

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**NOTICE OF MOTION NO.993 OF 2013**  
**IN**  
**ARBITRATION PETITION NO.933 OF 2011**

Mars Enterprises & Anr.

..Applicants.

(Org. Respondents)

In the matter between

Sky Gourmet Catering Private Ltd. and Anr.

....Petitioners.

Versus

Mars Enterprises & Anr.

...Respondents.

Mr. A. Dasgupta i/by M/s. Jhangiani Narula & Associates, advocate for the applicants (Org. Respondents).

Mr. Adarsh Saxena i/by Amarchand & Mangaldas & Suresh A. Shroff & Co., advocates for respondent no.1 (Org. Petitioner No.1).

Mr. Aditya N. Raut i/by Desai Desai Carimjee & Mulla, advocates for the respondent no.2 (Org. Petitioner No.2).

**CORAM : RANJIT MORE, J.**

**DATED : JULY 30, 2013.**

**P.C.:**

Heard the learned counsel appearing for the respective parties.

2 Both learned counsel appearing for respondent nos.1 and 2

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(Original Petitioner Nos.1 and 2) undertake to file vakalatnama for respondent nos.1 and 2 within a period of two weeks from today. Undertakings are accepted.

3 The above motion is taken out for the following relief:

“a) that this Hon'ble Court be pleased to discharge the Bank Guarantee furnished by the Respondents to the Prothonotary & Senior Master pursuant to the order dated 9<sup>th</sup> September, 2011 read with Order dated 4<sup>th</sup> October, 2011 passed in the above matter.”

4 By the order dated 9<sup>th</sup> September, 2011 read with order dated 4<sup>th</sup> October, 2011 passed in the above arbitration petition, this Court directed applicants (original respondents) to secure respondent no.1's (Original Petitioner No.1) claim by furnishing bank guarantee of Rs.6.26 crores. Dispute between the applicants and respondents is amicably settled and parties have filed Consent Terms in Suit No.920 of 2012. Clause (8) of the Consent Terms reads as follows:

“8) The Plaintiffs and Defendants further agree that in view of the Defendants having agreed to take over ownership of the above-referred equipment, the Defendants claim for refund of the

security deposit of Rs.6,26,00,000/- (Rupees Six Crores Twenty Six Lakhs Only) paid by them and interest thereon and other claims referred to in the Arbitration notice dated 18<sup>th</sup> November, 2011 issued by M/s. Phoniex Legal stand withdrawn and the Defendants declare and confirm, that arbitral dispute between the Defendants and the Plaintiffs referred to in the Arbitration Petition (L) No.1001 of 2011 and Order dated 9<sup>th</sup> September, 2011 passed therein does not survive and the Defendants do not require or desire the Plaintiffs to secure any claim nor furnish any bank guarantee to the Defendants herein and the parties shall jointly apply to the Hon'ble Court for appropriate orders for discharge of the bank guarantee submitted by the plaintiffs pursuant to the above referred order dated 9<sup>th</sup> September, 2011.”

5 In the above circumstances, since the dispute between the Applicants (Original Respondents) and the Respondents (Original Petitioners) is amicably settled, applicants are entitled to relief, as aforesaid. Respondent nos.1 and 2 have also no objection if the motion is allowed in terms of prayer clause (a).

6 Accordingly, motion is allowed in terms of **prayer clause (a)**.

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Parties are directed to act on a copy of this order duly authenticated by the registry of this Court.

**(RANJIT MORE, J.)**

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