

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

COMM. ARBITRATION PETITION NO.80 OF 2017

Axis Trustee Services Ltd.)...Petitioner
V/s.

Gammon India Limited)....Respondent

Mr.Dinyar Madon, senior Advocate a/w Mr.Ranjeev Carvelho and
Mr.Rohit Lalvani i/by Manilal Kher Ambalal & Co. for petitioner.

Mr.Zal Andhyrujina a/w Mr.Hursh Meghani and Mr.Durgaprasad
Poojari i/by PDS Legal for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 16.11.2017

P.C.:-

1 At the outset, Shri Andhyrujina appearing for respondent states that the unaudited balance-sheet is yet to be furnished to petitioner in accordance with the order dated 11.10.2017 as the same is not yet ready. Mr.Andhyrujina states that within a period of 4 weeks from today, the unaudited balance-sheet should be ready and it will be handed over to Advocates appearing for petitioner.

2 Both the counsel state that parties could be referred to arbitration even though time to commence arbitration proceedings under section 9(2) of the Arbitration and Conciliation Act 1996 (the said Act), expired on 12.11.2017 and the petitioner after considering

the unaudited balance-sheet to be received from respondent, will decide whether to apply for further orders before the arbitral tribunal under Section 17 of the Act. Mr. Andhyujina states that respondent also be given liberty to apply for appropriate orders including re-call, variation etc. of the order already passed in this petition and also to apply for any further reliefs.

3 Therefore, by consent, following order is passed :-

ORDER

(i) Mr. Shiraz Rustomjee, a senior Advocate of this court having his office at Jeevan Jyot Building, 2nd floor, 18/20 Cawasji Patel Street, Fort, Mumbai-400 001, Tel No. 22022521, is appointed as sole arbitrator to arbitrate on all disputes/differences, including counter claim, if any, arising out of or in connection with or relating to the corporate guarantee dated 27.1.2012 entered into between petitioner and respondent ;

(ii) The fees, administrative expenses, typing charges and venue charges, shall be shared equally between the parties and the same will be cost in the arbitral proceeding ;

(iii) Within 3 weeks of receiving a copy of this order, either from the advocates for petitioner or for respondents, the learned Arbitrator shall file with the parties, disclosure in writing as required under

Section 11(8) read with section 12(1) of Arbitration and Conciliation Act 1996;

(iv) Copy of this petition and copy of the affidavit in reply be filed before the sole Arbitrator who shall decide the same as an application under Section 17 of the said Act ;

(v) Parties are at liberty to file further affidavits and documents before the learned Arbitrator ;

(vi) The ad-interim orders granted shall continue until the application under Section 17 is disposed or otherwise modified/withdrawn or recalled on an application, if made by respondent ;

(vii) All rights and contentions of the parties are kept open except the right of respondent to contest the existence of arbitration agreement ;

(viii) Petition accordingly stands disposed.

4 Mr.Andhyrujina states that without prejudice to respondents' rights and contention, they shall also provide statement of value of assets both, movable and immovable, and also mention therein what is the value of encumbered assets and what is the value of unencumbered assets.

(K.R.SHRIRAM,J)

