

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
ADMIRALTY SUIT NO.33 OF 2010**

Coromandel International Ltd.

..Plaintiff

Vs.

M. V. Glory & Ors

..Defendants

**WITH
NOTICE OF MOTION NO.1870 OF 2018
IN
ADMIRALTY SUIT NO.33 OF 2010
WITH
ADMIRALTY SUIT NO.12 OF 2011
WITH
ADMIRALTY SUIT NO.62 OF 2011
WITH
CHAMBER SUMMONS NO.421 OF 2012
IN
EXECUTION APPLICATION (L) NO.406 OF 2012
WITH
COMMERCIAL ADMIRALTY SUIT NO.1 OF 2011**

Mr. Bimal Rajasekhar I/b Ashwin Shaker for Plaintiff in ADMS/33/2010, COMAS/1/2011, ADMS/62/2011 and for Defendant No. 6 in ADMS/12/2011.

(1. Mr. Sajiv Panicker, Authorized Singatory of Plaintiff in ADMS/33/2010 and Mr. Sudarshan Gujar, Authorized Singatory of Plaintiff in ADMS/62/2011 and COMAS/1/2011 are present in court)

Mr. V. J. Matthew, Senior Advocate a/w Mr. Vipin Verghese I/b Sandhya Pillai for Defendant No. 3 in ADMS/33/2010 and for Plaintiff in ADMS/12/2011.

(Mr. T. X. Harry, Constitutes Attorney of Defendant No. 3 in ADMS/33/2010 and for Plaintiff in ADMS/12/2011 present in court)

None for Claimant/Applicant in EXAL/406/2012.

CORAM : K.R.SHRIRAM, J.

DATE : 21st JUNE 2019

P.C.:

1 At the outset, Mr. Rajshekhar appearing for plaintiff in Admiralty Suit Nos.33/2010, 62/2011 and 59/2011, states that an affidavit proving publication of notice under Rule 951 has been affirmed by one Mr. Santosh Koli on 7th June 2019, but due to inadvertence the entire page of the newspapers has not been annexed to the affidavit and only a photocopies of the relevant portion from newspapers have been annexed. The said affidavit, I am keeping on file. Mr. Rajshekhar undertakes to file a fresh affidavit annexing thereto the entire page of

the newspapers in which notice was given. The fresh affidavit to be affirmed within one week from today. The old affidavit affirmed on 7th June 2019 by Mr. Santosh Koli is in any event retained in file.

2 In four suits listed today, parties have entered into consent terms dated 21st June 2019. There is one more execution application which is listed with these suits. On 7th June 2019, when these 4 suits and the execution application was listed before this court, nobody had appeared for the applicant in the execution application. Mr. Rajshekhar states that even when the execution application was listed independently before Hon'ble Mr. Justice R. I.Chagla on 10th June 2019, the said applicant had not appeared and the court was pleased to direct the said execution application be listed for dismissal on 17th June 2019. On 17th June 2019, the matter was not taken up as the records and proceedings were in this court.

3 The consent terms entered into between 4 plaintiffs provides for disbursal amongst themselves in the proportion given in the consent terms the entire balance sale proceeds together with accumulated interest. The consent terms, however, does not make any provision for the applicant in the execution application. The amount claimed by applicant in the execution application is Rs.20,93,711.33. Counsel in fairness state that from sale proceeds an amount of Rs.24 lacs be kept aside, in case the execution applicant appears and states his claim for the amount, and the balance amount be disbursed among the 4 plaintiffs. Counsel states that if within three months from today the applicant in execution application does not come forward, then the court can release this amount of Rs.24 lacs together with accumulated interest thereon to 4 plaintiffs. In my view,

this is a very fair suggestion.

4 Moreover, notice under Rule 951 has been published on 10th December 2018. Mr. Rajshekhar tenders a certificate dated 21st June 2019 from Prothonotary and Senior Master certifying that no claim has been received pursuant to the notice given under Rule 951. The said certificate is scanned and reproduced herein.

