

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION**

NOTICE OF MOTION NO.1036 OF 2018

IN

ADMIRALTY SUIT NO.2 OF 2018

NKD Maritime Limited

....Applicant

IN THE MATTER BETWEEN :

Fleet Ship Management INC

....Plaintiff

Vs.

LPG Maharshi Shubhatreya and Ors.

....Defendants

Mr. Makarand V. Raut for applicant.

Mr. Arjun Mitta a/w. Mr. Sanjeev Sambasivan i/b. Bose and Mitra and Co. for original plaintiff.

Mr. Brendon Pereira a/w. Mr. Aman Rungta i/b. Crawford Bayley and Co. for defendant nos.1 and 2 (Resolution Professional of Varun Shipping Limited).

Ms. Shweta Sadanandan i/b. Mr. Ashwin Shanker for intervener/mortgagee banks.

Mr. Hardaus Pauri a/w. Ms. Sonakshi Sahay i/b. Mulla and Mulla and CBC for respondent no.1.

Mr. Jitendra B. Mishra for respondent no.3 (Customs, Kandla).

Mr. Shyam Kapadia a/w. Mr. Avinav Mukherjee i/b. Mustafa Motiwalla for respondent no.5.

CORAM : K.R.SHRIRAM, J.

DATE : 18th JUNE, 2018

P.C.:

1 At the outset, Mr. Raut, counsel for applicant tenders draft amendment, which is taken on record and marked "X" for identification. Leave to amend granted. Amendment to be carried out forthwith. Re-verification dispensed with.

2 The counsel for respondent no.1 states that his instructing advocates will file Vakalatnama within one week from today. Undertaking

accepted.

3 Mr. Mishra undertakes to file Vakalatnama on behalf of respondent no.3 within one week from today. Undertaking accepted.

4 In view of the amendment to the application, Mr. Raut seeks leave for deletion of respondent nos.2 and 4. Leave granted. Amendment to be carried out forthwith.

5 Mr. Pauri, counsel for respondent no.1 and Mr. Mishra, counsel for respondent no.3 state that for the claim that respondent nos.1 and 3 have against the vessel upto the date of confirmation of sale by this Court, respondent nos.1 and 3 will lodge their respective claims with Official Liquidator/IRP.

6 Mr. Kapadia, counsel for respondent no.5 states that respondent no.5 will lodge its claim with Official Liquidator/IRP for its dues but at the same time, as stated in its affidavit in reply filed through one Yusuf Jagmag affirmed on 15th June 2018, since respondent nos.1 and 3 are going to lodge their claim with Official Liquidator and in view of the fact that company, on whose behalf of respondent no.5 had applied for inward entry and given an undertaking, is in the process of being wound up, respondent no.5 should be discharged of its liabilities to respondent nos.1 and 3.

7 Since winding up proceeding against the owner of the vessel (s) is pending before NCLT and since Port and Customs Authorities will be

lodging their claim with Official Liquidator/IRP, in my view, it will cause great prejudice to respondent no.5, who apart from having to wait in the queue to recover its dues from Official Liquidator/IRP, is also saddled with liabilities to Port and Customs Authorities on behalf of the owner of the vessel (s).

8 Therefore, respondent no.5 may lodge its affidavit of proof of debt with Official Liquidator. But so far as undertakings given to Port and Customs Authorities, i.e., respondent nos.1 and 3, they are relieved of those undertakings. It is however, clarified that Port and Customs Authorities, for their dues from the date of confirmation of sale, will have to look to the present owner of the vessel, viz., applicant for payments, as advised in accordance with law.

9 Once the affidavit of proof of debt is received from respondent nos.1,3 and 5, who after the amendment to the application, are the only respondents left in this application, and the counsel state that the affidavit of proof of debt will be filed within six weeks from today, Official Liquidator to consider and dispose the same in accordance with law.

10 In view of the above, respondent nos.1,3 and 5, who are the only surviving respondents, to issue such documents as necessary, subject to receiving payments, if any for the period post confirmation of sale, from the owners of the vessel that is sold for scrapping.

11 Notice of motion is allowed and according disposed.

(K.R. SHRIRAM, J.)