

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

**NOTICE OF MOTION (L) NO.697 OF 2017
IN
COMMERCIAL SUIT NO.792 OF 2017**

National Bank of Greece SA

....Applicant/Plaintiff

Vs.

m.v. Theoxenia (IMO No.9142980)

....Defendant

Mr. Rahul Narichania, Senior Advocate a/w Mr. Anuj Dhowan and Ms. Mitali Chakravarty i/b Bose and Mitra & Co. for plaintiff/applicant. Mr. Vikrant D. Shetty for Purchaser (Aries Shipping & Trading Co. Liberia). Ms. Shweta Sadanandan i/b Ashwin Shanker for plaintiff in Admiralty Suit No. 29 of 2017.

Mr. Satish D. Chitgopikar Deputy Sheriff of Mumbai present.

CORAM : K.R. SHRIRAM, J.

DATE : 22nd JANUARY, 2018

PC.:

1 Perused the report of the Sheriff. Heard all parties. M/s. Aries Shipping & Trading Co have paid the balance purchase price of the vessel MV THEOXENIA for a total sum of USD 3,100,000/- (United States Dollars Three Million, One Hundred and Thousand only) to the Sheriff's office in pursuance of the order passed by this Court on 5th January 2018.

2 The auction sale of the Vessel MV THEOXENIA is confirmed in favour of M/s. Aries Shipping & Trading Co, having their office at 80, Broad Street, Monrovia, Liberia.

3 The Sheriff of Mumbai is directed to inform the Port, Customs and other concerned authorities about the auction sale of the Vessel and

confirmation thereof by this Court. The concerned authorities, including the Port of Kakinada, Customs Authorities and the Master of the Vessel MV THEOXENIA are directed to handover the possession of the vessel to the purchaser.

4 The Prothonotary and Senior Master, High Court, Bombay, shall forthwith and in any event within 72 hours, issue a Bill of Sale of the vessel MV THEOXENIA in favour of M/s. Aries Shipping & Trading Co, specifically for “Scrapping”.

5 In the view of the sale of the Vessel, the existing crew on board the Vessel MV THEOXENIA will have to handover the charge of the Vessel to the M/s. Aries Shipping & Trading Co.

6 The Sheriff of Mumbai is permitted to keep aside an aggregate amount of USD 5,00,000/- from the sale proceeds presently in his account to make payment of/towards:

- a) Crew wages in respect of the claims received from the date of the arrest, 23rd June 2017 till the date of disembarkation to be calculated by Sheriff;
- b) an amount of Rs.83,01,038/- towards Sheriff's expenses, towards valuation, advertisement costs and maintenance of the Vessel.
- c) crew repatriation and associated costs.

The amount mentioned in clause (b) herein shall be immediately refunded to plaintiff/applicant by the Sheriff of Mumbai. If the

amount of USD 5,00,000/- is not sufficient to pay the amounts under paragraphs 6 (a) and 6 (c), the Sheriff of Mumbai, can request the Prothonotary and Senior Master, subject to orders of this Court, to make payments towards the heads under paragraph 6 (a) and 6 (c), from the sale proceeds.

7 The claims, if any, of the crew on board the Vessel MV THEOXENIA, over and above such claim already submitted, for any period prior to the arrest of the Defendant Vessel, may be filed before this Court, and this Court shall pass appropriate orders for disbursement of such claims, subject to hearing all the parties, from out of the sale proceeds held by the Prothonotary and Senior Master of this Court.

8 After deducting the amount of USD 5,00,000/- as stated in paragraph 6 above, the Sheriff of Mumbai may thereafter deposit the balance sale proceeds of the Vessel MV THEOXENIA with the Prothonotary and Senior Master of the High Court, Bombay in the USD account of Prothonotary and Senior Master. The said balance of the sale proceeds is directed to be deposited in an interest bearing account till such time as the Admiralty Suit(s) against MV THEOXENIA are disposed and money directed to be paid out.

9 As all members of the present crew on board defendant Vessel MV THEOXENIA, I am informed, are foreign nationals, the Sheriff's office

shall also organize the repatriation of the crew presently on board the Vessel MV THEOXENIA. For the purpose of shifting the vessel and crew transfer and repatriation, as a matter of convenience, the Sheriff may engage the existing Agents, M/s. Infinity Shipping as appointed by the order dated 8th November 2018. The cost of M/s. Infinity Shipping for crew repatriation expenses shall be met by the Sheriff initially from the amount of USD 5,00,000/- retained by him as specified above. For facilitating such transfer, the Sheriff's office may seek such assistance from the local Police including the marine Police, Kakinada, as may be necessary.

10 It is clarified that the Port, Customs and other authorities at Kakinada shall not raise any issue or prevent the Vessel from sailing out by the new Owners on account of any outstanding port dues, and may file a claim for the same against the sale proceeds lying in this Court.

11 It is clarified that any charges or dues concerning the Vessel shall be borne by the auction purchaser - M/s. Aries Shipping & Trading Co Liberia only from the date of the Bill of Sale.

12 It is clarified that all the arrest orders in respect of the vessel MV THEOXENIA by the High Court of Bombay in all Admiralty suits, shall stand vacated as of this day.

13 The Notice of Motion and Sheriff's Report No.40 of 2017, Sheriff's Report No.1 of 2018 and Sheriff's Report No.8 of 2018 are

disposed accordingly. Notwithstanding disposal of the notice of motion, applicant to remove all office objections and get the notice of motion numbered within two weeks from today.

14 Prothonotary and Senior Master shall forward a copy of Bill of Sale together with a copy of this order, to the Panama register of shipping at the following address by courier and the courier charges shall be utilised from the sale proceeds.

*Maritime Authority of Panama
Pan Canal Plaza Building (Albrook)
Omar Torrijos Hervera Avenue, Albrook,
Alcon Borough, Panama, Republic of Panama
General Directorate of Merchant Marine
Ph. No. (507) 501 5356 – itc@segumar.com
(507) 501 4241 – statutes@segumar.com*

15 All parties to act on the ordinary copy of this order duly authenticated by the Associate of this Court.

(K.R. SHRIRAM, J.)