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

ADMIRALTY SUIT NO. 2 OF 2012
WITH
JUDGES ORDER NO. 64 OF 2014
WITH
NOTICE OF MOTION (LODG.) NO. 1767 OF 2018
IN
ADMIRALTY SUIT NO. 2 OF 2012

HSH NORDBANK AG .. Plaintiff
Vs.
M.V. DAINTHE & Anr. .. Defendants

Mr.Rahul Narichania, senior advocate a/w. Ms.Komal Joshi, Mr.Harsh Buch and Ms.Aditi Bajaj i/b ALMT Legal for plaintiff.

Mr.Bimal Rajasekhar for defendant No.2.
Mr.Ralf Schmidt, General Manager/Constituted Attorney of plaintiff present.
Mr.Christian Reinert, German Attorney of plaintiff present in Court.
Mr.Mahmoud Pishbin, authorized representative of defendant No.2 present in Court.

CORAM : K.R.SHRIRAM, J.

DATE : 14TH AUGUST 2018

P.C.

1 Parties have resolved their dispute and defendant No.2 has submitted to a decree as per the draft Minutes of Order which reads as under :-

"DRAFT MINUTES OF THE ORDER

It is submitted by the Parties that:

A. On 27 June 2003, the Islamic Republic Iranian Shipping Lines ("Defendant No. 2") entered into a shipbuilding contract dated 27 June 2003 (the "Shipbuilding Contract") with a shipyard in China for the building, construction, launching and equipping of the vessel MV "Golafruz" (ex-names MV "Dianthe", MV "Iran Bam" and MV "Horsham") bearing IMO number 9323833 (the "Vessel").

B. During the construction of the Vessel, in / around December 2004, Defendant No. 2 transferred its rights and liabilities under the Shipbuilding Contract to one Horsham Shipping Company Limited, a body corporate then registered in the Isle of Man ("Horsham") by way of a novation agreement dated 22 December 2004 (the "Novation Agreement").

C. On 16 March 2005, the Plaintiff (via its Singapore Branch) and Horsham entered into a secured loan agreement pursuant to which the Plaintiff agreed to make available to Horsham a secured floating interest rate pre-delivery term loan of up to USD 14,950,000.00 and a secured floating interest rate post-delivery term loan of up to USD 29,900,000.00 in respect of the Vessel (the "Loan Agreement"), which Loan Agreement was subsequently supplemented and amended by a First Supplemental Agreement dated 06 June 2005 and a Second Supplemental Agreement dated on or around July 2009 (collectively the "Loan Agreements").

D. The Loan Agreements were secured by the following documents (collectively the "Security Documents"):

(i) Deed of Guarantee and Indemnity provided by Defendant No. 2 to the Plaintiff dated 16 March 2005 pursuant to which Defendant No. 2 undertook to act as primary obligor and guarantor of any and all obligations of Horsham under the Loan Agreements (the "Guarantee");

(ii) Deposit Agreement and Pledge of Accounts between the Plaintiff and Horsham dated 06 June 2005;

(iii) First priority Maltese mortgage "A" for the Vessel in favour of the Plaintiff dated 18 August 2006 (the "Maltese Mortgage");

(iv) Deed of Covenants for the Vessel between Horsham and the Plaintiff dated 18 August 2006;

(v) Assignment of Earnings and Charters between Horsham and the Plaintiff dated 18 August 2006;

(vi) *Assignment of Insurances and Requisition Compensation between Horsham and the Plaintiff dated 18 August 2006;*

(vii) *Tripartite Agreement between Defendant No. 2, Horsham and the Plaintiff dated 18 August 2006; and*

(viii) *Pledge Agreement between Horsham and the Plaintiff dated 28 May 2009.*

E. *Horsham made a number of utilisation requests under the Loan Agreements and the Plaintiff remitted the sums requested as follows: An amount of USD 14,950,000.00 was used to cover the outstanding pre-delivery loan principal under the pre-delivery financing; and A further USD 14,950,000.00 was remitted to the Plaintiff of China as payment of the remaining balance of the purchase price under the Shipbuilding Contract, following which the Vessel was delivered to Horsham upon successful construction and launching.*

F. *The principal sum owed to the Plaintiff under the Loan Agreements was therefore USD 29,900,000.00, which was to be repaid in accordance with the terms of the Loan Agreement.*

G. *The Plaintiff asserts, but the Defendant No. 2 does not admit, that within 2010, various Events of Default under the Loan Agreement occurred, principally due to the US and EU sanctions enacted against Iran, which were notified to Horsham and Defendant No. 2 by way of a letter from the Plaintiff dated 14 October 2010.*

H. *The Plaintiff asserts, but the Defendant No. 2 does not admit, that since these Events of Default were not rectified, the Plaintiff proceeded to declare the Outstanding Indebtedness of the loan (as defined in the Loan Agreements) on 11 November 2010, requesting repayment of all sums remaining unpaid under the Loan Agreements, (i.e. approximately USD 21,055,938.68 at that time) plus interest and costs, as applicable.*

I. *Furthermore, in August 2011, the Plaintiff learned from the Department of Economic Development of the Isle of Man Government (via its lawyers in Germany and the Isle of Man) that Horsham had been struck off the Register in the Isle of Man and dissolved, which the Plaintiff asserts in itself constituted an Event of Default under the Loan Agreements.*

J. *As a result of the aforementioned, the Plaintiff asserts, but the Defendant No. 2 does not admit, that it had a maritime claim against the Vessel as a matter of Indian law and that it was entitled to proceed against the Vessel in rem for recovery of the Outstanding Indebtedness under the Loan Agreements and the Security Documents.*

K. *On 06 November 2011, the Plaintiff filed Admiralty Suit (No. 2 of 2012) before the Bombay High Court for recovery of the Outstanding Indebtedness under the Loan Agreements in the (original) sum of USD 18,146,989.21 (USD 17,809,562.09 principal and USD 271,901.26 interest) and enforcement costs of USD 65,625.86 (the "Indian Proceedings"). Pending final disposal of the Indian Proceedings the Plaintiff sought and obtained an ad-interim order from the Bombay High Court in India for the arrest of the Vessel, which order of arrest was then confirmed by a further order of the Bombay High Court on 09 November 2011 (the "Arrest Order").*