		No. HC-B/Misc/1502/2019 Bombay, 21 st June, 2019.
From : Shri M.W. Chandwani Prothonotary and Senior Master, High Court, O.S., Bombay.		
To, Ashwin Shanker At : 415, Vardhmani Chambers, 17 Cawasji Patel Street, Fort, Mumbai 400 001.		
Re. : High Court, O.O.C.J. Admiralty and Vice Admiralty Jurisdiction Notice of Motion No. 1870 of 2018 in Admiralty Suit No. 33 of 2010		
Coromandel International Limited Versus m. v. Glory I & Ors.		... Plaintiff ... Defendants
Sir,		
Please refer to your praecipe dated 21 st June, 2019.		
As per Rule 951 (3) (d) of the High Court (O.S.) Rules, 1980, any person having a claim against the property or the proceeds of sale thereof, should apply in the Court for leave to intervene and prove his claim before the Court and obtain a decree before the expiration of period.		
In the above matter, no application is filed by any person to intervene and prove his claim in the above matter, before the expiration of period of 90 days specified in Sub Rule (2) (a) of Rule 951 or till date.		
		 for Prothonotary & Senior Master, High Court (O.S.), Bombay. 21/6/19

5 In view thereof, and as defendants have not come forward to defend any of the suits, I see no reason in accepting the consent terms entered into between 4 plaintiffs to disburse the sale proceeds together with accumulated interest in the proportion mentioned in paragraph 1 of the consent terms. Rs.24 lacs shall be deducted from the amount payable to each of the plaintiffs in the following proportion:

Suit No.	Plaintiff	Amount initially receivable as per the settlement agreement	Amount to be deducted taking into account the INR 24,000,00 to be set aside for the applicant in execution application (I) No.406 of 2012	Amount to be paid out
ADMS/33/2010	Coromandel International Ltd	INR 4,10,00,000	INR 5,03,000	INR 4,04,97,000
ADMS/12/2011	Heta Asset Resolution AG (formerly Hypo Alpe-Adria Bank International AG	Balance remaining in the account after the other 3 are paid out	INR 17,20,000	Balance remaining in the account after the other 3 are paid out and leaving a sum of INR 24,00,000/- in the account
ADMS/62/2011	Shiny Shipping & Logistics Pvt Ltd and Ors	INR 12,53,195	INR 15,000	INR 12,38,195
ADMS/59/2011	Marodi Service S.A.S.	INR 1,32,11,722	INR 1,62,000	INR 1,30,49,722
			INR 24,00,000	

The balance amount after deducting the contribution of each plaintiffs towards this Rs.24 lacs shall be paid over to respective plaintiff as provided in the consent terms.

7 The undertaking of each counsel that, if, later court directs plaintiffs

to bring back the money to court, plaintiffs shall bring back the amount within 4 weeks of such an order being passed, is also accepted.

8 The consent terms signed by the authorised signatories of each of the plaintiffs and their respective advocates is taken on record and marked "X" for identification. Mr. Rajshekhar and Mr. Matthew state that signatories of each of the plaintiffs whom they are representing, are present in court and identify them. For ease of reference, the consent terms without annexures is reproduced below:

X
29/6/19

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
ADMIRALTY SUIT NO. 33 OF 2019
Cecconadal International Limited – Plaintiff
v.
m.v. GLORY-1 & Ors. – Defendants
WITH
ADMIRALTY SUIT NO. 12 OF 2011
Beta Asset Restoration A/S – Plaintiff
Versus
m.v. GLORY-1 & Ors. – Defendants
WITH
ADMIRALTY SUIT NO. 63 OF 2011
Shiny Shipping & Logistics Pvt. Ltd. and Ors – Plaintiffs
Vs
m.v. Glory and Ors – Defendants
WITH
ADMIRALTY SUIT NO. 59 OF 2011
Merodi Service S.A.S. – Plaintiff
Vs
Sale proceeds of m.v. GLORY-1 – Defendant
CORAM: K.R. SHRIRAM, J.
DATE: 20 JUNE 2019
CONSENT TERMS

[Signatures]

