

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL NOTICE OF MOTION(L) NO.1629 OF 2019
WITH
COMMERCIAL NOTICE OF MOTION NO.1402 OF 2019
IN
COMMERCIAL ADMIRALTY SUIT NO.27 OF 2019**

Kreuz Subsea PTE Ltd.	..Plaintiff/Applicant
Vs.	
Awb Gal Constructor	..Defendant

**WITH
COMMERCIAL NOTICE OF MOTION NO.1781 OF 2019
IN
COMMERCIAL ADMIRALTY SUIT NO.27 OF 2019
WITH
COMMERCIAL ARBITRATION PETITION NO.657 OF 2019**

Mr. Prashant Pratap, Senior Advocate a/w Mr. Prashant Asher and Mr. Nirav Shroff I/b Crawford Bayley and Co. for Plaintiff/Applicant in NMCD/1402/2019

Ms. S. Priya for Applicant in NMCDL/1629/2019;

Mr. Prathamesh Kamat a/w Ms. Varsha Ramann and Mr. Avik Sarkar I/b Kamal and Co. for Defendant/Applicant in NMCD/1781/2019 and for Petitioner in CARBP/657/2019

**CORAM : K.R.SHRIRAM, J.
DATE : 24th JULY 2019**

P.C.:

COMMERCIAL NOTICE OF MOTION NO.1402 OF 2019

1 After the matter was heard for sometime, counsel tendered consent minutes of order dated 24th July 2019, signed by advocate for plaintiff and advocate for defendant vessel and its owners. The consent minutes of order is taken on record and marked as “X” for identification.

2 For ease of reference, the consent minutes of order is scanned and reproduced below:

X *21/3/19*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY & VICE ADMIRALTY JURISDICTION
COMMERCIAL NOTICE OF MOTION NO.1402 OF 2019**

IN

COMMERCIAL ADMIRALTY SUIT NO.27 OF 2019

Krenz Subsea Pte. Ltd. ... Applicant / Plaintiff

Versus

AWB GAL Constructor ... Defendant

CONSENT MINUTES OF ORDER

1. The Plaintiff and Tirupati Vessel Pvt. Ltd. owner of the Defendant vessel AWB GAL Constructor had entered into a charterparty dated 15 January 2019 for charter of the Defendant vessel. The Plaintiff has various claims against the owner of the Defendant vessel which arise out of and / or in connection with the charterparty which is an agreement for use or hire of the vessel.

2. The Plaintiff filed Commercial Admiralty Suit No 27 of 2019 and obtained an order of arrest of the Defendant vessel AWB GAL Constructor dated 8 March 2019 to secure its claims. No security has been furnished for release of the vessel by its owner Tirupati Vessel Pvt. Ltd. and the vessel continues to remain under arrest.

3. The Plaintiff filed Commercial Notice of Motion No 1403 of 2019 seeking inter alia return of various material and equipment belonging to the Plaintiff and also third parties from whom it was taken on hire by the Plaintiff and which is on

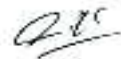
Order *LB*

board the Defendant vessel and set out in Exhibit "C" and Exhibit "D" to the Affidavit in Support of the said Notice of Motion. This application is opposed by the owner of the Defendant vessel who claims a lien on all material and equipment on board the vessel belonging to the Plaintiff and various third parties, in respect of its claims under the charterparty.

4. The Plaintiff and Tirupati Vessel Pvt. Ltd. have agreed to refer their disputes to arbitration pursuant to the Arbitration Clause contained in the Charterparty dated 15 January 2019 and have agreed to the appointment of a sole arbitrator.

5. Entirely without prejudice to their rights and contentions and without any admission of liability, the Plaintiff has offered to secure the claim of the owners of the Defendant vessel for 25 days charter hire in the sum of Rs.2,50,98,600.00 as per Invoice No.TVPL/KSS:041819 dated 11 February 2019 and a further sum of Rs.5,12,302.00 as per Invoice No.TVPL/KSS:031819 dated 11 February 2019. The total sum offered to be secured aggregates to Rs.2,56,11,902.00 rounded off to Rs.2,56,00,000.00. This offer is accepted by the owners of the Defendant vessel who will release and return the material and equipment belonging to the Plaintiff and various third parties which is currently on board the Defendant vessel.

