IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
NOTICE OF MOTION NO.432 OF 2017
IN
ADMIRALTY SUIT NO. 41 OF 2015

DVB Group Merchant Bank (Asia) Limited … Plaintiff

Versus

M.V. Malaviya Twenty Three
(IMO No. 9299082) and Ors. … Defendants

Mr. Rahul Narichania, Sr. Adv. a/w. Ms. Pooja Kapadia and Ms. Pratiksha Avhad i/b. Mulla and Mulla and Craigie Blunt and Caroe for the Plaintiff.
Mr. Arnab Ghosh i/b. Manoj Khathri for Defendant No.6

CORAM: S.J. KATHAWALLA, J.

DATED: 8th MARCH, 2017

P.C.:

1. Mr. Ghosh appearing for Defendant No.6 states that the prayer clauses (a) and (b) are in relation to repatriation of two seamen on board the Defendant No.9 Vessel (Malaviya 9). He further states that, he has been informed by the Advocate appearing for the Plaintiff that pursuant to the filing of the said Notice of Motion, the Plaintiff has already arranged for repatriation of the said seamen. In view thereof, Prayers (a) and (b) are infructuous. In view of the payments expended by the Plaintiff for urgent repatriation of the seamen the said costs incurred by the Plaintiff shall be treated as Sheriff's costs and expenses having a first charge on the sale proceeds.

2. In relation to prayer clauses (c), (d) and (e) of the said Notice of Motion, Mr. Ghosh submits that certain outstanding payments are due and payable to three communication providers for services rendered on Defendant Nos.1 to 5 vessels and the said service providers have claims amounting to USD 18,933.51. Mr. Ghosh submitted that the Plaintiff may be directed to clear the amounts payable to the communication service providers for their service rendered on Defendant Nos.1 to 5 vessels from the period starting from the respective date of hand over of the said vessels, till date.

3. In the event there are claims of the communication service providers the same should be lodged against the sale proceeds of the vessel and the same will be determined in accordance with law. The Plaintiff cannot be expected to make payment to them.

4. Mr. Ghosh further submits that the Plaintiff is liable to pay the applicable VAT on the sale price of the Defendant Nos. 1 to 5 vessels. Mr. Narichania submits that this is not a regular commercial transaction of sale between two commercial entities. The vessels have been sold pursuant to a Court auction, hence no VAT is payable. Mr. Narichania further submits that the Defendant No.6 has not produced any document from the tax authorities evidencing any claim for VAT to be payable by the Plaintiff.

5. In relation to the VAT issue if the authorities raise any valid and tenable claim for the VAT in relation to the sale of the Defendant Nos.1 to 5 vessels by auction conducted by this Court, the Plaintiff is free to challenge the same in accordance with law but will be liable to pay VAT in the event the Plaintiff is eventually held liable to make this payment.

6. In view of this the above Notice of Motion is disposed of with no orders as to costs.

(S.J.KATHAWALLA, J.)