

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL NOTICE OF MOTION NO.442 OF 2017
IN
COMMERCIAL SUIT NO.541 OF 2017**

Lilly Maritime Private Limited

....Applicant/Plaintiff

Vs.

Shipping Corporation of India Limited

....Defendant

Mr. Amogh Singh I/b. Mr. M.V. Raut for applicant/plaintiff.

Mr. Rahul Narichania, senior advocate a/w. Mr. Prathamesh Kamat and Ms. Varsha Ramann I/b. M/s. A. Mehta Laljee and Company for

CORAM : K.R.SHRIRAM, J.

DATE : 22nd JANUARY 2019

P.C.:

1 At the outset, Mr. Singh states that he is pressing only prayer clause – (a) of the notice of motion.

2 This prayer clause – (a) is almost identical to prayer clause – (h-1) in the plaint. I say almost identical because in the notice of motion the figure of Rs.1,63,00,000/- is not mentioned, rest being the same.

3 First of all, if prayer clause – (a) of the notice of motion is granted, the suit would automatically get decreed in terms of prayer clause – (h-1) in the plaint. Moreover, defendant has in the written statement at paragraphs 10 to 14 have stated why this amount of Rs.1,63,00,000/- being the pre-bid amount is not refundable. According to defendant, they are entitled to set off of this amount of Rs.1,63,00,000/-

and even after setting off, they will still have a claim of about Rs.1,30,00,000/- recoverable from plaintiff. In the written statement at paragraph 10 (b) it is stated “..... This defendant is in law entitled to set off/equitable set off and/or make an equitable set off and/or adjust the aforesaid sum of Rs.2,93,36,722.77/- against the sum of Rs.2,99,83,646/- claimed by the plaintiff as refund.....”.

4 Therefore, at this stage, plaintiff is not entitled to the relief as prayed for. In the circumstances, notice of motion dismissed with no order as to costs.

5 Pleadings in the suit are completed. Therefore, the following order is passed :

(a) by 31st January 2019 parties shall file their respective affidavit of documents and serve a copy thereof upon the other side, failing which parties will not be permitted to rely on any document, copy whereof is not annexed to the plaint and/or written statement and mentioned in the list of documents annexed to the plaint and/or written statement. This will not, however, prevent a party from confronting a witness of another party with any document.

(b) by 6th February 2019 inspection to be completed. If inspection is not given, such party will not be permitted to rely on any document. By 11th February 2019 statement of admission and denial with reasons for denial to be exchanged. If the statement of admission and denial is not given, parties shall be deemed to have admitted the existence of all the documents of the other side.

(c) Suit be listed for issues on 13th February 2019 on which date parties shall come with agreed draft issues and a separate list of issues on which they are unable to agree. On

the next date, if parties do not come with draft issues, they are put to notice that parties will be put to terms.

(K.R. SHRIRAM, J.)