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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
NOTICE OF MOTION (L) NO. 43 OF 2017  
IN  
CHAMBER SUMMONS (L) NO. 2284 OF 2016  
IN  
EXECUTION APPLICATION NO. 240 OF 2011  
IN  
FOREIGN AWARD DATED 17TH JANUARY 2017**

Vitol S.A. & Others ...Applicants  
*In the matter between*  
Asian Natural Resources (India) Limited ...Original Claimant/  
(Formerly Bhatia International Limited) Award Debtor  
*Versus*  
Vitol S.A. & Others ...Original Respondent/  
Award Holder

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**Mr. Zal Andhyarujina, with Mrs. N. Jejeebhoy, Mr. Abraham Varuguese, Ms. Damayanti Sen & Mr. Pabitra Dutta, i/b Bose & Mitra & Co., for the Applicants/Original Award Holder.**  
**Mr. Kezer Kharawala, i/b Lex Juris, for BGTL.**  
**Mr. M.R. Mandavgade, OSD from the Office of Court Receiver, is present.**

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**CORAM: G.S. PATEL, J**  
**DATED: 10th January 2017**

**PC:-**

1. The Applicant has in its favour a Foreign Award dated 17th January 2011, one that it has been trying to enforce and execute for the last six years but only with a conspicuous lack of success, thanks only to the very many attempts being made by the Award Debtors to constantly innovate new ways to defeat the Applicant. There are several orders against the Applicant. I will consider the effect of these on the present application an appropriate time. For the present, I leave open all contentions including as to jurisdiction since the cargo in question is presently located at Magdalla Port.

2. Today, I am only concerned with ensuring the implementation of Mr. Justice S.J. Kathawalla's order dated 30th December 2016. In order to understand what requires to be done, it is necessary to set out this order:

“1. In the above Chamber Summons the Award Holder viz. Vitol S.A., made an Application before this Court on 22nd December, 2016 seeking an urgent ad interim order of injunction against the cargo of 30,000 MT of coal belonging to Bhatia Global Trading Limited at the Magdalla port discharged from the vessel MV Atlantic SB (“Cargo”). By an order dated 22nd December 2016 this Court has passed an ad interim order of injunction against the subject Cargo.

2. The Port Officer of the Magdalla Port, Capt. R.K. Raman of the Gujarat Maritime Board is today present in Court. He has informed the Court that there is only 22,917 mt. tonnes of coal in the Port premises as per the book balance. The statement is

accepted. He further states that the Magdalla port has no vacant space within its premises to store the subject Cargo and the discharge operations of other vessels calling at the Magdalla port/s have been severely affected as the jetty/port area is blocked by the subject cargo.

3. In view of the above it is necessary for the subject Cargo to be shifted on book value from the premises of the Magdalla port within ten days from the date of this order to Plot No. 48, Hissa No. 1, 2, 3, Village Gavier, Taluka – Choryasi, Surat being the plot of land of Bhatia Global Trading Limited outside the port premises (“BGTL Plot”) where the cargo would remain under the custody of this Court.

4. Bhatia Global Trading Limited is hereby directed to take necessary measures to ensure that the subject cargo is clearly demarcated, identifiable and not commingled with any other cargo on the plot. They shall also not deal with the subject Cargo in any manner whatsoever until further orders of this Court and provide the Award Holder an opportunity to take periodic inventory of the subject cargo as and when necessary.

5. It is clarified that the costs of shifting the cargo from the Magdalla port premises to the BGTL Plot will be borne at the first instance by the Award Holder which would be deemed to be Court Receivers expenses/ custodia legis of this Court and such expenses shall be reimbursed as first

priority from the sale proceeds of the cargo, upon a suitable application to the executing Court.

6. The Award holder undertakes to make an application to this Court for the sale of the cargo immediately on re-opening. All contentions of the parties are kept open.”

3. Mr. Andhyarujina for the Applicant informs me that cargo in question and which is also the subject matter of this Notice of Motion is presently still in the premises of Magdalla Port. Clause 4 of Kathawalla J’s order requires that the cargo, when shifted, must be clearly demarcated and not commingled. Kathawalla J has already said in paragraph 3 that the cargo is in custody of this Court.

4. Subject to an assessment of all other contentions, it is obviously necessary that this cargo be sold at some point. Whether this can be done under orders of this Court or requires a transmission of the decree are questions to be addressed at a later stage.

5. For the present, this cargo of coal needs to be sequestered. This is in the interest of both sides. The Court Receiver will, therefore, accompany the Applicant’s representatives to the site at Magdalla Port. The Port Authorities will act on an authenticated copy of this order. Paragraph 5 of Kathawalla J’s order will also operate, i.e., that the Applicants will initially bear the costs of shifting. They will, therefore, have to arrange for the necessary trucks or containers. The cargo is to be shifted to the site identified in paragraph 3 of the order dated 30th December 2016.

6. The Award Debtor will ensure complete cooperation and will allow access to this site. If not, the Court Receiver will take assistance of the local Police Authorities to ensure access to this site. Those police authorities will also act on an authenticated copy of this order.

7. The Court Receiver with the assistance of the Applicants make necessary arrangements to have the cargo clearly kept in such a manner that it is, to the extent possible, protected from theft and pilferage or mixed or commingled with any other item of the cargo.

8. At the option of the Plaintiffs, they may depute a team of security guards, if they so wish, or provide for some sort of a fencing or guard rail around this portion of the site. It is clarified that the site is an open plot and is not a warehouse or a shed.

9. I am particularly concerned about the fact that this cargo is coal and is not only perishable but also flammable and hazardous. The coal dust must be minimized by keeping the coal dampened. All of this makes the matter more than somewhat urgent. The Applicants will, therefore, move with utmost possible despatch and expedition.

10. Affidavit in Reply to the Notice of Motion to be filed and served on or before 20th January 2017. Affidavit in Rejoinder to be filed and served on or before 24th January 2017.

11. List the Notice of Motion for hearing and final disposal on 27th January 2017.

**(G. S. PATEL, J.)**