

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

**COMPANY APPLICATION (L) NO. 13 OF 2015
IN
COMPANY APPEAL NO. 42 OF 2013
IN
CLB COMPANY PETITION NO. 83 OF 2011**

Enercon GmbH

..Applicant

Vs.

Enercon (India) Ltd & Ors.

..Respondents

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Mr. S.U. Kamdar, Senior Counsel, Mr. Zubin Behramkamdin, Counsel, Mr. Jehangir Jejeebhoy, Counsel a/w Mr. Vivek Vashi, Ms. Kanika Sharma, Mr. Hrushi Narvekar, Mr. Krishnendu Sayta, Ms. Shaheda Madraswala, Advocates i/b M/s Bharucha & Partners for Applicant.

Mr. Fredun Devitre, Sr. Advocate, Mr. Nikhil Sakhardande, Ms. Swagata Naik, Ms. Sonali Mathur, Ms. Priyanka Shetty, i/b AZB and Partners for Respondents

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**CORAM : N.M. JAMDAR, J.
DATED : 10 APRIL 2015**

P.C.:

By this company application, the applicant prays that an e-mail correspondence dated 24 March 2015 be taken on record and also effect thereof.

2. Oral arguments in the company appeal are already completed. The appeals were adjourned from time to time to

enable the appellants to file their written submissions. At this stage, the company application is moved to place the e-mail correspondence on record.

3. It is contended by the learned Senior Advocate for the Appellant that this e-mail shows that a third set of Articles of Association of the Company was placed in the Arbitration proceedings pending between the parties. He submits that though the respondents have sought to withdraw the Articles from the record of the Arbitration, the fact that the third set of Articles were available substantiates the case of Appellant as regards the unauthorised amendments of articles and the effect as regards Article 170(a), without notice to the appellants. The learned Counsel seeks liberty to place this amended articles on record as and when permission is granted by the Arbitral Tribunal.

4. The learned Senior Advocate for the respondents submits that the articles in question were placed on record of the Arbitral Tribunal by inadvertence and they are not the authorised Articles and the Articles which are part of the present proceedings, are the correct articles which are registered with the authorities. He submitted that an application is made to the Arbitral Tribunal to take the registered articles, which are on the record of the present appeal, on record.

5. Both the learned Counsel agree that the actual Articles in question need not be placed on record of this appeal. It is however urged that the effect of placing the third Articles of Association on record of the Arbitral Tribunal and the answer of the respondent be considered to evaluate the argument as regard the unauthorized alteration of the articles.

6. Accordingly, the company application is disposed of by permitting the applicants to place on record the e-mail correspondence. The arguments advanced by the learned Counsel for the parties reproduced above will be considered during the disposal of the Company Appeal.

7. Company Application is disposed of in above terms.

(N.M. JAMDAR, J.)