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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.170 OF 2018

IN

CONTEMPT PETITION (L) NO.76 OF 2017

IN

ARBITRATION PETITION NO.1599 OF 2014

WITH

CONTEMPT PETITION (L) NO.76 OF 2017

IN

ARBITRATION PETITION NO.1599 OF 2014

Tata Capital Financial Services Ltd.Applicant/Petitioner

vs

Metal Closures Pvt. Ltd. And 2 Others ...Respondents

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Mr. Rohaan Cama, a/w. Ms. Benedicta Lobo, i/b. Katariya & Associates,
for the Petitioner.

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CORAM : S.C. GUPTE, J.

DATED: 13 DECEMBER, 2018

P.C.:

. This notice of motion, namely, Notice of Motion No.170 of 2018, is taken out by the original Petitioner for condonation of delay in filing the contempt petition. Learned Counsel for the Petitioner/Applicant relies on a judgment of a Division Bench of our Court in the case of **Harshawadan Bandivadekar vs. Taramati Harishchandra Ghanekar**¹. Relying on this judgment, it is submitted that there is power in Court to condone the delay in filing of a contempt

¹ 2008 SCC OnLine Bom 899

petition; a petition may be entertained accordingly after expiry of one year from the date on which the contempt is alleged to have been committed. None appears for the Respondents/Contemnors. There is no reply filed to the contempt petition. It so transpires from the material placed before the Court, which forms part of the contempt petition and the notice of motion herein, that at least as far as the Respondents' commitment to comply with the requirements of Clauses 4, 5 and 9 of the Consent Terms is concerned, the contempt alleged cannot be said to have been committed any time before one year of filing of the contempt petition. By these clauses, the Respondents were required, in the event of their failure to pay the installments referred to in Clause 3 of the Consent Terms, to co-operate with the Petitioner for effecting sale of the equipments listed in Annexures I and II to the Consent Terms. The Petitioner has explained in its contempt petition, as also in its notice of motion, that though the default in payment of installments had been committed on the due dates, that is to say, on 31 March 2015 and 30 April 2015, the matter was being negotiated between the parties in view of their business relationship and, as a result, a final notice communicating the Petitioner's requisition to comply with Clauses 4 and 5, particularly, by submitting details of the location of the equipments and surrendering of the equipments to the Petitioner to enable it to take steps for sale of the equipments in terms of Clauses 4, 5 and 9 was sent only on 20 October 2016. Even if one were to give some reasonable period to the Respondents/Contemnors for complying with this last requisition, after various attempts of settlement failed, the alleged contempt in not surrendering the equipments and co-operating with the Petitioner in the matter of sale of equipments, could not be said to have

occurred at any time before 30 October 2016. In that case, the petition filed on or after 30 October 2016 cannot be said to be barred by limitation within the meaning of Section 20 of the Contempt of Courts Act, 1971. On these observations, the notice of motion can be disposed of with directions to the Registry to register the contempt petition. It will be open to the Respondents to argue at the hearing of the contempt petition that the contempt, if any, was committed more than one year prior to the present petition. It will, likewise, be open to the Petitioner herein to press the proposition canvassed at the hearing of the present notice of motion and which is recorded at the very outset, based on the judgment of the Division Bench in the case of **Harshawadan Bandivadekar**. The notice of motion is, accordingly, disposed of. The office may register the contempt petition. A copy of the contempt petition be served afresh on the Respondents/Contemnors. The pre-admission notice is made returnable on 11 January 2019.

(S.C. GUPTE, J.)