

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

**JUDGE'S ORDER NO.56 OF 2018
IN
COMMERCIAL ADMIRALTY SUIT (L) NO.11 OF 2018**

M/s.Darya Shipping Private Limited)....Plaintiff
V/s.

LPG Maharshi Bhardwaj (IMO No.9007570) & Ors.)Defendants

Mr.Abhishek Khare a/w Ms.B.Bhatia i/by Khare Legal Chambers for plaintiff.

[Mr.Rajesh Deshwal-Chairman of plaintiff present in Court].

Mr.V.K.Ramabhadran, Senior Advocate a/w Mr.Brendon Pereira, Mr.Aman Rungta i/by Crawford Bayley and Co. for defendant no.3 (Resolution of Professional for defendant no.2).

[Mr. Sanjeev Maheshwari, defendant no.3 present in Court].

CORAM : K.R.SHRIRAM,J

DATE : 19.3.2018

P.C.:-

1 Mentioned. Not on board. Papers produced.

2 At the outset, Mr.Khare seeks leave to amend prayer clause-(f) to include prayer clauses-(d) and (e) as well. Leave granted. Amendment to be carried out forthwith. Re-verification dispensed with.

3 Mr.Ramabhadran, on instructions from defendant no.3, the Insolvency Resolution Professional appointed by the NCLT pursuant to an order dated 14.6.2017, states that the Court may grant the order of

arrest subject to keeping open the rights of defendant no.3 to allege that the Suit itself could not have been filed pursuant to provisions of Insolvency and Bankruptcy Code, 2016 let alone making an arrest application. Mr.Ramabhadran states that there are such similarly situated matters listed for hearing on similar issues on 11.4.2018. Mr.Ramabhadran requests that this Suit also be listed on 11.4.2018 along with other Suits.

4 Mr.Khare appearing for plaintiff makes a solemn statement that there is no caveat against arrest of the 1st defendant vessel.

5 In view of this statement made by Mr.Khare and in view of the statement made by Mr.Ramabhadran, Judges Order is signed separately.

6 Plaintiff is at liberty to forward a copy of the communication from the Sheriff of Mumbai forwarding this order by fax/email/hand delivery/RPAD to Port and Customs Authorities.

7 The undertaking of plaintiff's advocates that the warrant of arrest will be served upon the Port and Customs Authorities within one week from today is accepted.

8 All to act on a copy of this order duly authenticated as true copy by the Associate of this Court.

9 After the above order was dictated, Mr.Khare submitted that plaintiff took over the management of defendant no.1 vessel and five other vessels, all six owned by defendant no.2 because the agreement was with defendant no.3-Insolvency Resolution Professional representing the committee of creditors formed by the banks/financial institutions, who are secured creditors, to whom the six vessels are mortgaged and to protect their interests. Mr.Khare states that ever since the agreement was signed and plaintiff took over management of the vessel, the IRP or the committee of creditors have not paid a penny and plaintiff is out of pocket in the sum of about Rs.6,61,00,000/- for the 1st defendant vessel and another Rs.15 crores with regard to other five vessels under the same ownership of defendant no.2. For management of those five vessels, defendant no.3 has signed separate agreement with plaintiff. Mr.Khare also states that plaintiff cannot be expected to fund the management of the six vessels and protect the rights of the mortgagee banks and the secured creditors. Mr.Khare states that even the wages of the crew on the six vessels have not been paid and due to non availability of even basic necessities like fresh water on all the vessels, some of the crew

members have also been now afflicted with some communicable skin diseases like scabies and chicken pox. Mr.Khare states there is no medical treatment also made available. He also adds the crew want to leave due to non-payment of wages, lack of basic amenities and fear of spread of communicable diseases. He fears a rebellion. Mr.Khare further states that all the six vessels are LPG carriers and time bombs. Any deficiency in safety procedure or requirements an explosion may happen putting life and property to risk including marine life. Mr.Khare is seeking ad-interim relief in terms of prayer clauses-(d) & (e) to direct defendant no.3-IRP to place sufficient amount of funds on account with the plaintiff so that provisions can be supplied, crew can be given medical assistance, bunkers, diesel for generators and fresh water also could be supplied. Mr.Khare states that relying on representation made by IRP as provided in the ship management agreement, plaintiff has expended sums by providing for necessities on board the all the six ships. Mr.Khare submits that defendant no.3 is the Chairman of committee of creditors with whom the management of the defendant no.2-company is vested under the provisions of Insolvency and Bankruptcy Code.

