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

**NOTICE OF MOTION NO.404 OF 2017
IN
SUIT NO.3159 OF 2000**

The Shipping Corporation of India Ltd.	... Applicant / Plaintiff
Vs.	
R. Piyarelall International Ltd.	... Defrendant

Nupur Awasthi, i/b. M/s. Consulta Juris for Plaintiff.

CORAM:	R. I. CHAGLA, J.
DATE:	26TH JULY, 2019.

PC:-

1. By an order dated 12th July, 2019, this Court had granted permission to the Applicant to serve notice to the Defendant by substituted service of the present Notice of Motion. The learned Counsel for the Applicant has tendered the copy of email which was issued to the Defendants in which notice was given of the next date of hearing. The learned Counsel for the Applicant states that the Notice of Motion along with Affidavit in Support had in fact been served upon the Defendant on 20th June, 2019 and the Affidavit of Service has been filed evidencing service on the Defendant of the Notice of Motion and Affidavit in Support. The email which had been issued by the Applicant was to intimate the

Defendant that the matter had been listed on 19th July, 2019 for hearing. The Chamber Summons is for restoration of the Notice of Motion which had been taken out for restoration of the Suit which had been dismissed for default.

2. There is a delay of 1375 days in filing the present Notice of Motion and for which the condonation has been sought. It is stated by the learned Counsel for the Applicant that Arbitration Proceedings were instituted by the Applicant and the Award was challenged in Appeal by the Applicant and it was only on 4th October, 2016 that the award which had been passed by the learned Sole Arbitrator had been dismissed by this Court. The award of the learned Arbitrator had held that there is no valid and binding arbitration agreement between the parties. The learned Counsel for the Applicant states that in view of the Applicant pursuing the Arbitration Proceedings, they had lost sight of the dismissal of the Notice of Motion on ground of non-compliance of office objections raised by the Prothonotary and Senior Master of this Court by order dated 24th July, 2013. It is stated in paragraph 19 of the Affidavit in Support that on taking search of the records of the Suit, it was noticed that the Notice of Motion taken out for restoration of the Suit was rejected for non-compliance of office objections. This came to the knowledge of the Advocate for the

Plaintiff only in third week of December, 2016 from the website of the High Court, wherein the status of the case is listed.

3. I have considered the Notice of Motion and Affidavit in Support of the Notice of Motion. I find from the averments in the Affidavit in Support of the Notice of Motion that the Arbitration Proceedings were ongoing between the Plaintiff and Defendant and the challenge to the Award came to be ultimately dismissed on 4th October, 2016. The Award had held the claim to be not arbitrable. The subject matter of the arbitration and of the Suit is the same.

4. Considering, that the parallel proceedings in Arbitration were going on part from the fact that there was negligence on the part of the Advocate in noticing the dismissal of the Notice of Motion for restoration of the Notice of Motion filed for restoration of the Suit, which came to the knowledge of Advocate for Plaintiffs only in the third week of December, 2016, the Plaintiffs should not be made to suffer. Since the initial Notice of Motion had been taken out for restoration of the Suit which itself had been dismissed for default, it would be appropriate in the interest of justice that the Notice of Motion seeking restoration of the initial Notice of Motion which was dismissed for non-compliance of office

objections raised by the Prothonotary and Senior Master by 24th July, 2013 be restored and heard on merits.

5. Accordingly, the delay in taking out of this Notice of Motion is condoned and the Notice of Motion is made absolute in terms of prayer clauses (a) and (b).

(R I. CHAGLA, J.)