L. *After the Arrest Order was issued, the Plaintiff and Defendant No. 2 filed interim applications seeking, respectively, the sale of the Vessel and furnishing security for release of the Vessel. On 13 December 2012, Defendant No. 2 was directed by the Bombay High Court to furnish security in respect of the Plaintiff's claim. Before the Defendant No. 2 could furnish security in terms of the Order of 13 December 2012 the Plaintiff's sale application came up for hearing and, on 24 December 2013, the Plaintiff obtained an order for sale of the Vessel. Thereafter, Defendant No. 2 complied with the order of 13 December 2012 and arranged for remittance of the relevant security amount of INR 114,50,00,000.00 which amount was deposited in the account of the Prothonotary and Senior Master, Canara Bank, Nariman Point Branch on 27 January 2014 (as updated from time to time, the "Principal Amount"). The order of sale of the Vessel was accordingly set aside.*

M. *Following deposit of the aforementioned amount with the Bombay High Court, at the end of Quarter 1 of 2014, an amount of INR 38,30,916.00 was deducted from the aforementioned amount by way of Indian 'Tax Deducted at Source' (as updated from time to time, the "TDS Amount"). However, pursuant to an internal circular issued shortly thereafter, Indian banks were directed not to deduct TDS and hence the TDS Amount of Rs. 52,84,677.00 was reinvested by the Bombay High Court. This amount forms part of the principal amount.*

N. *As of 29 December 2017, the amount of the Plaintiff's claim under the Loan Agreements amounted to a total sum of USD 25,234,377.31 (based on the exchange rate as on 29 December 2017 of 1.00 EUR = 1.1993 USD and consists of:*

(i) *principal: USD 17,809,562.09;*

(ii) *interest (06.06.2011 - 29.12.2017): USD 4,614,645.72;*

(iii) *enforcement costs: USD 2,565,094.09; and*

(iv) *Sheriff's poundage on 1) to 3): USD 245,075. 41.*

O. *As of the date mentioned below, the current amounts held with the Bombay High Court aggregate:*

Amount	*Date of Payment into Court*	*Aggregate Current Amount (INR)*
Total Amount	*27 January 2014*	*154,75,03,250.00*

Hereafter the total amounts lying with this Court are referred to as the "Total Security Amount".

P. *In view of the admission of liability made by the Defendant No. 2 (as subsequently set out) Parties are agreeable to a final Decree being passed, in full and final settlement of all claims arising under or in connection with the Loan Agreements, the Security Documents and the Indian Proceedings.*

Q. *Against the backdrop of the foregoing, the following Order is passed.*

1. *Judgement on Admission*

1.1. *Defendant No. 2 has admitted to the Plaintiff in writing (the "Admission") vide a letter dated 15 June 2018 addressed by the Defendant No. 2's attorneys ("Admission Letter") of its liability in relation to the Total Security Amount less an amount equivalent to EUR 680,000. The said amount of EUR 680,000 is hereinafter referred to as "The Share of Defendant No. 2". The Plaintiff has annexed the said Admission Letter to the Notice of Motion in the captioned suit being Notice of Motion (L) 1767 of 2018 at Exhibit A. The same is taken on record and is marked as "X-1" for identification. There shall accordingly be a Decree on Admission in favour of the Plaintiff and against Defendant No. 2 for the Total*

Security Amount, less the Share of Defendant No. 2 of EUR 680,000. This amount, for which a Decree is passed in favour the Plaintiff, shall hereinafter be referred to as "the Decretal Amount".

1.2. *At the first instance the Share of Defendant No. 2 of EUR 680,000 (net) shall be remitted by the Prothonotary & Senior Master of this Court without any deduction whatsoever to Defendant No. 2 as per the bank details set out in clause 1.5, at the currency exchange rate prevailing on the date of remittance. It is clarified that any bank and other charges attendant to remittance of the Share of Defendant No. 2 will be deducted from the Decretal Amount and not from the Share of Defendant No. 2. Upon receipt by the Defendant No. 2 of EUR 680,000 (net) and subject to conditions contained hereinbelow having been met, the Prothonotary shall remit the Decretal Amount to the Plaintiff, as per the bank details set out in clause 1.6. When remitting the Decretal Amount, the Prothonotary & Senior Master shall deduct therefrom:*

(a) Remittance charges, bank charges and other charges / expenses; and

(b) Poundage of 1% on the Decretal Amount, which poundage shall be paid by the Prothonotary & Senior Master to the Sheriff of Mumbai in accordance with the High Court [OS] Rules.

1.3. *Though a Decree is being passed, the Suit shall be disposed only once the amounts as abovesaid are received by the Plaintiff and Defendant No. 2. If the amounts as abovesaid are not received by either the Plaintiff or Defendant No. 2, and subject to the Decretal Amount being available with the Court or being brought back to the Court, this Order shall stand recalled and both Parties shall be at liberty to pursue their claims as they stood before. However, in such an event the Plaintiff shall not be entitled to rely on this Order, the Admission or the Admission Letter for any purpose, all of which shall be treated as void.*

1.4. *On a Decree being passed and provided this Order is not recalled, Defendant No. 2 shall no longer have any proprietary rights or claims of any kind in the Total Security Amount save and except as specifically mentioned herein i.e. to the extent of the Share of Defendant No. 2.*

1.5. From out of the Total Security Amount, a sum equivalent to EUR 680,000 net of all bank and statutory charges will be remitted *by the Prothonotary in EUR currency at the exchange rate prevailing on the date of remittance to the bank account nominated by the Defendant No. 2, details of which are set out below:*

BANK MELLI HAMBURG ("Recipient Bank")

Account No. 2581013008

IBAN: DE37 2021 0200 2581 0130 08

BIC/Swift: MELIDEHH

Beneficiary: Islamic Republic of Iran Shipping Lines

1.6. After the Share of the Defendant No. 2 is received by it, the Decretal Amount (less deductions mentioned in clause 1.2)] shall be remitted by the Prothonotary & Senior Master in Singapore Dollar currency to the Plaintiff in full to the following bank account of the Plaintiff:

Bank Account (NOSTRO) of the Plaintiff

(BIC: HSHNSGSG) No. 0010734288 at

DBS Bank Ltd. in Singapore, BIC: DBSSSGSG

1.7. All statutory charges and charges relating to remittance of the Share of Defendant No. 2 and the Decretal Amount shall be borne by the Plaintiff alone and shall be deducted from the Decretal Amount.