FACTS

- A. The motor vessel Glory-1 ("Vessel") was arrested by the Bombay High Court pursuant to an order of arrest passed on 22 August 2010 in Admiralty Suit No. 33 of 2010.
- B. After her arrest, the Vessel was abandoned by her owners – Andromeda Ship Holdings Ltd. ("Owners") because of which she was in a perilous condition. Accordingly, by orders dated 10 February 2011 and 7 April 2011 passed in Notice of Motion No. 2714 of 2010 in Admiralty Suit No. 33 of 2010, the Bombay High Court ordered the Vessel to be sold by public auction. Pursuant thereto, the Sheriff of Mumbai caused notices for sale of the Vessel to be published, locally and internationally.
- C. A public auction for sale of the Vessel was conducted on 29 April 2011. The highest bid received was INR 13,32,00,000 from Karnak Holdings Ltd. This bid was accepted by the Bombay High Court. On / about 19 May 2011, the purchase price of INR 13,32,00,000 was deposited. The sale was confirmed in favour of Karnak Holdings Ltd. ("Buyer") and the Vessel delivered to it free from liens and encumbrances as per order dated 20 May 2011.
- D. From out of the purchase price deposited by the Buyer, Sheriff's poundage and advertisement costs were deducted, port charges levied by the Visakhapatnam Port Trust were paid out and an amount of INR 76,00,454 was transferred to the Andhra Pradesh High Court to ensure to the benefit of the suit filed by the crew members there- as per the order dated 20 May 2011 in Notice of Motion No. 3714 of 2010 in Admiralty Suit No. 33 of 2010. The balance amounts were thereafter invested with the State Bank of India (Special Branch).
- E. After the vessel was arrested on 22 August 2010, additional suits were filed against the Vessel / the Sale Proceeds. Two suits, Admiralty Suit No. 28 of 2010 and Admiralty Suit No. 19 of 2012 was dismissed for want of prosecution on 15 December 2017. The Plaintiffs therein, one Blue Light Star Marine Services Pvt. Ltd. and Prosper Marine Suppliers, have not taken out any application for restoration of their suits.

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- F. On 13 December 2018, an advertisement was published as required under Rule 951 of the Bombay High Court (Original Side) Rules inviting claims against the sale proceeds of the vessel. No claims have been received pursuant to such advertisement.
- G. The principal amounts claimed in all the surviving suits filed against the Vessel / the Sale Proceeds are detailed below:

SUIT NUMBER	PLAINTIFF	CLAIM
ADMS 33/2018	Ceramareel International Limited	USD 812,588.84 - INR 90,77,788.61 (Sheriff's expenses) - INR 5,20,42,253.26 + INR 90,77,788.61
ADMS 12/2011	HETA ASSET RESOLUTION AG (formerly Type Alpe-Adria Bank International AG)	USD 5,572,439- INR 33,68,86,855.75
ADMS 62/2011	Shree Shipping & Logistics Pvt. Ltd. and Ors	USD 44,962.18- INR 28,79,602.82
ADMS 59/2011	Marodi Service S.A.S.	USD 469,157.42- INR 3,00,47,186.96
TOTAL ...		INR 45,09,33,686.40

- H. The Owners have not entered an appearance in any of the suits filed against the Vessel / the Sale Proceeds and as such the various Plaintiffs who have filed suits against the Vessel / the Sale Proceeds are entitled to have their claims decreed thereafter satisfied from out of the Sale Proceeds. However, because the aggregate of claims brought against the Vessel / Sale Proceeds exceed the Sale Proceeds themselves, each Plaintiff who has filed a suit against the Vessel / Sale Proceeds is entitled to intervene and contest suits brought by the other Plaintiffs as also to contest the priority of claims brought

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by the other Plaintiffs. Further apart from the suits detailed above, no claims have been lodged against the Vessel / Sale Proceeds.

1. To avoid lengthy and expensive litigations, all Plaintiffs who have filed suits against the Vessel / Sale Proceeds have decided to enter into an amicable settlement on the terms recorded below. The Plaintiffs who have intervened in other Plaintiffs' suits have no objection to the suits being disposed of on the terms contained hereinafter.

