

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

**NOTICE OF MOTION NO.21 OF 2017
IN
COMMERCIAL SUIT NO.63 OF 2016**

Western India Shipyard LimitedApplicant/Plaintiff

Vs.

m.v. Qing and Ors.Defendants

**WITH
CHAMBER SUMMONS NO.88 OF 2017
WITH
NOTICE OF MOTION (L) NO.302 OF 2017
WITH
NOTICE OF MOTION NO.430 OF 2017
WITH
NOTICE OF MOTION NO.494 OF 2017
WITH
NOTICE OF MOTION NO.683 OF 2017
WITH
NOTICE OF MOTION NO.5 OF 2018
IN
COMMERCIAL SUIT NO.63 OF 2016**

Mr. Vikramsingh Yadav for Insolvency Resolution Profession appointed for plaintiff.

Mr. Rahul Narichania, senior advocate a/w. Ms. Pratiksha Avhad i/b. M/s. Mulla and Mulla and CBC for defendant nos.1 and 2.

Mr. V.K. Ramabhadran, senior advocate a/w. Mr. Aman Rungta i/b. Crawford Bayley and Co. for defendant no.3.

Mr. A.M. Vernekar for defendant no.4.

Mr. Prashant Pratap, senior advocate a/w. Mr. Nishaan Shetty and Mr. Amanpreet Singh i/b. Mr. Harsh Pratap/Mr. Abhimanyu Singh for M/s. Balaji Fuels (the successful bidder/purchaser).

Mr. Rohan Agarwal i/b. MDP and Partners for Star Matrix Limited.

Mr. S.D. Chitgopikar, Deputy Sheriff of Mumbai present.

CORAM : K.R.SHRIRAM, J.

DATE : 31st JANUARY, 2018

PC.:

NOTICE OF MOTION NO.21 OF 2017

1 By an order dated 10th January, 2018, this Court was pleased to accept the offer of M/s. Balaji Fuels for purchase of 1st defendant vessel – m.v. Qing for Rs.18,50,00,000/- (Rupees Eighteen Crores Fifty Lakhs only). Before the auction, M/s. Balaji Fuels had paid a sum of Rs.1 Crore as Earnest Money Deposit. The Deputy Sheriff has filed a report stating that the balance amount of Rs.17,50,00,000/- was paid by M/s. Balaji Fuels on 25th January, 2018 and the amount is credited to the account of the Sheriff of Mumbai.

2 The notice of motion is listed today for confirmation of sale. The Deputy Sheriff has also placed Sheriff's Report No.9 of 2018. In the report, Deputy Sheriff has confirmed having received the entire consideration for defendant no.1 vessel from M/s. Balaji Fuels and also has mentioned about the various amounts deposited by plaintiff and defendant no.2 from time to time, the expenses incurred by the Sheriff and how those expenses were incurred.

3 Having heard the counsel, the Sheriff's Report is allowed in terms of prayer clauses – (a) to (g), which read as under :

(a) that the auction sale of the vessel M.V. Qing may be confirmed in favour of the auction purchaser M/s. Balaji Fuels, as they have paid the entire purchase price of Rs.18,50,00,000/- (Rupees Eighteen Crores Fifty Lakhs only) in this office for the purchase of the said vessel which

is at present lying port and harbour of Mormugao, Goa;

(b) that the Prothonotary and Senior Master may be directed to issue Bill of Sale in favour of M/s. Balaji Fuels in respect of the vessel M.V. Qing which is lying at the port and harbour of Mormugao, Goa by indicating expressly in the bill of sale that the vessel M.V. Qing is being sold only for scrapping and not for trading as per the Order dated 10th January, 2018 passed by Your Lordship;

(c) that the Sheriff of Mumbai may be directed to inform the port, customs and other concerned authorities of the port of Mormugao, Goa in respect of the auction sale of the vessel M.V. Qing and subsequent confirmation of the same by the Hon'ble High Court, Bombay in favour of M/s. Balaji Fuels, with a request to provide co-operation to the auction purchaser to take the possession of the said vessel;

(d) that the Sheriff of Mumbai may be directed to make payment of Rs.7,10,150/- to Defendant No.3, Rs.2,40,881/- each to Plaintiff and Defendant No.2 from the sale proceeds of Rs.18,50,00,000/- received by this office in their bank account by way of NEFT;

(e) that the Sheriff of Mumbai may be directed to make payment of Rs.16,216/- each to Plaintiff and Defendant No.2 towards balance deposit amount which they had paid in this office in their bank account by way of NEFT;