2. Full & Final Settlement / Discharge of Mortgage

2.1. Upon receipt of payments by the Plaintiff and the Defendant No. 2, in terms of this Order, parties will have no claims of any kind or nature against each other in respect of the transactions which form the subject matter of the Suit. For avoidance of doubt, it is clarified that upon receipt by the Plaintiff, of amounts in terms of this Order, the Maltese Mortgage will stand forthwith discharged.

2.2. The Plaintiff undertakes, through its advocates and/or agents, file a declaration to discharge the Mortgage with the Maltese Ship Registry in the duly executed form ("Discharge Deceleration") within ten working days from receipt of the Decretal Amount failing which the Plaintiff will be liable for losses suffered by the Defendant No. 2, if any, arising out of the Plaintiff's failure to file such discharge declaration with the Maltese Registry. Once such Discharge Declaration is filed, the Plaintiff through its advocates and/or agents, shall forthwith forward to the advocate of the Defendant No. 2 a simple copy of such executed Discharge Declaration. In addition, the Plaintiff shall, at its costs, provide a *photocopy of the confirmation of discharge of Mortgage ("Discharge Confirmation") as and when the same is received by it from the Maltese Registry, latest within 40 days from the date on which the Plaintiff filed the Discharge Declaration. However, the Plaintiff shall not be responsible for delays (even beyond 40 days) in obtaining a copy of the Discharge Confirmation if such delays are not caused by fault of the Plaintiff and in such circumstances, the Plaintiff will use its best endeavours to obtain the Discharge Confirmation as swiftly as possible.*

3. *Consequential Directions*

3.1. *The Prothonotary & Senior Master is hereby directed to encash the fixed deposits forthwith which have been invested by the Prothonotary & Senior Master.*

3.2. *Once the fixed deposits are encashed, the Prothonotary & Senior Master is directed to first remit the Share of Defendant No. 2 as set out in clause 1.5. The Prothonotary & Senior Master is directed to thereafter deduct all statutory dues including Sheriff's poundage at 1% from the Decretal Amount as set out in clause 1.2 and to remit the resultant balance to the Plaintiff as per the procedure set out in clauses 1.6 and 3.3. Any bank charges shall be deducted and paid out from the resultant / remaining balance prior to remittance.*

3.3. *The Prothonotary & Senior Master is hereby directed to first initiate remittance of the amount equivalent to EUR 680,000 (conversion as stated above), i.e. the Share of Defendant No. 2. Once remittance is effected the Prothonotary & Senior Master shall collect the SWIFT confirmation of remittance from the State Bank of India (SBI) and issue a certificate / letter to the advocates appearing for the Plaintiff and the Defendant No. 2, confirming remittance of the Share of the Defendant No. 2 (i.e. EUR 680,000). Within 7 court working days from the Prothonotary & Senior Master issuing a certificate / letter as provided for above, the Defendant No. 2 shall either directly or through its advocate inform the Plaintiff in writing whether its share of EUR 680,000 has been received or not. If no such written intimation is issued by the Defendant No. 2 / its advocate, the Defendant No. 2 shall be deemed to have received its share of EUR 680,000 and in which case the Decretal Amount shall be remitted to the Plaintiff in terms of clause 1.6.*

3.4. *In any event, if Defendant No. 2 does not receive its share of EUR 680,000 by 27 September 2018 as a final cut-off date, this Order shall stand recalled and the Plaintiff shall be at liberty to pursue its claim as stood before, provided always that the Decretal Amount is still available with the Hon'ble High Court or can be* *brought back to the Hon'ble High Court. For the avoidance of doubt, this shall apply regardless of whether or not the Share of the Defendant No. 2 can be brought back to the account of the Prothonotary & Senior Master or be returned into this Court's sphere of control. However, in such an event the Plaintiff shall not be entitled to rely on this Order, the Admission or the Admission Letter for any purpose, all of which shall be treated as void.*

3.5. Parties can act upon receipt of authenticated copies of this Order to secure statutory approvals, if any, without prejudice to the rights and liberties granted vide this Order.

3.6. The Suit shall stand disposed on the receipt of the amount by the Plaintiff and Defendant No. 2 in terms of this Order.

3.7. There shall be no order as to costs.

3.8. All concerned authorities including but not limited to the Prothonotary, SBI and the RBI shall act on a copy of this Order duly authenticated by an Associate of this Court."

2 The consent minutes of order signed by the authorized representatives of plaintiff, defendant No.2 and their respective advocates is taken on record and marked 'X' for identification. The counsels state that the persons who have signed the consent terms for plaintiff and for defendant no.2 are present in Court and identify them.

3 Order in terms of the consent terms. All undertakings accepted.

4 For ease of reference, a scanned copy of minutes of order is reproduced hereinbelow :-

14/8/18

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY AND VICE ADMIRALTY JURISDICTION

NOTICE OF MOTION NO (L) 1767 OF 2018

IN

ADMIRALTY SUIT NO. 2 OF 2012

HSH Nordbank AG ..**Plaintiff**

V/s

M.V. Dianthe and Anr. ...**Defendants**

DRAFT MINUTES OF THE ORDER

It is submitted by the Parties that:

A. On 27 June 2003, the Islamic Republic Iranian Shipping Lines ("**Defendant No. 2**") entered into a shipbuilding contract dated 27 June 2003 (the "**Shipbuilding Contract**") with a shipyard in China for the building, construction, launching and equipping of the vessel MV "Golafruz" (ex-names MV "Dianthe", MV "Iran Bam" and MV "Horsham") bearing IMO number 9323833 (the "**Vessel**").