6. It is agreed by the parties that upon the Plaintiff furnishing a Bank Guarantee of DBS Bank in the sum of Rs. 2,56,00,000.00 (Rupees Two Crores Fifty Six lacs) in favour of the Prothonotary & Senior Master, High Court, Bombay, Tirupati Vessel Pvt. Ltd., owners of the Defendant vessel shall forthwith release and return the material and equipment on board the vessel belonging to the

Plaintiff and various third parties as identified in Exhibit "C" and Exhibit "D" to the Affidavit in support of Notice of Motion No 1402 of 2019.

7. It is agreed by the parties that the Defendant vessel shall unload the material and equipment with the help of its crane / gear and power and facilitate and cooperate in the delivery of the material and equipment to the Plaintiff. In the event, the Defendant vessel does not have sufficient crew on board to operate its crane / gear, the Plaintiff will be entitled to provide at their cost a competent crane operator and other personnel as may be necessary for operating the crane to unload the material and equipment from the Defendant vessel. If for any reason the vessel's crane / gear is in-operational and cannot be utilized for unloading the material and equipment at anchorage, the owner of the Defendant vessel shall bring the vessel to berth at Mumbai Port forthwith and facilitate the unloading of the material and equipment with the help of shore cranes. All charges for use of shore cranes together with any berth hire charges and pilotage as may be necessary shall be paid by the Plaintiff to Mumbai Port Trust in the first instance. It shall be open to the Plaintiff to claim these amounts from the Defendant vessel and its owner if entitled to in law.

8. It is expressly agreed and clarified that the above shall operate as an ad-interim pro-tem arrangement to enable the Plaintiff to obtain return of the material and equipment belonging to the Plaintiff and various third parties on board the Defendant vessel. It shall be open to the Plaintiff to apply to the sole arbitrator for an order for return of security and the said application shall be considered on merits by the sole arbitrator under section 17 of the Arbitration and Conciliation Act, 1996 with all contentions of the parties kept open. For this purpose Commercial Notice of Motion No.1402 of 2019 shall be considered by the sole

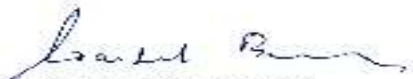


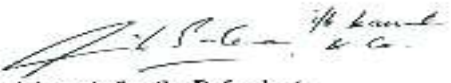
arbitrator as an application under Section 17 of the Arbitration and Conciliation Act, 1996. It shall be open to the parties to file further pleadings and documents in respect of the application.

9. The Bank Guarantee referred to in paragraph 6 above shall be provided initially for a period of one year and to be renewed thereafter from time to time till the disposal of the Plaintiff's application under section 17 for return of security and for a period of three months thereafter and subject to further orders of this Hon'ble Court.

10. The Plaintiff does not press its prayer in the said Notice of Motion for return of the bunkers supplied by the Plaintiff to the Defendant vessel and reserves its right to claim the value of the bunkers from the Defendant vessel and its owners.

Dated this 24th day of July 2019


Advocate for the Plaintiff
Kreuz Subsea Pte. Ltd.


Advocate for the Defendant
vessel and its Owners Tirupati
Vessel Pvt. Ltd.

3 So far as paragraph 7 of consent minutes of order is concerned, Mr. Kamat states that though the consent minutes of order has been signed, his instructions are that stream discharge is not possible and defendant vessel will be brought alongside into the berth of Mumbai Port Trust, subject

to sufficient draft being available and plaintiff may use shore crane to discharge the equipments on to the berth or directly on to trucks, as the case may be. Mr. Kamat states that they will extend all co-operation for removal of the equipments. As regards port charges towards berth hire and pilotage and if, there are any charges for moving the vessel from anchorage to Mumbai Port Trust berth, the same shall be paid by plaintiff. Mr. Pratap, without prejudice to plaintiff's rights, agrees to pay those charges and reserves plaintiff's rights to claim the same from defendant.

4 Order accordingly.

5 Notice of motion accordingly stand disposed.

6 All to act on authenticated copy of this order.

COMMERCIAL NOTICE OF MOTION (L) NO.1629 OF 2019

7 In view of the above, as the equipments referred to in the notice of motion no.1402 of 2019 covers the equipments of applicant in this notice of motion (l) no.1629 of 2019, the said notice of motion (l) no.1629 of 2019 also accordingly stands disposed.

(K.R. SHRIRAM, J.)