(f) that the Sheriff of Mumbai may be directed to handover the possession of the above vessel M.V. Qing to the authorized representative of the auction purchaser M/s. Balaji Fuels, after receiving the Bill of Sale in respect of the said vessel from the Prothonotary and Senior Master, High Court, Bombay;

(g) that the Sheriff of Mumbai may be directed to deposit the balance purchase price of the above vessel Rs.18,38,08,088/- (i.e., Rs.18,50,00,000/- (-) Rs.7,10,150 (-) Rs.2,40,881/- (-) Rs.2,40,881/-) and balance amount from the breaking of the Fixed Deposits (forfeited amount) amounting to Rs.2,52,03,663/-, in the office of the Prothonotary and Senior Master, High Court, Bombay, after deducting the above expenses by Cheque with a request to invest the same in Fixed Deposit.”

4 So far as prayer clause – (d) is concerned, the amount of Rs.7,10,150/- to be paid over to Solicitors of defendant no.3 – Crawford Bayley and Co. and the amounts payable to defendant no.2 to be paid over to their Solicitors - Mulla and Mulla and CBC.

5 So far as prayer clause – (h) is concerned, it is clarified that the Sheriff's poundage will be 1% of the amount plaintiff would recover in the suit and not 1% of the sale proceeds in respect of auction of 1st defendant vessel.

6 The Prothonotary and Senior Master to sign the bill of sale expressly stating therein in bold fonts that the sale is only for scrapping/breaking. The bill of sale to be signed and copy sent to Deputy Sheriff of Mumbai as soon as possible and in any event within three days from today.

7 Mr. Narichania states that defendant no.2 had placed booms around the vessel and also was rendering OSR services. Mr. Vernekar states that the booms placed by defendant no.2 were found to be ineffective and therefore, defendant no.4, i.e., Mormugao Port Trust, had placed their booms around the vessel to prevent/contain any oil pollution.

 Ofcourse, Mr. Narichania does not agree with what Mr. Vernekar states to the extent of ineffectiveness of the booms placed by defendant no.2 but does not dispute that defendant no.4 also had placed

booms.

8 Mr. Pratap appearing for M/s. Balaji Fuels states that within a period of one week from today, M/s. Balaji Fuels will either come to an arrangement with Mormugao Port Trust, defendant no.4, for placing the booms/OSR or make alternative arrangements. M/s. Balaji Fuels will also be responsible for all charges, dues, tariffs, port dues, taxes, etc. as would be liable to be paid in law from the date M/s. Balaji Fuels takes possession of the vessel and in any event, within 24 hours of the Deputy Sheriff communicating to M/s. Balaji Fuels that the vessel is ready to be handed over. The Sheriff of Mumbai shall ensure that possession is handed over or this communication is sent within 24 hours of receiving the bill of sale either from the office of the Prothonotary and Senior Master or from M/s. Balaji Fuels.

9 Mr. Narichania states that whatever original documents are available with defendant no.2 apart from the documents which may be found on board the 1st defendant vessel will be handed over to the advocates for M/s. Balaji Fuels/their nominee by 12 noon on 3rd February, 2018.

10 Defendant no.2 shall be entitled to withdraw its crew which is deployed on the Jetty by giving atleast three working days notice to M/s. Balaji Fuels. It is clarified that from the date of taking possession by M/s.

Balaji Fuels or from the expiry of the notice period as mentioned in paragraph 8 above, the vessel will be at the sole risk, responsibility and liability of M/s. Balaji Fuels.

11 The 90 days period prescribed in paragraph 5 of order dated 10th January, 2018 is clarified to the extent that the time to refloat the vessel to take away outside the Goa Port limits is granted upto and including 25th April, 2018.

12 Mr. Vernekar prays that the Port dues to be paid immediately out of the sale proceeds. The Port's claim is yet to be adjudicated and decreed by a Court of competent jurisdiction. Hence Mr. Vernekar's prayer cannot be granted.

13 Notice of motion and Sheriff's Report No.9 of 2018 accordingly stand disposed.

CHAMBER SUMMONS NO.88 OF 2017

None for applicant.

Therefore, chamber summons stands dismissed.

NOTICE OF MOTION (L) NO.302 OF 2017

None for applicant.

Therefore, notice of motion stands dismissed and in any event, is infructuous.

NOTICE OF MOTION NO.430 OF 2017
WITH
NOTICE OF MOTION NO.494 OF 2017
WITH
NOTICE OF MOTION NO.683 OF 2017
WITH
NOTICE OF MOTION NO.5 OF 2018

In view of the above order passed in notice of motion no.21 of 2017, nothing survives in these notices of motion.

Therefore, notices of motion accordingly stand disposed.

(K.R. SHRIRAM, J.)