B. During the construction of the Vessel, in / around December 2004, Defendant No. 2 transferred its rights and liabilities under the Shipbuilding Contract to one Horsham Shipping Company Limited, a body corporate then registered in the Isle of Man ("**Horsham**") by way of a novation agreement dated 22 December 2004 (the "**Novation Agreement**").

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C. On 16 March 2005, the Plaintiff (via its Singapore Branch) and Horsham entered into a secured loan agreement pursuant to which the Plaintiff agreed to make available to Horsham a secured floating interest rate pre-delivery term loan of up to USD 14,950,000.00 and a secured floating interest rate post-delivery term loan of up to USD 29,900,000.00 in respect of the Vessel (the **"Loan Agreement"**), which Loan Agreement was subsequently supplemented and amended by a First Supplemental Agreement dated 06 June 2005 and a Second Supplemental Agreement dated on or around July 2009 (collectively the **"Loan Agreements"**).

D. The Loan Agreements were secured by the following documents (collectively the '**Security Documents**'):

(i) Deed of Guarantee and Indemnity provided by Defendant No. 2 to the Plaintiff dated 16 March 2005 pursuant to which Defendant No. 2 undertook to act as primary obligor and guarantor of any and all obligations of Horsham under the Loan Agreements (the '**Guarantee**');

(ii) Deposit Agreement and Pledge of Accounts between the Plaintiff and Horsham dated 06 June 2005;

(iii) First priority Maltese mortgage "A" for the Vessel in favour of the Plaintiff dated 18 August 2006 (the **"Maltese Mortgage"**);

(iv) Deed of Covenants for the Vessel between Horsham and the Plaintiff dated 18 August 2006;

(v) Assignment of Earnings and Charters between Horsham and the Plaintiff dated 18 August 2006;

(vi) Assignment of Insurances and Requisition Compensation between Horsham and the Plaintiff dated 18 August 2006.

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(vii) Tripartite Agreement between Defendant No. 2, Horsham and the Plaintiff dated 18 August 2006; and

(viii) Pledge Agreement between Horsham and the Plaintiff dated 28 May 2009.

E. Horsham made a number of utilisation requests under the Loan Agreements and the Plaintiff remitted the sums requested as follows: An amount of USD 14,950,000.00 was used to cover the outstanding pre-delivery loan principal under the pre-delivery financing; and A further USD 14,950,000.00 was remitted to the Plaintiff of China as payment of the remaining balance of the purchase price under the Shipbuilding Contract, following which the Vessel was delivered to Horsham upon successful construction and launching.

F. The principal sum owed to the Plaintiff under the Loan Agreements was therefore USD 29,900,000.00, which was to be repaid in accordance with the terms of the Loan Agreement.

G. The Plaintiff asserts, but the Defendant No. 2 does not admit, that within 2010, various Events of Default under the Loan Agreements occurred, principally due to the US and EU sanctions enacted against Iran, which were notified to Horsham and Defendant No. 2 by way of a letter from the Plaintiff dated 14 October 2010.

H. The Plaintiff asserts, but the Defendant No. 2 does not admit, that since these Events of Default were not rectified, the Plaintiff proceeded to declare the Outstanding Indebtedness of the loan (as defined in the Loan

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Agreements) on 11 November 2010, requesting repayment of all sums remaining unpaid under the Loan Agreements, (i.e. approximately USD 21,055,903.68 at that time) plus interest and costs, as applicable.

I. Furthermore, in August 2011, the Plaintiff learned from the Department of Economic Development of the Isle of Man Government (via its lawyers in Germany and the Isle of Man) that Horsham had been struck off the Register in the Isle of Man and dissolved, which the Plaintiff asserts in itself constituted an Event of Default under the Loan Agreements.

J. As a result of the aforementioned, the Plaintiff asserts, but the Defendant No. 2 does not admit, that it had a maritime claim against the Vessel as a matter of Indian law and that it was entitled to proceed against the Vessel in rem for recovery of the Outstanding Indebtedness under the Loan Agreements and the Security Documents.

K. On 06 November 2011, the Plaintiff filed Admiralty Suit (No. 2 of 2011) before the Bombay High Court for recovery of the Outstanding Indebtedness under the Loan Agreements in the (original) sum of USD 18,146,989.21 (USD 17,809,362.09 principal and USD 271,901.36 interest) and enforcement costs of USD 65,625.86 (the "**Indian Proceedings**"). Pending final disposal of the Indian Proceedings the Plaintiff sought and obtained an ad-interim order from the Bombay High Court in India for the arrest of the Vessel, which order of arrest was then confirmed by a further order of the Bombay High Court on 09 November 2011 (the "**Arrest Order**").

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L. After the Arrest Order was issued, the Plaintiff and Defendant No. 2 filed interim applications seeking, respectively, the sale of the Vessel and furnishing security for release of the Vessel. On 13 December 2012, Defendant No. 2 was directed by the Bombay High Court to furnish security in respect of the Plaintiff's claim. Before the Defendant No. 2 could furnish security in terms of the Order of 13 December 2012 the Plaintiff's sale application came up for hearing and, on 24 December 2013, the Plaintiff obtained an order for sale of the Vessel. Thereafter, Defendant No. 2 complied with the order of 13 December 2012 and arranged for remittance of the relevant security amount of INR 114,50,00,000.00 which amount was deposited in the account of the Prothonotary and Senior Master, Canara Bank, Nariman Point Branch on 27 January 2014 (as updated from time to time, the "**Principal Amount**"). The order of sale of the Vessel was accordingly set aside.

M. Following deposit of the aforementioned amount with the Bombay High Court, at the end of Quarter 1 of 2014, an amount of INR 38,30,916.00 was deducted from the aforementioned amount by way of Indian 'Tax Deducted at Source' (as updated from time to time, the "**TDS Amount**"). However, pursuant to an internal circular issued shortly thereafter, Indian banks were directed not to deduct TDS and hence the TDS Amount of Rs. 52,84,677.00 was reinvested by the Bombay High Court. This amount forms part of the principal amount.

