dispute shall be completed within a period of thirty calendar days from the date of commencement of such proceedings.

**Explanation:** Conciliation proceedings shall be deemed to have commenced on the date of completion of appointment of conciliator as provided herein.

**15.68 Settlement Agreement**

**15.68.1** When it appears to the conciliator that there exists an element of settlement, which may be acceptable to the concerned parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

**15.68.2** If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

**15.68.3** Wherever the settlement agreement is being drawn up between the parties, the conciliator shall ensure that the settlement agreement clearly specify whether the amount / securities settled relate to a transaction executed on the ATS of the Exchange or to any order / instruction to buy or sell a security or to the money paid or security deposited with the trading member / clearing member in respect of any order / instruction to buy or sell the security or for any reason other than those specified herein.

**15.68.4** When the parties sign the settlement agreement as drawn up under Bye-law 15.68.3, it shall be final and binding on the parties and the persons claiming under them respectively.

**15.68.5** The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties and the Exchange.

**15.69 Status and Effect of Settlement Agreement**

The settlement agreement shall have the same status and effect as if it is an arbitral award.

**15.70 Cost**

Upon termination of the conciliation proceedings, the conciliator on the basis of Schedule of Fees, as may be provided in the Relevant Regulations from time to time and in consultation with the Relevant Authority shall fix the cost of the conciliation and give written notice thereof to the parties.

Explanation:

**15.70.1** Cost mean reasonable cost relating to:

- 15.70.1.1** the fees and expenses of the conciliator and witnesses required by the parties with the consent of the conciliator;
- 15.70.1.2** any expert advice required by the conciliator with the consent of the parties; and
- 15.70.1.3** any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

**15.70.2** The cost shall be borne equally by the parties unless the settlement agreement provides for a different apportionment.

**15.71 Termination of Conciliation Proceedings**

**15.71.1** The conciliation proceedings shall be terminated –

- 15.71.1.1** by signing of the settlement agreement by the parties on the date of agreement; or
- 15.71.1.2** by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts in conciliation are no longer justified, on the date of the declaration; or
- 15.71.1.3** by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- 15.71.1.4** by a written declaration of a party to the other party and the conciliator that the conciliation proceedings are terminated, on the date of the declaration.



**15.71.1.5** The conciliator shall, upon termination of the proceedings, send an intimation thereof in writing to the Exchange.

**15.72 Confidentiality**

Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings, except where their disclosure is necessary for the purposes of implementation and enforcement of the settlement agreement.