

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO.347 OF 2017
IN
COMMERCIAL ARBITRATION PETITION NO.34 OF 2016**

Shree Jagdamba Agrico Exports Ltd.Applicant/Petitioner

Vs.

Addhar Mercantile Pvt. Ltd.Respondent

Mr. Bimal Rajasekhar i/b. Mr. Ashwin Shanker for applicant/petitioner.

Mr. A.S. Doctor a/w. Mr. Arnab Ghosh i/b. Mr. Manoj Khatri for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 6th SEPTEMBER, 2017

PC.:

NOTICE OF MOTION NO.347 OF 2017

1 This notice of motion is taken out by applicant/petitioner for condoning the delay of 29 days.

2 It is the case of applicant that there was no delay at all because the copy of the final Award was received by petitioner's Advocate on 16th March, 2016 and the same was handed over to petitioner only on 23rd April, 2016 and the petition was lodged on 15th July, 2016. Therefore, according to applicant it is within the 90 days period.

3 This notice of motion has been taken out by way of abundant caution since if the Court considers the date of 16th March, 2016, which is the date of which petitioner's Advocate received the Award, as the starting date, then the 90 days would have expired on 16th June, 2016 and there

will be a delay of 29 days.

4 The reason for the delay given is that petitioner's Advocate was traveling when the Award was received in his office on 16th March, 2016 and only on 23rd April, 2016 the Award was forwarded to petitioner.

5 Mr. Doctor, counsel for respondent strongly opposes the application for condoning the delay on the basis that the Constituted Attorney of petitioner/applicant one Mr. Sudarshan Gujjar has his office at the address of petitioner's Advocate. Mr. Doctor states that even the board resolution, copy whereof is annexed to the petition, authorises the said Mr. Sudarshan Gujjar to represent petitioner/applicant in all suits and proceedings filed in any Court, Tribunal or Authority in India in respect of the proceedings filed by respondent and to produce, summon or receive documents, to compromise, to compound or to refer for arbitration any or the aforesaid proceedings and to deposit and withdraw moneys in any Court, Tribunal or Authority in India. Mr. Doctor further states that therefore, since the Award has been delivered at the address of the Constituted Attorney, which is the same as the address of the Advocate for petitioner, the Award should be deemed to have been served on petitioner/applicant.

6 The forwarding letter dated 15th March, 2016 of the Arbitrator is addressed to respondent with copy to petitioner - Shree Jagdamba Agrico

Exports Ltd. C/o. Mr. Ashwin Shanker. It is not addressed to the Constituted Attorney Mr. Sudarshan Gujjar. Respondent also, except for mere denials, are unable to show that Mr. Sudarshan Gujjar had received this letter and therefore, it was served upon petitioner/applicant. I would also add that the board resolution does not indicate that Mr. Sudarshan Gujjar was authorised to receive the Award from the Arbitrator.

7 In view of all the above circumstances, I am inclined to condone the delay. The notice of motion is allowed and accordingly disposed in terms of prayer clause – (a).

8 Petition to be listed on board on 4th October, 2017.

(K.R. SHRIRAM, J.)