N. As of 29 December 2017, the amount of the Plaintiff's claim under the Loan Agreements amounted to a total sum of USD 25,234,377.41 (based on the exchange rate as on 29 December 2017 of 1.00 EUR = 1.1993 USD

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and consists of:

(i) principal: USD 17,809,563.09;

(ii) interest (06.06.2011 - 29.12.2017): USD [illegible];

(iii) enforcement costs: USD [illegible]; and

(iv) Sheriff's poundage on 1) to 3): USD [illegible].

O. As of the date mentioned below, the current amounts held with the Bombay High Court aggregate:

Amount	Date of Payment into Court	Aggregate Current Amount (INR)
Total Amount	27 January 2014	154,75,03,250.00

Hereafter the total amounts lying with this Court are referred to as the "**Total Security Amount**".

P. In view of the admission of liability made by the Defendant No. 2 (as subsequently set out) Parties are agreeable to a final Decree being passed, in full and final settlement of all claims arising under or in connection with the Loan Agreements, the Security Documents and the Indian Proceedings.

Q. Against the backdrop of the foregoing, the following Order is passed.

1. **Judgement on Admission**

1.1 Defendant No. 2 has admitted to the Plaintiff in writing (the "**Admission**") vide a letter dated 15 June 2018 addressed by the Defendant No. 2's attorneys ("**Admission Letter**") of its liability in relation to the

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Total Security Amount **less** an amount equivalent to EUR 680,000. The said amount of EUR 680,000 is hereinafter referred to as "**The Share of Defendant No. 2**". The Plaintiff has annexed the said Admission Letter to the Notice of Motion in the captioned suit being Notice of Motion (L) 1767 of 2018 at Exhibit A. The same is taken on record and is marked as 'X-1' ~~"X"~~ for identification. There shall accordingly be a Decree on Admission in favour of the Plaintiff and against Defendant No. 2 for the Total Security Amount, less the Share of Defendant No. 2 of EUR 680,000. This amount, for which a Decree is passed in favour the Plaintiff, shall hereinafter be referred to as "**the Decretal Amount**".

1.2. At the first instance the Share of Defendant No 2 of EUR 680,000 (net) shall be remitted by the Prothonotary & Senior Master of this Court without any deduction whatsoever to Defendant No. 2 as per the bank details set out in clause 1.5, at the currency exchange rate prevailing on the date of remittance. It is clarified that any bank and other charges attendant to remittance of the Share of Defendant No. 2 will be deducted from the Decretal Amount and not from the Share of Defendant No. 2. Upon receipt by the Defendant No. 2 of EUR 680,000 (net) and subject to conditions contained hereinbelow having been met, the Prothonotary shall remit the Decretal Amount to the Plaintiff, as per the bank details set out in clause 1.6. When remitting the Decretal Amount, the Prothonotary & Senior Master shall deduct therefrom:

(a) Remittance charges, bank charges and other charges / expenses; and

(b) Poundage of 1% on the decretal amount ~~balance after deducting sums mentioned in clause 1.2(a) above~~, which poundage shall be paid by the Prothonotary & Senior Master to the Sheriff of Mumbai in

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accordance with the High Court [OS] Rules.

1.3. Though a Decree is being passed, the Suit shall be disposed only once the amounts as aforesaid are received by the Plaintiff and Defendant No. 2. If the amounts as aforesaid are not received by either the Plaintiff or Defendant No. 2, and subject to the Decretal Amount being available with the Court or being brought back to the Court, this Order shall stand recalled and both Parties shall be at liberty to pursue their claims as they stood before. However in such an event the Plaintiff shall not be entitled to rely on this Order, the Admission or the Admission Letter for any purpose, all of which shall be treated as void.

1.4. On a Decree being passed and provided this Order is not recalled, Defendant No. 2 shall no longer have any proprietary rights or claims of any kind in the Total Security Amount save and except as specifically mentioned herein i.e. to the extent of the Share of Defendant No. 2.

1.5. From out of the Total Security Amount, a sum equivalent to EUR 690,000 net of all bank and statutory charges will be remitted by the Prothonotary in EUR currency at the exchange rate prevailing on the date of remittance to the bank account nominated by the Defendant No. 2, details of which are set out below:

BANK MELLI HAMBURG ("Recipient Bank")

Account No. 2581013008

IBAN: DE37 2021 0200 2581 0130 08

BIC/Swift: MELIDEHH

Beneficiary: Islamic Republic of Iran Shipping Lines

1.6. After the Share of the Defendant No. 2 is received by it, the Decretal Amount (less deductions mentioned in clause 1.2(i) shall be remitted by the Prothonotary & Senior Master in Singapore Dollar currency to the Plaintiff in full ~~without any set-off, withholding, withholding any reservation or deduction whatsoever (unless specifically stated herein), by way of bank transfer, to be irrevocably credited without any restrictions and granting all requisite approvals~~ to the following bank account of the Plaintiff:

Bank Account (NOSTRO) of the Plaintiff

(BIC: HSHNSGSG) No. 0010734288 at

DBS Bank Ltd. in Singapore, BIC: DBSSSGSG

1.7. All statutory charges and charges relating to remittance of the Share of Defendant No. 2 and the Decretal Amount shall be borne by the Plaintiff alone and shall be deducted from the Decretal Amount.

2. **Full & Final Settlement / Discharge of Mortgage**

2.1. Upon receipt of payments by the Plaintiff and the Defendant No. 2, in terms of this Order, parties will have no claims of any kind or nature against each other in respect of the transactions which form the subject matter of the Suit. For avoidance of doubt, it is clarified that upon receipt by the Plaintiff, of amounts in terms of this Order, the Maltese Mortgage will stand forthwith discharged.

2.2. The Plaintiff ~~shall~~ undertakes to, through its advocates and or agents, file a declaration to discharge the Mortgage with the Maltese Ship Registry in the duly executed form ("Discharge Deceleration") within ten working days from

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receipt of the Decretal Amount failing which the Plaintiff will be liable for losses suffered by the Defendant No. 2, if any, arising out of the Plaintiff's failure to file such discharge declaration with the Maltese Registry. Once such Discharge Declaration is filed, the Plaintiff through its advocates and/or agents, shall forthwith forward to the advocate of the Defendant No. 2 a photo copy of such executed Discharge Declaration. In addition, the Plaintiff shall, at its costs, provide a copy of the confirmation of discharge of Mortgage ("Discharge Confirmation") as and when the same is received by it from the Maltese Registry, latest within 40 days from the date on which the Plaintiff filed the Discharge Declaration. However, the Plaintiff shall not be responsible for delays (even beyond 40 days) in obtaining a copy of the Discharge Confirmation if such delays are not caused by fault of the Plaintiff and in such circumstances, the Plaintiff will use its best endeavours to obtain the Discharge Confirmation as swiftly as possible.

