

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION NO.1 OF 2019
WITH
JUDGE'S ORDER NO.197 OF 2019
WITH
COMMERCIAL NOTICE OF MOTION NO.1781 OF 2019
IN
COMMERCIAL ADMIRALTY SUIT NO.27 OF 2019**

Kreuz Subsea Pte Ltd.

....Plaintiff

Vs.

AWB GAL Constructor (IMO No.8758574)Defendant

Mr. Prashant Pratap, senior advocate a/w. Ms. Simantini Mohite, Mr. Nirav Shroff and Ms. Megharanjani Chandu i/b. Crawford Bayley and Company for plaintiff.

Mr. Rahul Narichania, senior advocate a/w. Ms. Varsha Ramann and Mr. Avik Sarkar i/b. Kamal and Company for defendant.

Mr. Santosh Mishra i/b. Kochhar and Company for Afcons Infrastructure Limited (Performa respondent in IA/1/2019).

Mr. Tanmay Nandi, General Manager of Afcons Infrastructure Limited present.

**CORAM : K.R.SHRIRAM, J.
DATE : 22nd OCTOBER 2019**

P.C.:

1 Parties have entered into consent minutes of order dated 22nd October 2019. The consent minutes of order signed by advocates representing plaintiff and defendant is taken on record and marked "X" for identification.

2 Order in terms of the consent minutes of order. All undertakings are accepted.

3 For ease of reference, the consent minutes of order is scanned and reproduced hereinbelow :

x' 18
22/10/19

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE-ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO. 1 OF 2019
IN
COMMERCIAL ADMIRALTY SUIT NO. 27 OF 2019

TIRUPATI VESSELS PVT LTD ... APPLICANT
[Owners of AWB Gal Constructor (IMO No. 8758574)]

IN THE MATTER BETWEEN:

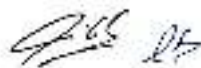
KREUZ SUBSEA PTE. LTD. ... PLAINTIFF
VERSUS
AWB GAL CONSTRUCTOR (IMO NO. 8758574) ... DEFENDANT

CONSENT MINUTES OF ORDER

1. Tirupati Vessel Pvt Ltd, having registered office in Calcutta is the registered owner of the Defendant Vessel AWB GAL Constructor.
2. The Defendant vessel is under arrest pursuant to an order dated 8 March 2019 of this Hon'ble Court in the above suit.
3. Tirupati Vessel Pvt. Ltd. and Afeons Infrastructure Ltd. ("*Afeons*") had entered into a charterparty dated 26 August 2019 for charter of the Defendant vessel Gal Constructor to perform offshore operations in relation to the ongoing offshore project of the Oil and Natural Gas Corporation Ltd. ~~Annexed hereto and marked as Exhibit A is a copy of the said charterparty dated 26 August 2019.~~
4. Afeons Infrastructure Ltd. is presently interested in utilising the Defendant Vessel to carry out an ongoing offshore project for the Oil and Natural Gas Corporation Ltd. under the said charterparty and for which purpose the Defendant Vessel shall be required to sail out of Mumbai Port to Bombay High to carry out the offshore operations.
5. In consideration of this Hon'ble Court permitting the Defendant Vessel to sail out of Mumbai Port under arrest to the offshore location at Bombay High to perform

operations whilst under arrest for the Oil and Natural Gas Corporation Ltd.(“ONGC”) under the charterparty dated 26th August 2019 with Afeons, and pending the hearing and final disposal of the Comm. Notice of Motion No. 1781 of 2019, the applicant unequivocally and unconditionally undertakes to this Hon’ble Court as follows:

- a. That the Defendant Vessel is as on date unencumbered and free from all liens, claims, charges or encumbrances;
- b. That the Defendant Vessel shall not be sold or encumbered in any manner whatsoever nor any lien or charge or encumbrance shall be permitted to be created in the said vessel and no third party rights, title or interest shall be created in the said vessel;
- c. That the Defendant Vessel shall under the charterparty dated 26th August 2019 with Afeons Infrastructure Ltd. perform offshore operations for ONGC at Bombay High whilst under arrest and shall not be taken or cause or permitted to be taken by the Applicant to any other port or location, except in an emergency, but which port or location shall always be within the territorial jurisdiction of India; in case of such emergency, the Applicant shall inform the Plaintiff and their Advocates within 24 hours.
- d. That on demand by the Plaintiff, the Applicant shall keep the Plaintiff notified of the whereabouts of the Defendant Vessel.
- e. That in the event the Commercial Notice of Motion No.1781 of 2019 is dismissed and / or the Applicant is required to furnish security then the Applicant shall within a period of 4 weeks furnish the necessary security by way of a bank guarantee or deposit the amount of security so ordered by this Hon’ble Court with the Prothonotary and Senior Master, High Court, Bombay, subject to any Appeal.



