

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 17TH DAY OF JULY 2019

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

A. No.4708 of 2019

In the matter of Section 9 application under the Arbitration and Conciliation Act, 1996, as amended in 2015 And

In the matter of London Arbitral Proceedings arising out of Charterparty dated 22nd November 2018 as amended by Annexure dated 24th December 2018 and Agreements dated 13th March 2019 and 12th April 2019.

LSS Ocean Transport DMCC,
Rep. By its authorised signatory,
A company incorporated under the appropriate
Laws of the United Arab Emirates, having its
registered office at Unit #2708, Jumeriah Business
Centre 5 - Cluster W-Dubai,
United Arab Emirates.

: Applicant

Vs.

K.I. (International) Limited,
A Company incorporated under the Companies Act 1956,
having its registered office at #664,
T.H.Road, Tondiarpet,
Chennai - 600 081.

: Respondent

Application praying that this Hon'ble Court be pleased to pass an order of attachment over the cargo of 10,000 MT of coal lying in the port of Krishnapatnam in the custody of the Applicant pending initiation and disposal of London arbitration proceedings arising out of Charterparty dated 22nd November 2018 as amended by Annexure dated 24th December 2018 and Agreements dated 13th March 2019 and 12th April 2019.

This Application coming on this day before this court for hearing, the Court made the following order:-

This application is filed to pass an order of attachment over the cargo of 10,000 MT of Coal lying in the port of Krishnapatnam in the custody of the applicant pending initiation and disposal of London arbitration proceedings arising out of Charterparty dated 22.11.2018 as amended by Annexure dated 24.12.2018 and agreements dated 13.03.2019 and 12.04.2019.

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2. The Charterparty was entered into between the applicant and the respondent on 22.11.2018. There was an Annexure dated 24.12.2018 to the said charterparty. Further, there was a deferment agreement dated 13.03.2019, which was also amended by agreement dated 12.04.2019. As per which, the applicant had lien over 12,500 MT of Coal for the undisputed demurrage claim

and 2,500 MT of Coal for the disputed demurrage claim and the total cargo is of 15,000 MT.

3. Admittedly, the first installment for USD 100,000 was paid on 24.04.2019 and against this 5,000 MT were released. Thereafter, on 25.04.2019 another USD 100,000 was to be paid, which was also paid on 28.06.2019 and another 5,000 MT were released. As per Clause 7 of the deferment agreement dated 12.04.2019, the owners can exercise a lien on the balance of the cargo of 2,500 MT and charterers further agreed to provide an undated cheque in the sum of USD 295,400 (equivalent to Indian rupees Rs.2,06,78,000/-) in favour of "Taurus Shipping Private Limited" as security for the disputed amount of discharge port demurrage.

4. The respondent defaulted in making payment of second and third installments. So the applicant presented the cheques given as security and all the three cheques were dishonoured for the reason that the accounts were frozen. Hence, the security furnished by the respondent was not a good security. The cargo with the applicant is 5,000 MT of which 2,500 MT goes for the lien pending an award as per Clause 7 of the agreement dated 12.04.2019 and for the balance 2,500 MT, the applicant is before this Court seeking for an injunction as other than this cargo there is no other asset of the

respondent, which the applicant can attach. If the applicant does not have any valid security equivalent to the value of its claim, it will be difficult in the event an award being passed to recover the same from the respondent.

5. After arguments and deliberations, today the parties have come up with certain proposal, as per which, out of the balance 5,000 MT being held by the applicant, 2,500 MT to be sold and the sale proceeds could be adjusted. Accordingly, the respondent has today handed over an undated cheque bearing No.233455 drawn on Union Bank of India, Washermenpet branch, Chennai - 600 021 for a sum of Rs.2,06,78,000/- (Rupees Two Crores Six lakhs and Seventy Eight Thousand only) in the name of "Taurus Shipping Pvt. Limited", as per Clause 7 of the agreement issued by Goyal Ispat Private Limited, which is said to be one of the group companies of the respondent i.e. K.I.(International) Limited to the learned counsel for the applicant, which is also hereby acknowledged.

6. In view of the cheque that has been received today, out of the 5,000 MT of Coal retained by the applicant, 2,500 MT shall be released to the respondent. The balance 2,500 MT, as per Clause 7 of the agreement, will be kept as lien by the

owner,

7. With the above directions, the application is closed.

Sd/-P.S.N.J

17/07/2019

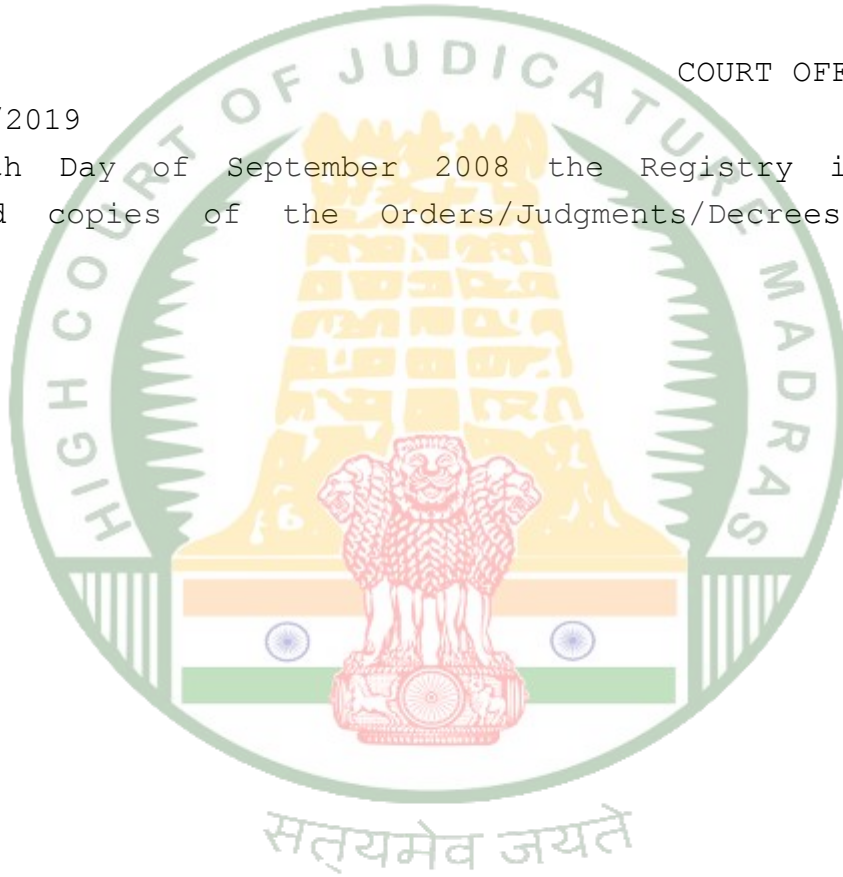
//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

jj 01/08/2019

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