3. **Consequential Directions**

3.1. The Prothonotary & Senior Master is hereby directed to encash the fixed deposits forthwith which have been invested by the Prothonotary & Senior Master.

3.2. Once the fixed deposits are encashed, the Prothonotary & Senior Master is directed to first remit the Share of Defendant No. 2 as set out in clause 1.5. The Prothonotary & Senior Master is directed to thereafter deduct all statutory dues including Sheriff's poundage at 2% from the Decretal Amount as set out in clause 1.2 and to remit the resultant balance to the Plaintiff as per the procedure set out in clauses 1.6 and 3.3. Any bank charges shall be deducted and paid out from the resultant / remaining balance prior to remittance.

3.3. The Prothonotary & Senior Master is hereby directed to first initiate remittance of the amount equivalent to EUR 680,000 (conversion as stated above), i.e. the Share of Defendant No. 2. Once remittance is effected the Prothonotary & Senior Master shall collect the SWIFT confirmation of remittance from the State Bank of India (SBI) and issue a certificate / letter to the advocates appearing for the Plaintiff and the Defendant No. 2, confirming remittance of the Share of the Defendant No. 2 (i.e. EUR 680,000). Within 7 court working days from the Prothonotary & Senior Master issuing a certificate / letter as provided for above, the Defendant No. 2 shall either directly or through its advocate inform the Plaintiff in writing whether its share of EUR 680,000 has been received or not. If no such written intimation is issued by the Defendant No. 2 / its advocate, the Defendant No. 2 shall be deemed to have received its share of EUR 680,000 and in which case the Decretal Amount shall be remitted to the Plaintiff in terms of clause 1.6.

3.4. In any event, if Defendant No. 2 does not receive its share of EUR 680,000 by 27 September 2018 as a final cut-off date, this Order shall stand recalled and the Plaintiff shall be at liberty to pursue its claim as stood before, provided always that the Decretal Amount is still available with the Hon'ble High Court or can be brought back to the Hon'ble High Court. For the avoidance of doubt, this shall apply regardless of whether or not the Share of the Defendant No. 2 can be brought back to the account of the Prothonotary & Senior Master or be returned into this

Court's sphere of control. However, in such an event the Plaintiff shall not be entitled to rely on this Order, the Admission or the Admission Letter for any purpose, all of which shall be treated as void.

3.5. ~~The State Bank of India is directed to act expeditiously upon the receipt of requests for remittance and require permissions, if any, for this remittance.~~

3.6. Parties can act upon receipt of authenticated copies of this Order to secure statutory approvals, if any, without prejudice to the rights and liberties granted vide this Order.

3.7. The Suit shall stand disposed on the receipt of the amount by the Plaintiff and Defendant No. 2 in terms of this Order.

3.8. There shall be no order as to costs.

3.9. All concerned authorities including but not limited to the Prothonotary, SBI and the RBI shall act on a copy of this Order duly authenticated by an Associate of this Court.

3.10. Certified copy of ~~this~~ Order expedited.

PLAINTIFF [MR. ... , CONSTITUTED ATTORNEY]

ADVOCATES FOR THE PLAINTIFF

DEFENDANT NO.2 [MR. ... , AUTHORISED SIGNATORY]

ADVOCATES FOR DEFENDANT NO.2

Dated 18 day of May 2014

HSH Nordbank AG

POWER OF ATTORNEY

HSH Nordbank AG

Gerhart-Hauptmann-Platz 50 /	Martensdamm 6
20095 Hamburg	24103 Kiel
Germany	Germany

True Copy

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A POWER OF ATTORNEY is given this 15 day of May 2014 by HSH Nordbank AG, a company incorporated under the laws of the Federal Republic of Germany and having its principal place of business at Hamburg and Kiel (hereinafter called the "Bank") pursuant to a resolution of the board of managing directors of the Bank passed on 17 day of January 2012

WHEREAS the Bank deems it expedient to appoint as its agent the person hereinafter mentioned in connection with the operation of the Bank's branch in Singapore.

NOW THIS DEED WITNESSETH that the Bank hereby appoints Mr. Ralf Schmidt (hereinafter called the "Attorney"), born on 4th October 1969, (identified by means of his Singapore IC no. S6962137F) the true and lawful Attorney Manager and Agent of the Bank for and in the name and on behalf of the Bank to do all or any of the following acts and deeds

1. To manage, direct and administer the operations of the branch of the Bank in Singapore (the "Singapore Branch") and to do all acts and things necessary in that behalf including the acquisition by purchase, lease or hiring upon any terms of premises for the purpose of carrying on the business of the Singapore Branch.

2. To engage, suspend and dismiss sub-agents, clerks, cashiers and other employees and employ accountants, brokers, solicitors, and other agents as may be required for efficiently carrying on the business of the Singapore Branch and for doing all or any of the acts and things which the Attorney is hereby empowered to do.

3. To negotiate banking facilities with other banks and to borrow money and to give security employing for that purpose any assets of the Bank over which the Attorney has control and generally to deal with the money and credit of the Bank in the course of the business of the Singapore Branch on such terms and subject to such conditions as the Attorney thinks fit.

4. To open and close accounts of customers of the Singapore Branch, to receive money on current and deposit accounts and pay out monies generally and pay or credit interest on such accounts charge commission and deal with the accounts of customers of the Singapore Branch in accordance with the practice of bankers in Singapore.

5. To lend and make advances of any monies of the Bank at such rate of interest and upon such security as the Attorney thinks fit or without security to any person firm or company and to receive and give a good discharge for repayments of any money so lent or advanced and of interest thereon.

