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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 297/2017 and C.M. No.24860/2017 (stay)**

GAMMON INDIA LTD Appellant

Through: None.

versus

EX SERVICEMEN SECURITY & ALLIED SERVICES Respondent

Through: Mr. Nalin Tripathi, Advocate with
Mr. Sampa Sengupta Roy, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **07.11.2017**

1. While issuing notice in this appeal on 17.7.2017, the following order was passed:-

“CM No.24861/2017 (Exemption)

Exemption allowed subject to just exceptions.
CM stands disposed of.

FAO 297/2017 & CM No. 24860/2017(Stay)

1. Learned counsel for the appellant argues that an application under Section 8 of the Arbitration and Conciliation Act could not have been disposed of by ordering production of the copy of the arbitration agreement but that application can either be allowed or dismissed with respect to existence of arbitration agreement and disputes i.e it is argued that once the appellant/defendant had sought reference of disputes to arbitration under Section 8 then such application could only have been disposed of on merits by referring the matter to arbitration or declining the relief but the application could not have

been disposed of by simply directing production of copy of the arbitration agreement.

2. Notices be issued to the respondent, on filing of process fee, both in the ordinary method as well as by registered AD post, returnable on 7th November, 2017.

3. Till further order unless varied by the Court, there shall be stay of proceedings in suit no.14794/2016 titled as ***Gamman India Ltd. Vs. Ex. Servicemen Security & Allied Services*** pending in the court of Sh.Raj Paul Singh Teji, Addl. District Judge-09 (Central) Delhi.”

2. It is rightly conceded on behalf of the respondent/defendant that the application under Section 8 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as ‘the Act’) can be disposed of either by allowing the same or dismissing the same i.e either by referring the parties to the arbitration or holding that the arbitration clause does not exist for reference of the disputes to the arbitration and the trial court could not have disposed of the application under Section 8 of the Act simply by asking for filing of the arbitration agreement.

3. Accordingly, the impugned order dated 26.4.2017 is set aside and the trial court is directed to dispose of the application under Section 8 of the Act in accordance with law either on the basis of the original arbitration agreement or if there is no arbitration agreement and sufficient reasons are

given for not producing the arbitration agreement, then, on the basis of copy of the arbitration agreement, in accordance with law.

4. Appeal is accordingly disposed of in terms of aforesaid observations.

VALMIKI J. MEHTA, J

NOVEMBER 07, 2017

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