SETTLEMENT TERMS

1. The fixed deposit in which the Sale Proceeds are deposited shall be broken by the Prothonotary & Sr. Master, High Court Bombay and the Sale Proceeds shall be disbursed amongst the various Plaintiffs in the proportions detailed below:

SUIT NUMBER	PLAINTIFF	AMOUNT RECEIVABLE AS PER THE SETTLEMENT AGREEMENT
ADMS 33/2010	Cocoonadel International Limited	INR 4,10,00,000
ADMS 12/2011	Helm Asset Resolution AG (Formerly Hypo Alpe-Adria Bank International AG)	Balance remaining in the account after the other 3 are paid out
ADMS 62/2011	Shany Shipping & Logistics Pvt. Ltd. and Ors	INR 12,53,195
ADMS 59/2011	Maced. Service S.A.S.	INR 1,32,11,722

2. The aforesaid amounts shall be remitted by the Prothonotary & Sr. Master, High Court Bombay to the various Plaintiffs / their nominees as per the bank account details and in the manner provided in Annexure A to these terms. After the payments towards ADMS 33/2010, ADMS 62/2011 and ADMS 59/2011 are made as per the above, the balance amounts remaining in the account shall be remitted in its entirety to the Plaintiff in ADMS 12/2011.

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3. To give complete effect to these consent terms, the Hon'ble & Sr. Master, High Court Bombay is authorized to apply (or to appoint any of the advocates appearing for the Plaintiffs to apply on his behalf) to the Reserve Bank of India or to such other statutory bodies or organizations as may be required. Remittances to the account of Marodi Service S.A.S to be made in Euros and to the account of Hela Asset Resolution AG to be made in US Dollars.
4. Applicable bank charges attendant to transferring amounts in accordance with these terms shall be deducted from the amounts to be transferred.
5. Upon receipt of amounts mentioned in clause 1 above (less applicable bank charges), the Plaintiffs shall not have any claim against each other or against the Vessel or against the Sale Proceeds. However, the Plaintiffs are at liberty to proceed against the Owners and / or any other assets belonging to the Owners for recovery of the balance amount due to them, if they wish.
6. All concerned authorities, including the Reserve Bank of India and the State Bank of India to act on a photostat copy of these terms authorized by an associate of the Bombay High Court.
7. The aforementioned suits stand ^{disposed of} ~~withdrawn~~, as amicably settled.  
8. Refund of court fees, as per the High Court (OS) Rules, 1980 to the various Plaintiffs and / or their constituted attorneys and / or their advocates, as the case may be.
9. No order as to costs.
10. These consent terms have been signed on behalf of the various Plaintiffs by their respective constituted attorneys / authorized signatories. Copies of the power of attorneys / board resolutions / letters of authority issued by the various Plaintiffs are collectively annexed as Annexure B.


 For Concordia International Limited
 (Mr. Sanjay Panicker, Constituted
 Attorney)


 For Shiny Shipping & Logistics Pvt.
 Ltd. and Ors.
 (Mr. Sudarshan Gujar, Authorized
 Signatory)


 For Heta Asset Resolution AG
 (Kennedy Hype Alpo-Adria Bank
 International AG)
 (Mr. T.K. Harry, Constituted Attorney)


 For Marlin Service S.A.S.
 (Mr. Sudarshan Gujar, Constituted
 Attorney)


 Advocate for the Plaintiff in ADMS
 33/2010, 52/2011, 59/2011


 Advocate for the Plaintiff in ADMS
 12/2011

- 9 Order in terms of consent terms.
- 10 All suits and interim applications accordingly stand disposed.
- 11 Refund of court fees in accordance with rules.
- 12 No order as to costs.
- 13 All to act upon authenticated copy of this order.
- 14 As regards the execution application, the same to be listed for hearing on 12th July 2019, since it is arising out of admiralty suit, the same to be placed before this court. On the next date, if applicant is not represented, the execution application will be dismissed without further reference to applicant.

Registry to give notice of today's order alongwith copy of the order to applicant as well as applicant's advocate. Mr. Rajashekhar states he shall also forward a copy of this order. Statement accepted.

(K.R. SHRIRAM, J.)