6. To issue circular notes, letters of credit, bills, guarantees, indemnities, stand-by letters of credit, bonds and other instruments usually issued by bankers in Singapore.

7. To discount draw accept indorse pledge hypothecate or otherwise negotiate all or any foreign or inland bills of exchange or promissory notes and other negotiable instruments.

8. To buy and sell or cause to be bought and sold for customers of the Singapore Branch all kinds of stocks, shares and securities.

9. To accept for safe custody and keep for customers of the Singapore Branch all kinds of securities valuables and things on such terms as the Attorney thinks fit.

10. To pay for and on behalf of the customers of the Singapore Branch premiums subscriptions interest dividends and such other periodic payments on such terms and subject to such conditions as the Attorney thinks fit.

11. To take and hold as security or otherwise and to sell negotiate transfer and realise bills of lading dock warrants delivery orders policies of insurance title deeds mortgages bills of sale, certificates of stock and shares debentures and all kinds of mercantile instruments assignments of property licences to take property documents of title securities and symbols of possession of or title to property of any kind.

12. To undertake and perform in the name of the Bank the offices duties and responsibilities of executor trustee custodian and other positions of trust if and in so far as the Singapore Branch may be permitted so to do by the laws for the time being in force in Singapore.

13. To ask demand sue for recover and receive of and from all and every person body politic or firm or company whomsoever and whatsoever all sums of money debts dues goods wares merchandise chattels effects and things of any nature or description whatsoever which at any time or times hereafter shall or may become due or owing or payable to or recoverable by the Bank by virtue of any hypothecations, bottomry, bonds, mortgages, pledges, agreements or other securities whatsoever or upon or by virtue of any bills of exchange promissory notes cheques bills of lading or other mercantile or negotiable instruments whatsoever.

14. To settle any account disputes or reckoning whatsoever in which the Singapore Branch shall or may at any time hereafter be in any way interested or concerned with any person or body politic or corporate whatsoever and to pay and receive the balance or balances thereof as the case may require.

15. To commence and prosecute any actions or other proceedings in any court of justice in any country state or territory for the recovery of any debts or sums of money right title or interest property claim matter or thing whatsoever now or hereafter to become due or payable or in any way belonging to the Bank by any means or on any account whatsoever and to consent or submit to or appeal against any judgment or order in any such suit action or proceeding and to discontinue any such suit action or proceeding on such terms as the Attorney shall in his judgment or discretion see fit.

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16. To appoint receivers and managers pursuant to any powers given to the Bank and to make any declaration or affidavit in proof of any debt or debts due or claimed to be due to the Bank in any proceedings taken or hereafter to be taken by or against any person firm or company under any Act or Ordinance for the time being in force for the relief or otherwise of insolvent debtors or the winding-up of companies and to attend all meetings of creditors under any such proceedings and to propose second or vote for or against any resolution or resolutions at any such meeting and generally to act for the Bank in all proceedings whether by way of bankruptcy or liquidation by arrangement or by composition which may be taken against or for the relief of any debtor of the Bank in such manner as the Attorney shall in his absolute discretion see fit and also to use and take all other lawful ways and means for recovering receiving maintaining or getting in any such sum or sums of money or other things whatsoever which are or shall or may be by the Attorney conceived or thought to be due owing belonging or payable to the Bank by any person firm or company whatsoever and upon receipt or delivery of any such sums of money rents issues profits debts dues goods chattels effects and things or any of such particulars as aforesaid or any part or parts thereof respectively to make give sign seal execute and deliver all and any good and effectual acquittances releases and discharges transfers reconveyances and reassignments whether by deed or otherwise as the nature of the case may require or as the Attorney shall think fit and expedient as amply and effectually to all intents and purposes as the Bank could have done if present and this Power of Attorney had not been made.

17. To appear in and defend or compromise any action or other proceeding now or hereafter to be instituted commenced or prosecuted against the Bank in any such court of justice as aforesaid and to refuse and resist payment of any sum or sums of money or compliance with or fulfilment of any claim or demand or otherwise as the Attorney shall think fit.

18. To pay or satisfy or to compromise or compound upon any terms which the Attorney may deem expedient any debts or damages owing to or claimed by or from the Bank or for which the Bank may be or may be alleged to be liable.

19. To register or file or cause to be registered or filed in any official registry or any court in Singapore or with or by any body politic corporation company or person this Power of Attorney and all deeds notices memorials contracts instruments or documents which it may be necessary or expedient to register or file.

20. Generally to do or cause to be done for and on behalf of the Bank all acts and things whatsoever whether expressly mentioned herein or not which in the course of the general business of the Singapore Branch transacted as aforesaid may seem to the Attorney to be requisite or expedient to be done or caused to be done.

21. In order to effect execute and perform the several matters and things aforesaid to appoint from time to time or generally such person or persons as the Attorney may think fit as his substitute or substitutes to do execute and perform all or any such matters and things as aforesaid and at pleasure to remove any such substitute and to appoint another or others in his place.

22. For all or any of the purposes of this Power of Attorney for the Bank and in the Bank's name to give and execute all such bonds guarantees indemnities covenants and obligations as the Attorney may think fit necessary or proper.

23. For all or any of the purposes of this Power of Attorney to sign seal execute and perfect and as the Bank's act and deed to deliver on the Bank's behalf any contract conveyance lease

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mortgage assignment surrender release transfer instrument deed or any other document whatsoever.

24. Generally to act in relation to the Bank's property and affairs and to this Power of Attorney as fully and effectually in all respects as the Bank itself could do in the course of the general business of the Singapore Branch.

The Bank reserves the right to revoke this Power of Attorney at any time by notice to the Attorney, and such notice shall be sufficient if communicated by telex, facsimile transmission or letter from the Bank.

AND the Bank will, from time to time and at all times, ratify and confirm whatever the Attorney or any substitute appointed by the Attorney lawfully does, or causes to be done, pursuant to this Power of Attorney, including that which may be done after the revocation of the said powers but before notification of such revocation, and will indemnify and keep the Attorney or any substitute appointed by the Attorney indemnified against all claims, demands, costs, damage, losses and expenses howsoever arising, consequent upon the lawful exercise of all or any of the powers and authorities contained in this Power of Attorney.

