A.No.6092 of 2019

PUSHPA SATHYANARAYANA, J.

Seeking appointment of a Receiver and direct the sale of 2500 MT of Cargo currently under the possession of the applicant and have the sale prospects deposited to the credit of this application with the Registry, this application has been filed.

2. There was a Charterparty Agreement entered into between the applicant and the respondent on 22.11.2018, pursuant to which, there was a deferment agreement dated 12.04.2019 also entered into. Earlier, the parties were before this Court in A.No.4708 of 2019, wherein the applicant herein had sought for 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 the arbitration proceedings at London based on the above referred agreements. In Clause 7 of the Agreement dated 12.04.2019, it was agreed by the Charterers that the owners can exercise a lien on the balance of cargo of 2500 MT and also agreed to provide an undated cheque in the sum of USD 2,95,400 in favour of Taurus Shipping Private Limited, as security for the disputed amount of discharge port demurrage.

3. In furtherance to the above clause, the order was passed by this Court on 17.07.2019 recording the submission of the parties therein that out of total 5000 MT of coal held by the applicant, 2500 MT to be sold and the sale proceeds could be adjusted. A cheque to the value of Rs.2,06,78,000/- was also given to the applicant favouring Taurus Shipping Private Limited issued by one of the group companies of the respondent company. Therefore, this Court had permitted 2500 MT be released to the respondent and the balance of 2500 MT, as per Clause 7 of the Agreement, will be kept as lien by the owner.

4. There is no dispute with regard to Clause 7 of the said deferment agreement dated 12.04.2019. The parties also said to have been acted upon the said order and there was no challenge to the same. The present application is filed by the applicant seeking appointment of a Receiver for the sale of the balance of 2500 MT in their possession, as it is stated that the said cargo is a perishable commodity and its weight and quality would consistently deteriorate everyday. Earlier though the applicant sent request to the respondent through their Advocates to monetize the cargo in their possession and the sale proceeds be held in an escrow account till the arbitration

proceedings are over, as there was no response, the present application has been filed. It is further stated that being an international commercial arbitration, which is also yet to commence, the applicant has approached this Court for the sale of the coal.

5. The application is resisted by the respondent contending that the present application is a mere demand for additional security, when already the applicant was given an undated cheque in the sum of USD 2,95,400 from the respondents group concern. The said undated cheque itself would be sufficient for the applicant to safeguard its claim and there is no necessity for demanding an additional security. Secondly, the original charterparty agreement dated 22.11.2018 between the parties did not provide for a lien to be exercised by the applicant against the unpaid demurrages, whereas, only in the amended deferment agreement dated 12.04.2019, two more securities were provided to the applicant, which were obtained under economic duress, as the applicant refused to release the delivery order for the coal. Thirdly, the damages for demurrages itself is disputed and that is the subject matter of arbitration. Hence, securing the entire claim amount, which is subject matter before arbitration does not arise.

6. As stated earlier, it is not in dispute that the deferment agreement contains clause 7, which provides for retention of 2500 MT of coal. It is the apprehension of the applicant that the quality and price of the coal would deteriorate, if not utilized immediately. The coal is only kept in lien. The respondent, being the owner of the coal, also should have concern about the deterioration of the value of the said commodity.

7. Though it is argued by the learned counsel for the respondent that the said clause itself was obtained under economic duress, so far there is no challenge laid to the said clause, so also the earlier order of this Court was also not challenged till today. Even assuming that the respondent is going to challenge the same, till such time the challenge is made there is no impediment for the applicant to sell the 2500 MT of coal in their custody and monetize the same and deposit the proceeds of the sale to the credit of this application pending disposal of the arbitration proceedings, since (i) the quality and price of the coal would be deteriorated till the completion of the arbitral proceedings ; and (ii) the cost and expenses towards demurrage of the said cargo is only debited to the charters account.

8. Considering the respective arguments made by both sides, this Court is of the view that the applicant company as well as the respondent company could be permitted to depute a person each to be appointed as Joint Receivers for the sale of the cargo of 2500 MT of coal, which is held as security, and the said Joint Receivers so deputed are authorized to sell the 2500 MT of coal in the manner that may be agreed to by the parties. The sale proceeds shall be deposited before this Court to the credit of this application, which has to be kept in a Nationalized Bank in an interest bearing fixed deposit initially for a period of two years pending disposal of the Arbitral proceedings between the parties.

9. With the above directions, this application is disposed of.

04.10.2019

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PUSHPA SATHYANARAYANA, J.

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