10 Mr.Ramabhadran states that defendant no.3 as IRP has no independent source of funds and is dependent on the committee of

creditors (COC) to fund him. Counsel states the committee of creditors have not even paid IRP's (defendant no.3) fees. Mr.Ramabhadran states that defendant no.3 as IRP is not personally liable but is only representative of the creditors. Mr.Ramabhadran further placed on record relevant extract of the minutes of the meeting held on 5.2.2018 in which it is recorded that defendant no.3 as IRP had placed a resolution for passing by creditors whereby all the secured creditors having first charge on the vessels contribute towards meeting the cost of respective vessel expenses to be paid to Darya Shipping Private Limited (plaintiff) for the period from the date of take over of vessels till 31.1.2018 of Rs.9,02,21,000/- on the basis of share in the security of vessels. Mr.Ramabhadran points out that the said agenda was not approved by more than 75% by the voting share of the financial creditors and hence resolution has not been approved by the COC. Mr.Ramabhadran further states that the said agenda item was placed during the meeting of committee of creditors held on 20.2.2018, and again on 26.2.2018 and again on 6.3.2018 and in all the meetings, the item was not approved by more than 75% of the voting share of the financial creditors. He says the defendant no.3 as IRP is helpless and unless the mortgagees-creditors pay, IRP can do nothing.

11 In the circumstances, though the creditors are not present before this court, I would view defendant no.3, IRP, as representative of and representing all the creditors. Therefore, all the secured creditors having a first charge on each of the six vessels are directed to contribute together a sum of Rs.12 crores towards meeting the cost of each of the respective six vessels' expenses by depositing with the Prothonotary and Senior Master, High Court, Bombay, the same on or before 23rd March 2018. All the secured creditors having first charge on each of the vessel shall together contribute towards meeting the cost of each of the six vessels as an interim pro-tem arrangement. The lead bank/creditor will be responsible to deposit and may recover or seek contribution from their creditors.

12 Defendant no.3 is directed to forward a copy of this order to the committee of creditors forthwith.

13 Mr.Khare further states that if IRP or committee of creditors want to inspect the documents to support plaintiff's claim for expenses, plaintiff will be happy to provide all the details and to also give inspection. He adds, in any event IRP (defendant no.3) has approved Rs.9,02,21,000/- as noted in the minutes of meetings of COC.

14 As this is a rather unusual situation, Director General of Shipping is directed to call upon all the secured creditors who are part of the committee of creditors for a meeting and direct them to take over all the vessels so that plaintiff does not continue to suffer like the other plaintiffs and crew members' wages are also paid and bunkers, Diesel and provisions including fresh water are supplied. Defendant no.3, IRP shall provide a list of all the members of the committee of creditors to Director General of Shipping by 4.00 P.M. on 20th March, 2018. Director General of Shipping is requested to call for a meeting at the earliest, preferably, during the course of this week itself.

15 Mr.Khare states on instructions from Mr.Rajesh Deshwal-Chairman of plaintiff, that in a separate writ petition filed, they will not press for any relief so far as this defendant no.1 vessel is concerned. Statement accepted.

16 Plaintiff is also at liberty to forward a copy of this order to the Director General of Shipping.

17 If the amount as directed above, is not deposited by 23rd March, 2018, on the next date i.e., 26th March, 2018 the senior most representative, not below the rank of General Manager, of each of the

banks/financial institutions that form the committee of creditors' shall remain present in Court, failing which, this Court will be constrained to pass such orders as necessary to ensure their presence.

Stand over to 26th March, 2018 for directions.

(K.R.SHRIRAM,J)