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

NOTICE OF MOTION NO.2058 OF 2017
IN
ADMIRALTY SUIT NO.48 OF 2015

The Board of Trustees of the Port of Mumbai ....Plaintiff
Vs.
M.V. Labitra Carmel and Ors. ....Defendants

Mr. Ajai Fernandes a/w. Ms. Sneha B. Pandey i/b. Motiwalla and Company for plaintiff.
Mr. Vikrant D. Shetty for M/s. K.E. Salvage Corporation, bidder.
Mr. Rizwan Qureshi, representative of M/s. Rajnish Steels, bidder.
Mr. Satish D. Chitgopekar, Deputy Sheriff of Mumbai present.

CORAM : K.R.SHRIRAM, J.
DATE : 13th DECEMBER 2019

P.C.:

1 Pursuant to order passed on 27th November 2019, Sheriff of Mumbai has placed Sheriff's Report No.53 of 2019 for consideration. Based on the advertisement released by the Sheriff of Mumbai, three offers have been received for m.v. Labitra Carmel, i.e., (i) M/s. Rajnish Steels for Rs.15,11,000/-, (ii) M/s. K.E. Salvage Corporation for Rs.10,00,000/- represented by Mr. Shetty and (iii) M/s. Gulzar Steels for Rs.21,51,789/-. Mr. Shetty did not want to increase his offer. The representative of M/s. Rajnish Steels offered Rs.23,00,000/- as against his first offer of Rs.15,11,000/- and then increased it to Rs.25,00,000/-. The representative of M/s. Gulzar Steels did not want to improve his offer.

2 Mr. Fernandes, counsel for plaintiff places on record an email dated 8th November 2019 received by him from the Assistant Harbour

Master of Port instructing him that the vessel needs to be disposed of in its place due to its deteriorated condition and cannot be towed anymore. Mr. Fernandes also places on record copies of six photographs that he had received with the said email. The email alongwith the photographs are taken on record and marked “X” to “X-6” respectively, for identification. The condition, as could be seen from the photographs, is much worst than what is in the photographs annexed to the Survey Report dated 29th July 2019 given by Ericson and Richards Surveyors Private Limited (Ericson). Mr. Fernandes states that his instructions are that there will be costs incurred to re-float the vessel and then tow it to the scrapyard. Mr. Fernandes states that the vessel has grounded and the place where she is grounded of course is right across the ship breaking yard of Darukhana and any purchaser will have to break the ship *in situ* or incur expenditure to re-float her to the extent that she can be towed safely to the ship breaking yard.

3 I have seen the valuation report of Ericson. From the photographs annexed to the valuation report and from the photographs received on record today and marked “X” to “X-6” respectively, for identification, it does appear that the vessel has submerged further. The vessel is over 13 years old and she is found flooded sitting on the bottom and in very poor overall condition. The scrap value indicated on as is where is basis is purely on the basis of LDT and the Valuer has not factored the cost

of re-floating the vessel or breaking the vessel *in situ.* On as is where is basis the price indicated is Rs.63,91,136/-. The vessel has been *in situ* since March 2015. She has been ordered to be arrested pursuant to orders dated 20th April 2015 and 20th July 2015 and has been lying in P & V anchorage and unmanned and without power for several years and there is no crew on board the vessel nor any watchman nor caretaker. It is also occupying a valuable space of plaintiff. Everyday the vessel remains there plaintiff is loosing substantial revenue. Mr. Fernandes states that it is Rs.28,727/- per month.

4 We have to keep in mind that the Court sale is a forced sale and the best price is not often forthcoming. This is the third attempt to sell the vessel. Everytime an attempt is made to sell, costs have to be incurred and in this case, plaintiffs have already incurred as on date an amount of Rs.12,74,314/- as costs for the three sale attempts. In the circumstances, as observed by the Apex Court in ***Kayjay Industries (P) Ltd vs Asnew Drums (P) Ltd. & Ors.***[1] if court sales are too frequently adjourned with a view to obtaining a higher price, it may prove a self defeating exercise. It will be useful to reproduce paragraph 7 as under : -

> *"Certain salient facts may be highlighted in this context. A court sale is a forced sale and, notwithstanding the competitive element of a public auction, the best price is not often forthcoming. The judge must make a certain margin for this factor. A valuer's report, good as a basis, is not as good as an actual offer and variations within limits between such an estimate, however careful, and real bids by seasoned businessmen before the auctioneer are quite on the cards. More so when the subject matter*

1. (1974) 2 SCC 213

> *is a specialised industrial plant, which has been out of commission for a few years, as in this case, and buyers for cash are bound to be limited. The brooding fear of something out of the imported machinery going out of gear, the vague apprehensions of possible claims by the Dena Bank which had a huge claim and was not a party, and the litigious sequel at the judgmentdebtor's instance, have `scare' value in inhibiting intending buyers from coming forward with the best offers. Businessmen make uncanny calculations before striking a bargain and that circumstance must enter the judicial verdict before deciding whether a better price could be had by a postponement of the sale. Indeed, in the present case, the executing Court had admittedly declined to affirm the highest bids made on May 16, 1969, June 5, 1969 and August 28, 1969, its anxiety to secure a better price being the main reason. If court sales are too frequently adjourned with a view to obtaining a still higher price it may prove a self-defeating exercise, for industrialists will lose faith in the actual sale taking place and may not care to travel up to the place of auction being uncertain that the sale would at all go through. The judgmentdebtor's plea for postponement in the expectation of a higher price in the future may strain the credibility of the Court sale itself and may yield diminishing returns as was proved in this very case."*

5 In the circumstances, I am inclined to accept the offer of M/s. Rajnish Steels for Rs.25 lakhs, subject to payment of the balance amount as per the schedule fixed in the order dated 27th November 2019.

6 Upon the Sheriff of Mumbai confirming receipt of the entire amount, the Prothonotary and Senior Master/Admiralty Registrar shall sign the bill of sale in favour of M/s. Rajnish Steels and no one else and also endorse on the bill of sale that the sale is only for scrapping and not trading. No nominee will also be mentioned in the bill of sale. EMD of unsuccessful bidders to be returned.

7 The amount deposited by plaintiffs for sale of the vessel to be paid back to plaintiffs immediately upon receiving the balance sale consideration. The surplus amount to be deposited with the Prothonotary

and Senior Master, High Court, Bombay, who shall invest the same in fixed deposit with a nationalised bank, initially for a period of one year to be renewed year to year, subject to further orders of this Court.

8 Sheriff's Report No.53 of 2019 accordingly stands disposed. Notice of motion also stands disposed.

9 Sheriff's office shall communicate to the Port, Customs and other authorities informing them about the sale of m.v. Labitra Carmel pursuant to this order.

10 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)