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

COMPANY APPLICATION NO.38 OF 2018
IN
COMPANY PETITION NO.834 OF 2015

Misumi India Private Limited ….Applicant

IN THE MATTER BETWEEN :

Deep Blue Xpress Private Limited ….Petitioner
Vs.
Misumi India Private Limited ….Respondent

WITH
COMPANY PETITION NO.832 OF 2015
WITH
COMPANY APPLICATION NO.39 OF 2018
IN
COMPANY PETITION NO.832 OF 2015

Mr. Mustafa Doctor, senior advocate a/w. Mr. H.N. Thakore and Ms. Mehjabeen Marak I/b. M/s. Thakore Jariwala and Associates for applicant/original respondent.
Mr. J.P. Sen, senior advocate a/w. Mr. Dashmeet Chaddha and Mr. Rahul P. Jain I/b. Alpha Chambers for respondent/original petitioner.

CORAM : K.R.SHRIRAM, J.
DATE : 2nd AUGUST 2018

P.C.:

1 On the last occasion after the parties were heard for some time, the matter was stood over to enable the company to take instructions as to whether they will be inclined to secure petitioner's claim in both the petitions in the sum of Rs.1 Crore and also consider referring all disputes, which are subject matter of these two petitions, to arbitration.

2 Today Mr. Thakore, counsel appearing for the company states that the company is ready and willing to give a bank guarantee in the sum

of Rs.1 Crore of which Rs.95 Lakhs will be in company petition no.834 of 2015 and Rs.5 Lakhs in company petition no.832 of 2015. Mr. Thakore in fairness states that if cash amount was deposited, it would be invested by Prothonotary and Senior Master, High Court, Bombay in fixed deposit and therefore, the company will give a bank guarantee for a total sum of Rs.1 Crore in both petitions together with interest at such rate as the Court would determine as ad-hoc interest. Mr. Thakore hastens to add that this is only without prejudice to respondent's rights and contentions that no amount is due and payable to petitioner.

3 In the circumstances, the following order is passed :

(a) The company's undertaking to furnish common bank guarantee, without prejudice to their rights and contentions, in the sum of Rs.1 Crore (Rs.95 Lakhs will be in company petition no.834 of 2015 and Rs.5 Lakhs in company petition no.832 of 2015) is accepted;

(b) Bank guarantee to be furnished together with interest thereon at 9% p.a. and this rate of interest is only ad-hoc;

(c) Bank guarantee to be as per the format prescribed by Prothonotary and Senior Master, High Court, Bombay and will be in favour of Prothonotary and Senior Master;

(d) Bank guarantee will be valid initially for a period of one year to be renewed from year to year unless otherwise directed;

(e) Bank guarantee to be furnished within two weeks from today.

4 Mr. Sen states that within four weeks from today petitioner in both petitions will file suits for recovering the amounts claimed in the petitions. Statement accepted.

5 If within four weeks such suits are not filed, the company shall be at liberty to apply to this Court for return of bank guarantee.

6 Both company applications accordingly stand disposed.

7 Both petitions to be listed for directions on 23rd August 2018.

Gauri Amit Gaekwad
Digitally signed by Gauri Amit Gaekwad
Date: 2018.08.03 18:29:32 +0530

(K.R.SHRIRAM, J.)