

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ADMIRALTY AND VICE-ADMIRALTY JURISDICTION**

**NOTICE OF MOTION NO. 1950 OF 2017  
IN  
ADMIRALTY SUIT NO. 47 OF 2016**

M/s. Waterways Shipyard Private Limited .. Applicant

***In the matter between :***

Proactive Ship Management Private Limited .. Plaintiff

Vs.

M.V. Suryamukhi & Anr. .. Defendants

Mr. Ryan Mendes for applicant/defendant no.2.

Mr. Arnab Ghosh i/b Manoj R. Khatri for respondent/original plaintiff.

**CORAM : K.R.SHRIRAM, J.  
DATE : 11<sup>TH</sup> JANUARY 2018**

**P.C.**

1 This notice of motion is taken out on behalf of defendants to recall the order dated 28<sup>th</sup> July 2017 directing the suit be listed for ex-parte decree. Ex-parte decree has not been passed till date. In the affidavit in support, certain reasons are given for non-filing of written statement and for not being present in Court on 28<sup>th</sup> July 2017.

2 When the notice of motion was taken up for hearing yesterday considering the claim amount being Rs.23,75,965.21/-, the Court suggested to the parties whether they would refer their disputes in this suit to

arbitration. It should also be noted that defendants have secured plaintiff's claim by depositing an amount of Rs.24,32,207.24 with the Prothonotary and Senior Master, High Court, Bombay. To enable the counsels to take instructions, the matter was stood over to today. Shri Ghosh and Shri Mendes state that their respective clients are ready and willing to go for arbitration and further state that their respective clients consent to the appointment of Ms. Aditi Pawar, an Advocate practicing in the Court as sole Arbitrator. Therefore, by consent, the following order is passed :-

- (i) The order dated 28<sup>th</sup> July 2017 is recalled.
- (ii) Ms.Aditi Pawar, an Advocate practicing in this Court is appointed as Sole Arbitrator to arbitrate on disputes and differences including counterclaim, if any arising out of and/or in connection with and/or relating to the disputes in this company petition.
- (iii) The fees, administrative expenses, typing charges and venue expenses of the Arbitrator shall be shared equally between parties, i.e., 50% by plaintiff and 50% by defendants and the same will be costs in the arbitration proceedings.
- (iv) Within three weeks of receiving a communication from the advocate for plaintiff and/or defendants, the Arbitrator shall give in writing, directly to parties disclosure as required

under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996.

(v) The security given by defendants will enure to the arbitration proceedings. All rights and contentions of the parties are kept open including defendants' right to take out an application for return of security.

(vi) The seat of arbitration proceedings will be Mumbai.

3 Notice of motion disposed.

4 The suit accordingly disposed.

Refund of Court fees in accordance with the Rules.

Liberty to apply.

**(K.R. SHRIRAM, J.)**