

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY & VICE ADMIRALTY JURISDICTION**

ADMIRALTY SUIT NO.25 OF 2014

Bharat Singh ... Plaintiffs

V/s.

M.V.Kamal XLVI & Ors. ... Defendants
WITH

ADMIRALTY SUIT NO. 64 OF 2014

Capt.Petrov Viktor & Ors ...Plaintiffs

V/s.

M.V.Kamal XLVI & Ors. ...Defendants
WITH

ADMIRALTY SUIT NO. 39 OF 2014

Iftekhar Ahmed Siddiqi & Ors. ...Plaintiffs

V/s.

M.V.Kamal XLVI & Ors. ...Defendants
WITH

ADMIRALTY SUIT NO.10 OF 2014

Capt Olexandr Sukhachov & Ors. ...Plaintiffs

V/s.

M.V Kamal XXXVI & Ors. ...Defendants
WITH

ADMIRALTY SUIT NO. 97 OF 2015

Mrs. Oksana Kolesnykov ...Plaintiffs

V/s.

M.V. Kamal XXXVI & Ors. ...Defendants
WITH

ADMIRALTY SUIT NO.11 OF 2014

Capt.Yogesh Chander Malhotra & Ors. ...Plaintiffs

V/s.

M.V.Kamal XXXV & Ors. ...Defendants
WITH

ADMIRALTY SUIT NO.87 OF 2015

Palsar Oleksander & Ors. ...Plaintiffs

V/s.

M.V.Kamal XXXV & Ors. ...Defendants
WITH

ADMIRALTY SUIT NO. 31 OF 2014

Harinder Yadav ...Plaintiffs

V/s.

M.V. Kamal XXXV & Ors. ...Defendants

WITH

ADMIRALTY SUIT NO. 40 OF 2014

Eitesh Baria & Ors. ...Plaintiffs

V/s.

M.V. Kamal XXXV & Ors. ...Defendants

WITH

ADMIRALTY SUIT NO. 59 OF 2015

Deepak Kumar Ghosh & Ors. ...Plaintiffs

V/s.

M.V. Kamal XXXV & Ors. ...Defendants

WITH

CHAMBER SUMMONS NO.628 OF 2013

IN

ADMIRALTY SUIT NO.25 OF 2014

Bharat Singh, second officer of M.V.Kamal XLVI... Plaintiffs

V/s.

M.V. Kamal XLVI & Ors.

WITH

CHAMBER SUMMONS NO.651 OF 2013

IN

ADMIRALTY SUIT NO.11 OF 2014

Capt.Yogesh Chander Malhotra & Ors. ...Plaintiffs

V/s.

M.V. Kamal XXXV & Ors. ...Defendants

WITH

CHAMBER SUMMONS NO.652 OF 2013

IN

ADMIRALTY SUIT NO.10 OF 2014

Capt. Oleksandr Sukhachov & Ors. ...Plaintiffs

V/s.

M.V.Kamal XXXVI & Ors. ...Defendants

WITH

CHAMBER SUMMONS NO.272 OF 2013

IN

ADMIRALTY SUIT NO.25 OF 2014

Bharat Singh, second officer of M.V.Kamal XLVI... Plaintiffs

V/s.

M.V. Kamal XLVI & Ors
WITH

CHAMBER SUMMONS NO. 203 OF 2015
IN

ADMIRALTY SUIT NO.11 OF 2014
Capt.Yogesh Chander Malhotra & Ors. ...Plaintiffs
V/s.

M.V. Kamal XXXV & Ors. ...Defendants
WITH

CHAMBER SUMMONS NO.271 OF 2015
IN

ADMIRALTY SUIT NO.10 OF 2014
Capt. Oleksandr Sukhachov & Ors. ...Plaintiffs
V/s.

M.V.Kamal XXXVI & Ors. ...Defendants
WITH

ARBITRATION PETITION NO. 414 OF 2014
Maritime Consulting and Finance OU ...Petitioner
Versus
Black Sea & Azov Sea Dredging Company ...Respondent

Mr. Abhishek Khare i/b M/s. Khare Legal Chambers, for the Plaintiffs.

Mr. Ajay Fernandes i/b M/s. Motiwalla & Co. for Mumbai Port Trust.

Mr. Vishal Muglikar i/b Mr. Kaushik S. Krishnaswamy for Maritime Consulting and Finance OU.

Shailesh Kumar for Black Sea & Azov Sea dredging company – owners of Defendant No.1 vessel.

Mr. Keshav Borhade for applicant in Chambers Summons Nos.203/15, 271/15 and 272/15.

Coram: S.J. Kathawalla J.
Date: 5th August, 2016

P.C.