- f. That in the event there is any arrest or maritime claim or other liability on the Defendant vessel during the performance of the charterparty with Afcons and/or on account of any breach thereof, the same shall be forthwith discharged, settled or secured by the Applicant.
 - g. That in the event of the Defendant Vessel suffering any accident or casualty the Applicant shall inform the Plaintiff of such incident within 24 hours of its occurrence.
 - h. That in the event of the vessel becoming an actual or constructive total loss the Applicant shall deposit the insurance proceeds as received from the insurers in this Hon'ble Court to secure the claim of the Plaintiff. The vessel is insured with the Oriental Insurance Company Ltd and P&I cover with Maritime Mutual. The Premium and call money has been paid for the entire duration of the cover and is valid till May 2020.
6. It is expressly agreed and understood that the vessel Gal Constructor shall remain under arrest even when on charter to Afcons Infrastructure and whilst performing offshore operations for the ongoing project of ONGC at Bombay High and until further orders of this Hon'ble Court.
7. In addition to the contents of clause 5 above, the applicant further unequivocally and unconditionally undertakes as follows,
- a) That the Applicant is the registered owner of the Vessels PFS Courage and PFS Brave and that both vessels are presently in Mumbai Port within the territorial Jurisdiction of this Hon'ble Court and are free from all liens, claims, charges and encumbrances.
 - b) That the applicant shall keep the said two vessels within Mumbai port in good order and condition and shall insure the same and shall not take the vessels outside Mumbai Port or use them commercially in any manner whatsoever until further orders of this Hon'ble Court; a copy of the cover



note/certificate of Insurance and P&I cover shall be provided to the Plaintiff and their Advocates on or before 24th October 2019 before 4 pm.

2) That the applicant shall pay all port charges, all vessel related charges, crew wages, bunkers and virtues on respect of the said vessels and shall not permit or cause to be permitted any lien claim or charge or encumbrance on the said vessels except for the purpose of securing the claim of the Plaintiff in accordance with clause 5(e) above; Tirupati Vessel Pvt Ltd shall give prior notice of 3 court working days to the Plaintiff's Advocates before creating such encumbrance or charge on the vessel's PFS Courage and PFS Drive.

22/10/19
22/10/19

3) All rights and remedies of the parties to raise any claims and counter claims are expressly reserved.

4) Liberty to parties to apply.

Dated this 22nd day of October 2019.

Advocate for Plaintiff
Kreuz Subsea Pte. Ltd.

Advocate for Defendant/AWB
GAL Constructor/Tirupati Vessel Pvt Ltd

4 Affidavit of Mr. Rajiv Agarwal, Director of Tirupati Vessel Pvt. Ltd., owners of defendant vessel, affirmed on 22nd October 2019 is taken on record. All undertakings in the said affidavit are also accepted.

5 Afcons Infrastructure Limited has also filed an affidavit of one Tanmay Nandi affirmed on 22nd October 2019 containing various undertakings. Those undertakings are also accepted.

6 Mr. Mishra, on instructions, undertakes that the Director of Afcons Infrastructure Limited will file a separate affidavit reproducing the undertakings already contained in the affidavit of Mr. Tanmay Nandi and this affidavit shall be affirmed and copy served by 25th October 2019. Undertaking and the undertakings to be contained in the said affidavit are also accepted.

7 All rights and contentions of plaintiff and defendant are kept open. Undertaking of Mr. Mishra that M/s. Kochhar and Company will file Vakalatnama on behalf of Afcons Infrastructure Limited in this interim application by 25th October 2019 is also accepted. Afcons Infrastructure Limited will file Vakalatnama as a formal respondent in this interim application.

8 Though the defendant vessel remains under arrest, by way of abundant caution, the Court Master/Associate has checked the caveat book against release and I am informed that there is no caveat against release of defendant vessel.

9 In view of the undertakings given, notwithstanding the fact that defendant vessel is still under arrest, defendant vessel is allowed to sail to

the extent as mentioned in the order above.

10 This interim application stands disposed. Liberty to apply.

11 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)