This Power of Attorney shall in all respects be interpreted in accordance with and governed by the laws of Singapore.

IN WITNESS WHEREOF the said HSH Nordbank AG has caused this Power of Attorney to be executed the day and year first above written.

SIGNED and DELIVERED by
Constantin von Oesterreich
for and on behalf of
HSH Nordbank AG

SIGNED and DELIVERED by
Torsten Temp
for and on behalf of
HSH Nordbank AG

~~Sworn/affirmed at Hamburg~~

~~Before me,~~

~~Dr. Robert Biekgraf~~
~~Notary Public~~

NOTARIAT AM ALSTERTOR

[illegible] DR. WOLFGANG ENGELHARDT JOHANN JONETZKI
DR. ROBERT DICKGRÄF DR. [illegible], LL.M. DR. MICHAEL VON HINDEN
NOTARE

Roll of Documents No. 1332/2014 DI

Hereby I, the Hamburg Notary Public

Dr. Robert Dickgräf

practising Alstertor 14, D-20095 Hamburg,

certify, that the above are the true signatures, subscribed in my presence, of

1. Mr. Constantin von Oesterreich,
   d.o.b.: 22nd April 1953,
   acting as the Chairman of the Board of Managing Directors authorized to represent the company jointly with another Member of the Board of Managing Directors or Procurator and exempted from the restrictions of Art. 181, 2nd altern. BGB (German Civil Code) for

   the public limited company (Aktiengesellschaft) under the style of
   HSH Nordbank AG
   with registered offices in Hamburg and Kiel,
   entered in the Commercial Register of the District Court of Hamburg under HRB 87366 and the Commercial Register of the District Court of Kiel under HRB 6127 KI;

2. Mr. Torsten Temp,
   d.o.b.: 20th May 1962,
   acting as a Member of the Board of Managing Directors authorised to represent the company jointly with another Member of the Board of Managing Directors or Procurator and exempted from the restrictions of Art. 181, 2nd altern. BGB (German Civil Code) for

   the above public limited company under the style of
   HSH Nordbank AG
   with registered offices in Hamburg and Kiel.

The identity of both persons is known to me; the business address of each is Gerhart-Hauptmann-Platz 50, 20095 Hamburg and Martensdamm 6, 24103 Kiel.

ALSTERTOR 14 · 20095 HAMBURG · [illegible]
TELEFON [illegible] · TELEFAX [illegible]
[illegible] POSTFACH [illegible] HAMBURG
WWW.ALSTERTOR.DE · [illegible]

NOTARIAT AM ALSTERTOR

I, the Notary, hereby confirm the above powers of representation pursuant to Art. 21 Sect. 1 Point 1 BNotO (Federal Regulations for Notaries) following my inspection of the Commercial Registers of 16th May, 2014 District Court of Hamburg, HRB 87386.

Hamburg, this 16th May, 2014

Dr. Robert Diekgräf, Notary Public

9101 E 741/2014

Die Echtheit vorstehender Unterschrift des

Notars Dr. Robert Diekgräf

und die Echtheit des beigedrückten Dienstsiegels werden hiermit bestätigt.
Zugleich wird bescheinigt, dass der Vorgenannte zur Vornahme der Amtshandlung befugt war.

Hamburg, den 30. Mai 2014

Die Präsidentin des Landgerichts
In Vertretung

Wandel
Vorsitzende Richterin am Landgericht

I hereby certify that the seal and signature appearing on this document are the true seal and signature of the [illegible]
[illegible]

Ref. SEG/N/ [illegible]
Berlin

Consular Officer
Embassy of Singapore
Berlin

1 0 JUN 2014

EMBASSY OF THE REPUBLIC OF SINGAPORE BERLIN

EMBASSY OF THE REPUBLIC OF SINGAPORE
FEE PAID
9€
BERLIN

TO WHOMSOEVER IT MAY CONCERN

[illegible]
[illegible]
[illegible] Suit No. [illegible]
[illegible]

We, the ISLANDIC REPUBLIC OF IRAN SHIPPING LINES ([illegible]) hereby authorize Mr. Mahmoud [illegible], holding [illegible] No. [illegible] and having his office address at 409, Satellite [illegible], B Wing, 107 [illegible], Chakala, Andheri (E), Mumbai – 400093 (INDIA) to do the following acts, deeds and things on our behalf, in relation to the captioned suit.

1. To represent [illegible] before any court or authority [illegible] in relation to the captioned suit and for this purpose to appear before the court or authority if required to do so.

2. To settle and / or compromise the captioned suit on such terms and conditions as may be approved by us and for this purpose to execute settlement agreements or consent terms or other document(s) (without limitation) as may be necessary for settling / compromising the captioned suit.

3. To apply to and follow up with any court or authority, on our behalf, for remittance of amounts lying deposited with the High Court at Bombay to our nominated bank account and for this purpose to execute any documents as may be necessary.

4. To apply for execution of decrees or orders passed in the captioned suit.

AND to do all other lawful acts, deeds and things necessary for the aforesaid purposes **AND WE** undertake that all acts, deeds and things [illegible] lawfully done or caused to be done pursuant to this letter of authority shall be construed as acts, deeds and things done by the company and the company undertakes to ratify and confirm all such acts, deeds and things.

Tehran, Dated this [illegible] day of July [illegible]

For [illegible]

S. A. [illegible]
General Manager of legal [illegible] office

True copy

5 Shri Narichania seeks leave to withdraw the original documents which have been received in evidence and marked exhibits and those documents which have been taken on record

and marked 'X' for identification. Shri Narichania, on instructions from plaintiff, undertakes to replace those original with photocopies duly certified as true copy by the advocate on record.

6 In view of this undertaking given, the Prothonotary and Senior Master, High Court Bombay, on being satisfied that the photocopies being filed as 'true copy' are the photocopies of the documents on record, shall return all originals to plaintiff's advocate.

7 All to act on authenticated copy of this order.

8 Certified copy expedited.

9 Liberty to apply.

10 All pending applications stand disposed.

(K.R. SHRIRAM, J.)