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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

ADMIRALTY & VICE ADMIRALTY JURISDICTION

JUDGE'S ORDER NO. 161 OF 2021

IN

COMMERCIAL ADMIRALTY SUIT (L) NO. 18377 OF 2021

The Board of Trustees of the Port of Mumbai ... Plaintiffs

Versus

M. V. TAG-9 & Anr. ...Defendants

WITH

INTERIM APPLICATION (L) NO. 21275 OF 2021

IN

COMMERCIAL ADMIRALTY SUIT (L) NO. 18377 OF 2021

Mr. Sudip Bhattacharya ... Applicant

In the matter of

The Board of Trustees of the Port of Mumbai ... Plaintiffs

Versus

M. V. TAG-9 & Anr. ...Defendants

Mr. Ajay Fernandes a/w. Ms. Sneha B. Pandey i/b. Motiwalla and
Co. for the Plaintiffs / Applicant.

Mr. Aamir Arsiwala, for the Defendant Nos.1 & 2.

CORAM : B.P. COLABAWALLA, J.

DATE : 22nd SEPTEMBER, 2021

P.C. :

1. Interim Application (L) No.21275 of 2021 not on board.
By consent of parties, taken on board finally.

2 This is a claim by Mumbai Port Trust against defendant no.1 vessel for non-payment of port dues as per the invoices referred to in paragraphs 4 & 5 of the plaint. I have heard Counsel Mr. Ajai Fernandes and considered the plaint and the documents annexed thereto.

3. Prima facie case for arrest is made out.

4. Mr. Arsiwala appears for Defendant Nos.1 & 2. He has entered appearance and accepted Writ of Summons pursuant to Order dated 01/09/2021. Defendant Nos.1 & 2 have also filed an Affidavit in Reply to this Judges Order, as well as Interim Application (L) No.21275 of 2021 under Order VII Rule 11 of the Code of Civil Procedure, 1908. Mr. Arsiwala submits that :

- (a) *Defendant No.2 is the Liquidator of Tag Offshore Limited (in liquidation), which is the owner of the Defendant no.1 vessel.*
- (b) *The present suit is barred by provisions of the Insolvency & Bankruptcy Code, 2016, under which the company is being liquidated.*

(c) Specifically, Sections 33(5), 35(1)(7), 36, 53 and 238 of the IBC, 2016 bar the present suit.

(d) The provisions of the IBC, 2016 must prevail over the provisions of the Admiralty Act, 2017.

5. However, Mr. Fernandes submits that all of these arguments have been dealt with by a coordinate bench of this Hon'ble Court in its judgement dated 19.05.2021 in the case of Raj Shipping v. Barge Madhwa [(2020) SCC Online Bom 651]. Further, Defendant no.2 has not filed any Caveat under Rule 1072 of the Bombay High Court (OS) Rules 1980 (as amended).

6. Having heard the learned Counsels on this aspect, I find that there is no merit in either the reply filed by the Defendant nos. 1 & 2 or the aforesaid Interim Application. I have considered the Affidavit in Reply and the Interim Application. The issues raised therein are squarely covered by the judgment of this Court in the case of Raj Shipping (supra). Mr. Arsiwala is unable to distinguish the aforesaid decision. The Interim Application is accordingly dismissed.

7. The Judge's order for arrest of Defendant no.1 vessel is signed separately. Caveat warrant book against arrest is also presented in the court and the Court Associate confirms that there is no caveat entered against arrest of Defendant no.1 vessel.

8. Plaintiff is at liberty to forward a copy of the communication from the Sheriff of Mumbai forwarding this order by fax/email/hand delivery/RPAD to Customs Authorities.

9. The undertaking of plaintiff's advocate that the warrant of arrest will be served upon the vessel within three weeks from today is accepted.

10. Considering the facts, and circumstances of this case, after execution of the warrant of arrest, if the arrested vessel is not released by furnishing security or bail amount within 15 days, or the vessel is found abandoned by the person in-charge of the vessel or owner or is found unmanned, then in such an event, on an application made by the Plaintiff, the office of Sheriff of Mumbai shall present a Sheriff's report for auctioning the vessel within seven days from the date of receiving communication from the Plaintiff's Advocate or from the date of knowledge of abandonment of the vessel.

11. All parties to act on an authenticated copy of this order digitally signed by the Personal Assistant /Private Secretary/Associate of this Court.

(B.P. COLABAWALLA, J.)