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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL CHAMBER SUMMONS NO. 949 OF 2019
IN
COMMERCIAL ADMIRALTY SUIT NO. 27 OF 2019**

Kreuz Subsea PTE. Ltd.	...Applicant/Plaintiff
vs	
AMB GAL Constructor	...Defendant

.....
Ms Simantini Mohite & Ms Prachi Shah i/b Crawford Bayley & Co. for
the Applicant/Plaintiff
Ms Varsha Ramann, Mr Avik Sarkar i/b Kamal & Co. for the
Defendant.

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**CORAM : B. P. COLABAWALLA, J.
SEPTEMBER 09, 2019.**

P.C. :

This Chamber Summons has been filed to permit the applicant / plaintiff to amend the plaint in terms of the schedule annexed thereto.

2 The learned advocate appearing on behalf of the defendant has vehemently opposed granting of this Chamber Summons. The learned advocate for the defendant has also filed an affidavit-in-reply dated 9th September, 2019. Two principal grounds of challenge to the amendment are that there is arbitration clause in the Charter Party and an application under Section 8 of the

Arbitration and Conciliation Act, 1996 (for short “**the Act**”) has already been filed in this Court asking for the present suit to be referred to the arbitration. It is further brought to my attention that the Arbitral Tribunal has already been constituted and has entered upon the reference. The second ground on which the Chamber Summons is opposed, is that the defendant has already filed a Notice of Motion for vacating the arrest order of the vessel, which is scheduled to come up before this Court on 17th September, 2019. On these two grounds, the Chamber Summons is vehemently opposed.

3 After hearing the learned advocate appearing on behalf of the defendant, I am unimpressed with any of the aforesaid contentions. Merely because an arbitration clause is contained in the Charter Party and an application under Section 8 of the Act is pending, are no grounds for not allowing the amendment. Similarly, merely because a Notice of Motion for vacating the arrest order of the defendant vessel, and which is scheduled to come up on 17th September, 2019, is also no ground for not allowing the amendment. This amendment is merely to amend the plaint as per the schedule annexed thereto. I do not think that the contentions raised by the learned advocate for the defendant, in any event, dis-entitle the plaintiff to seek amendment to the plaint.

4 At this stage, the learned advocate appearing for the defendant also sought to contend that the Chamber Summons suffers from latches and delay.

5 I completely fail to understand this argument. The plaint as originally filed was lodged on 8th March, 2019. The present Chamber Summons to amend the plaint, has been lodged on 9th August, 2019. It is clear from the schedule that what is sought to be brought on record are also certain facts which have occurred after the filing of the present suit. In these circumstances, I find this argument to be wholly ludicrous and, is therefore, rejected.

6 The Chamber Summons is accordingly allowed in terms of prayer clauses (a) and (b) which reads thus :-

- “(a) that this Hon’ble Court be pleased to permit the plaintiff / applicant to amend the plaint in terms of the Schedule annexed hereto ;
- (b) that this Hon’ble Court be pleased to permit the plaintiff to carry out all amendments consequential to prayer clause (a) above. ”

6 The amendment shall be carried out on or before 16th September, 2019 and the amended copy of the plaint shall also be served on the advocates for the defendant on or before the said date. It is made clear that this amendment is allowed without prejudice to

the rights and contentions of the defendant in all pending interlocutory proceedings that have either already been filed and or to be filed by the defendant. The Chamber Summons is accordingly disposed of. No order as to costs.

(B.P.COLABAWALLA, J.)