

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

**CHAMBER SUMMONS NO.779 OF 2017
WITH
NOTICE OF MOTION NO.3520 OF 2011
WITH
NOTICE OF MOTION NO.3527 OF 2011
WITH
NOTICE OF MOTION NO.1550 OF 2012
WITH
NOTICE OF MOTION NO.858 OF 2014
IN
SUIT NO.2865 OF 2011**

The Bank of New York MellonPlaintiff

Vs.

Zenith Infotech Ltd. & Ors.Defendants

Mr. Janak Dwarkadas, senior Advocate a/w. Mr. Rohan Rajyadhaksha, Ms. Priyanka Shetty and Mr. Haridhay Khurana i/b. AZB and Partners for plaintiff.

Mr. Zal Andhyarujina a/w. Mr. P.A. Kabadi and Ms. Taruna Nagpal i/b. Doijode Associates for defendant nos.5 and 6.

CORAM : K.R.SHRIRAM, J.

DATE : 28th SEPTEMBER, 2017

PC.:

CHAMBER SUMMONS NO.779 OF 2017

1 Heard the counsel. This is a pre-trial amendment. Have considered the Schedule annexed to the affidavit in support and Mr. Andhyarujina in fairness agreed that it does not change the nature or character of the suit. The amendment being sought is only to replace the particulars of claim originally filed as Exhibit R to the plaint to reflect the correct amount due under the FCCBs which were to mature for payment in September, 2011 and August, 2012, as also to provide a detailed

explanation in the body of the plaint for arriving at the amounts due and payable in accordance with terms of the 2006 Offering Circular and 2007 Offering Circular issued by defendant no.1.

2 After the suit was filed, plaintiff realised that they had inadvertently omitted to provide the details as to how the amounts due and payable calculated in the body of the plaint itself and due to inadvertence, incorrect amounts have been stated. Effectively, plaintiff is seeking to reduce its claim.

3 I cannot also find that there is any malafides on the part of plaintiff in taking out this application and nothing can be stated to be barred by limitation either.

4 In view of the above, I am inclined to allow the chamber summons. The chamber summons is allowed and accordingly disposed in terms of prayer clause – (a).

5 Amendments to be carried out and copy of the amended plaint to be served within four weeks from today.

6 Should defendants wish to file an additional written statement, they may do so within two weeks of receiving copy of the amended plaint.

7 Mr. Andhyarujina is pressing for cost. Mr. Andhyarujina is justified in pressing for cost.

8 Applicant/plaintiff to pay a sum of Rs.50,000/- as cost to the Advocate on record instructing Mr. Andhyarujina. This amount to be paid by way of cheque drawn in favour of the Advocate on record instructing Mr. Andhyarujina within four weeks from today.

9 Suit to be listed for directions on 17th November, 2017.

(K.R. SHRIRAM, J.)