1. Perused the praecipe dated 2nd August 2016 filed by the Advocates for the Plaintiffs. Heard the Learned Advocates for the Parties.
2. Counsel for Plaintiff states that Consent Terms were filed in the captioned proceedings on 12 April 2016 but Consent Terms could not be acted upon as notice under Rule 951 of the Bombay High Court (Original Side Rules) for inviting claims

against the vessel i.e. m.v. Kamal XXXV had not been published though Notice of Motion No. 685 of 2014 in Admiralty Suit No. 11 of 2014 for publication under Rule 951 of the Bombay High Court (Original Side) Rules was filed by the Plaintiff and the same was pending before this Court.

3. By an order dated 12 April 2016 of this Court, the Sheriff of Mumbai was directed to carry out the publication within 10 days of the order dated 12 April 2015. Pursuant to this direction, publication of the Notice was carried out by the sheriff of Mumbai on 4 May 2016 in the Free Press Journal and Nav Shakti.

4. The Consent Terms, duly executed by and on behalf of all the parties, were taken on record but were conditional to paragraphs 7 and 10 of the order dated 12 April 2016. Paragraphs 7 and 10 of the order dated 12 April 2016 are reproduced herein below:

7. In the meantime, the sale proceed of the vessels m.v. Kamal XXXV, m.v. Kamal XXXVI and m.v. Kamal XLVI are not to be disbursed to any party / claimant until the following conditions are satisfied: -

a) Upon expiry of 90 days from the date of publication of notice for inviting claims against the vessel m.v. Kamal XXXV;

b) Upon expiry of the aforesaid 90 days' period, if no other claimants come before this Court raising claims by way of suits against the sale proceeds of m.v. Kamal XXXV

10) If the conditions set-out in para 6(a) and 6(b) are satisfied, then the Prothonotary and Senior Master is forthwith directed to disburse the sale proceeds as set-out in consent terms.

5. It is pointed out by the Counsel for the parties that reference made to paragraphs 6(a) and 6 (b) in paragraphs 10 and 11 of the order dated 12 April 2016 should refer to paragraph 7(a) and 7(b) of the order dated 12 April 2016.

Accordingly it is hereby clarified that paragraphs 6 (a) and 6 (b) in paragraphs 10 and 11 of the order dated 12 April 2016 should be read to be paragraphs 7 (a) and 7 (b) in paragraphs 10 and 11 of the order dated 12th April, 2016.

6. The 90-day period from the date of publication of the Notice has expired on 1 August 2016. No caveats are pending against payment out of sale proceeds of KAMAL XXXV. However, one, Khakhra Marine Transport has come forward with its claims towards supply of necessities to KAMAL XXXV, KAMAL XXXVI and KAMLA XLVI. These claims are raised by way of three Chamber Summons, details of which are as follows:

- a. Chamber Summons No.203/15 in Admiralty Suit No. 11 of 2014
- b. Chamber Summons No.271/15 in Admiralty Suit No. 10 of 2014
- c. Chamber Summons No 272/15 in Admiralty Suit No 25 of 2014

7. Apart from the claim of Khakhra Marine Transport, there are no fresh claims filed pursuant to the Notice issued under Rule 951 of the Bombay High Court (Original Side) Rules, 1980, hence there is no impediment to the payment out of the sale proceeds as agreed amongst the parties.

8. The total principal amount of the claims of Khakhra Marine Transport is INR, 909000/- (Indian Rupees NINE LAKHS NINE THOUSAND ONLY). Without prejudice to the rights of the parties to the Consent Terms dated 12th April 2016, it is agreed amongst all the parties that, Khakhra Marine Transport be

paid INR, 909000/- (Indian Rupees NINE LAKHS NINE THOUSAND ONLY) in full and final satisfaction of their claims from the sale proceeds of KAMAL XXXV after payment under paragraphs 10 (a) to 10 (e) of the Consent Terms dated 12 April 2016 is effected. Upon payment of INR 909000/- (Indian Rupees NINE LAKHS NINE THOUSAND ONLY) to Khakhra Marine Transport, the payment will continue as per paragraph 10 (f) of the consent terms dated 12 April 2016.

9. Khakhra Marine Transport is directed to pay the poundage to the Sheriff of Mumbai as per rules and their counsel on instructions states that they have no objection to receive payment as set out hereinabove in full and final satisfaction of their claims.

10. As the conditions set out in paragraphs 7 and 10 of the order dated 12 April 2016 have been satisfied, the Consent Terms can be forthwith given effect to and acted upon.

11. The sale proceeds of the respective vessels will mean to include the principal and interest amounts. Bombay Port Trust is directed to pay poundage to the Sheriff of Mumbai as set out in order dated 12 April 2016.

12. In view of the above, the Consent Terms dated 12 April 2016 which were taken on record on 12 April 2016, are made absolute. The Prothonotary and Senior Master is hereby directed to forthwith act upon the Consent Terms. Accordingly, the Chambers Summons Nos.203/15, 271/15 and 272/15 are disposed off in the above terms.

13. All the parties, and the regulatory authorities (including RBI) are directed to expeditiously act upon an ordinary copy of this order and on a copy of the Consent Terms without any demur or delay.

14. The above Suits and Chamber Summonses are disposed off accordingly.

(S.J. KATHAWALLA, J.)