

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY & VICE ADMIRALTY JURISDICTION
NOTICE OF MOTION NO. 577 OF 2017
IN
ADMIRALTY SUIT NO.41 OF 2015

In the matter between:

DVB Group Merchant Bank (Asia) Ltd.	...Plaintiff
V/s	
m.v. "Malaviya Twenty Three"	
IMO number: 9299082 & Ors.	...Defendants
And	
Axis Bank & Anr.	Respondents

Mr. Rahul Narichania, Senior Advocate with Mr. Shardul Thacker, Ms. Pooja Kapadia and Ms. Pratiksha Avhad i/b. M/s. Mulla & Mulla & Craigie Blunt & Caroe for Plaintiff.

Mr. Shiv Vats representative of Defendant No.6 present.

Mr. Farhan Dubash and Ms. Ishita Advani i/b M/s Desai & Dewanji for Respondent No. 1

Mr. Sagar Divekar for Respondent No.2.

CORAM : S. J. KATHAWALLA, J.
DATED : 23rd March 2017

P.C.:

1. Mr. Narichania Learned Senior Counsel appearing for the Plaintiff states that the present Notice of Motion is inter alia taken out for verification of crew claims and; expenses purportedly incurred by the Defendant No.6 from the sum of USD 736,413. Mr. Narichania states that the quantum of claims of the crew are inflated and questionable. He therefore seeks verification of the same including orders with regard to verification of the expenses purportedly incurred in the sum of USD 736,413.

2. Mr. Dubash Learned Counsel appearing for Respondent No.1 on instructions states that his clients are agreeable to prayer (a) and that they have no objection if the said prayer is granted to the Plaintiff so long as Respondent No.1 is not liable to pay any fees, costs or expenses.

3. Mr. Divekar Learned Counsel appearing for Respondent No. 2 on instructions states that his clients are agreeable to comply with the reliefs claimed in prayer (b) i.e. to verify the payments made to the crew serving on board 6 Defendant vessels. The cut of date for such exercise would be upto 31st December 2016. Respondent No.2 shall also verify the amounts disbursed towards crew wages (by Defendant No.6) from the sum of USD 736,413 received from Petrobras-. He states that Respondent No.2 will not raise any bill for professional fees in relation to the said exercise.

4. As far as prayer (c) of the present Notice of Motion is concerned, Mr. Vats of Defendant No.6 undertakes that he will provide documentary proof of payment for utilization of USD 736,413 to the Plaintiff and Respondent No.2 within 2 days from the date of this Order.

5. Mr. Narichania states that Mr. Shetty, Advocate for the crew members has supplied a bulky Compilation of Documents only this morning in support of the alleged claim made by the crew for outstanding wages amounting to

Rs.3,25,02,596 and the Plaintiff would have to peruse the documents carefully to ascertain whether all the relevant documents have been provided by Mr. Shetty. In case any other documents are required, the crew will be required to supply the documents to the Plaintiff's Advocates at the very earliest and in any event within 2 days of such request being made. It is made clear that the documents relating to the crew claims should include contracts of employment, CDC certificates, proof of signing on and signing off and such other material and relevant documents to enable the Plaintiff's representative/s and a Chartered Accountant to verify the correctness and genuineness of the crew claims and the quantum thereof. Defendant No. 6 is also directed to within 2 days to supply to the Plaintiffs all relevant documents referred to above in relation to the crew wages and; to assist the Plaintiff in verification of the articles of the crew from the Fleet and Personnel Department of Defendant No.6 and also any other relevant Government Department.

6. The Plaintiff is also at liberty to contact the crew members who served on board the Defendant vessels in order to verify their claims.

7. In the circumstances aforesaid, the Notice of Motion is made absolute in terms of prayer clause (a) subject to no costs, charges, expenses being visited upon Respondent No. 1. Respondent No.2 shall act accordingly.

8. The Notice of Motion is also made absolute in terms of prayer clause (b) with a cut of date of 31st December, 2016. Respondent No.2 will not raise a bill for professional fees for carrying out this exercise.

9. It is open to the Plaintiffs to file a separate Notice of Motion for further reliefs in relation to the verification of the crew claims once they have had an opportunity to verify all the document supplied by the crew members to the Plaintiffs and if the need so arises.

10. The Notice of Motion is therefore made absolute in terms aforesaid.

(S. J. KATHAWALLA, J.)