

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
ADMIRALTY SUIT NO. 1 OF 2017

Gabon Special Economic Zone Mineral Port S A ...Plaintiff

Versus

M V Dharmasthal & Ors ...Defendants

Mr Prathamesh Kamat *with Shri J J Mulgaonkar, Shri Zueb Cutlerywala and Shri Vikram Kamath, Advocates for the Plaintiff.*

Mr B Sardessai, Advocate for the Respondent nos 1 to 3.

Mr Budhaji Gawade, Advocate for the Respondent no 4.

CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ
DATED: 10th October 2017

PC:-

1. Mr Rupesh Shivlingkar, who is the sole Proprietor of the 3rd Defendant, is present in Court. His Advocate confirms that he has read and understood the proposed Consent Order, a draft of which is tendered. The following order will, by consent, dispose off the commercial Admiralty Suit in its entirety. The Order is based on agreed terms with small agreed modification.

2. Defendant no. 3 is granted four working days' time from the date of this order to secure a One Time Settlement ("OTS") from Bank of India.

3. Once such an OTS is secured, the payment of the OTS amount i.e. Rs. 3,79,00,000/- will be made from the amounts deposited by the Plaintiff in the Escrow Account maintained with Defendant No.4. Defendant No. 3 will simultaneously issue a Bill of Sale for Defendant No. 2, mv Kavita, in favour of the Plaintiff.

4. On the OTS amount being paid to Bank of India, Defendant No. 3 will obtain “no dues” and “no encumbrance” certificates from the Bank of India and deliver these immediately to the Plaintiff.

5. The Plaintiff will thereafter tender the “no dues” / “no encumbrance” certificate(s) of Bank of India to the Captain of Ports.

6. On receipt of the “no dues” / “no encumbrance” certificate(s) of Bank of India, the Captain of Ports is directed to take steps to enter the name of the Plaintiff as owner of Defendant No. 2 in the Port/Authority records/registry as expeditiously as possible. The Captain of Ports is also to release the original registration certificate and other documents pertaining to Defendant No. 2 in his/their possession and deliver these to Plaintiff.

7. Pending the above, Defendant No. 3 will deliver Defendant No. 2 vessel to the Plaintiff at Goa Ore Carriers, Rossiam, Loutolim, Goa in order to carry out the activities as stated in sub clause 3.1.9 of MOA dated 19th May 2017, and which location the Plaintiff will take possession of Defendant No. 2 and enter its crew on Defendant No. 2.

8. The Plaintiff will carry out dry docking and other works for both barges, Defendant Nos 1 and 2, as contemplated in clause 3.1.9 of Memorandum of Agreements dated 19th May 2017 at the cost of Defendant No. 3. The expenses of such dry docking will be paid from the escrow account maintained with Defendant No. 4.

9. Until compliance of clauses (3) to (8) above, Defendant No. 2 will continue to remain under arrest to the benefit of the Plaintiff. On compliance of these clauses, the order of arrest passed by this Court *vide* its orders dated 26th and 27th September 2017 against Defendant No.2 will stand vacated.

10. Upon compliance of the above with respect to Defendants Nos 1 and 2, Plaintiff and Defendant No 3 to mutually agree on the manner of disbursal of the balance amount, if any, remaining in the Escrow Account;

11. If the 3rd Defendant does not obtain an OTS within the next four working days as specified above, it is agreed that the second MOU dated 19th May 2017 in respect of *MV Kavita* will stand cancelled and rescinded. Both parties consent to this. The Order of arrest in respect of that vessel will then stand vacated. All title documents will be returned to the 3rd Defendant immediately. The Plaintiffs will be entitled to an immediate release of the entire balance amount then lying in escrow with the 4th Respondent-Syndicate Bank along with accrued interest. The 3rd Defendant will not claim any share in that amount deposited. The Plaintiff for its part will give up all claims of every nature against the 2nd

Defendant except a claim in the nature of damages for breach of contract. The Plaintiffs are at liberty to pursue such a claim if so advised and this will be decided on its merits without being influenced by any of the orders or directions passed in this matter.

12. As regards the 1st Defendant, MV *Dharmasthal*, in view of the order passed yesterday read with this order, the suit stands decreed against the 1st, 3rd and 4th Defendants in respect of MV *Dharmasthal*.

13. All concerned to act on an authenticated copy of this order.

14. Drawn up Order dispensed with. However, should the parties require a drawn up order for any reason they will be entitled to apply to the Registry for one without having to obtain a fresh order of the Court only for that purpose.

NUTAN D. SARDESSAI J.

G. S. PATEL J.