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

SANTOSH SUBHASH KULKARNI

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Date: 2022.12.09 18:36:29 +0530

INTERIM APPLICATION NO. 4650 OF 2022
IN
COMM ADMIRALTY SUIT NO. 27 OF 2021

Sembcorp Marine Repairs & Upgrades Pte. Ltd. ...Applicant

In the matter between

Sembcorp Marine Repairs & Upgrades Pte. Ltd. ...Plaintiff

Versus

Sale Proceeds of M. V. Karnika (IMO No. 8521220) ...Defendant

Mr. Ram Jay Narayan, i/b Shweta Sadanandan, for the Applicant/Plaintiff.

CORAM: N. J. JAMADAR, J.
DATED : 6th DECEMBER, 2022

ORDER:-

1. This is an application for summary judgment under Order XIII-A read with Order XII Rule 6 of the Code of Civil Procedure, 1908 ("the Code").

2. The plaintiff is a company incorporated under the laws of Singapore. The plaintiff is engaged in the business of, *inter alia,* ship repair and refurbishment yard. The vessel, MV Karnika (IMO No.8521220) was flying the flag of Bahamas. Jalesh Cruises Mauritius Ltd. ("Jalesh") was the registered owner of MV

Karnika. Pursuant to orders passed by this Court on 7th October, 2020 and 28th October, 2020 in Admiralty Suit No.53 of 2020, MV Karnika was sold and the sale proceeds stand deposited with the Prothonotary and Senior Master of this Court. Pursuant to further order dated 22nd December, 2020 in Commercial Admiralty Suit (L) No.4374 of 2020 a notice inviting claims was published by the Sheriff of Mumbai. In response thereto, the plaintiff, who claims to have a maritime claim against the defendant – vessel has instituted this suit.

3. The plaintiff avers that on 1st March, 2019 Jalesh and plaintiff concluded a Ship Refurbishment Contract for repairs and refurbishment of MV Karnika for the value of US$ 50,00,000. The value was subsequently revised to US$ 40,60,165. The contract provided for, *inter alia,* payment of interest at the rate of 18% p.a. (i.e. 1.5% per month) on the outstanding amount receivable by the plaintiff beyond the credit period.

4. During period from 12th March, 2019 to 7th April, 2019, the plaintiff repaired and refurbished MV Karnika at its yard in Singapore. Invoices were raised for an aggregate amount of US$ 40,60,165. Jalesh made a lumpsum payment US$ 30,00,000 on 5th April, 2019. The said amount was adjusted against the first three invoices. An amount of US$ 10,60,165 covered by the last invoice dated 6th April, 2019, remained outstanding. Jalesh confirmed the correctness of the outstanding amount under the final invoice dated 6th April, 2019.

5. Correspondence ensued between the parties. Vide Confirmation (Exhibit-J), Jalesh acknowledged the outstanding amount of US$ 144,851.43 as of 6th February, 2020. Jalesh also acknowledged liability to pay interest at the rate of 1.5% per month on the said amount. In addition thereto, Jalesh admitted liability in subsequent communications dated 28th July, 27th August and 28th September, 2020. Jalesh however failed to pay the outstanding amount.

6. In the meanwhile, Jalesh has gone into liquidation in Mauritius. The plaintiff asserts it has not received any amount in the said liquidation proceedings. As the plaintiff has a maritime claim within the meaning of Section 4(1)(m) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("the Admiralty Act"), the plaintiff is entitled to enforce the same against the defendant – vessel, in rem. Hence this action against the sale proceeds of the defendant.

7. In the application, it is averred that the claim of the plaintiff represents an admitted liability. There are clear and unequivocal acknowledgments. Despite service of the writ of summons, none appeared for Jalesh. In view of the clear and explicit admissions of liability, there is no real prospect of the claim of the plaintiff being successfully defended. Hence, this application.

8. I have heard Mr. Narayan, the learned Counsel for the applicant – plaintiff. I have perused the averments in the plaint, application and documents annexed thereto.

9. The ship repair and refurbishment contract executed on 1st March, 2019 evidences the transaction between the plaintiff and Jalesh. The terms of the contract, *inter alia,* provided for payment of full amount of the invoices within seven days and payment of interest at the rate of 1.5% per month for the delayed period. The plaintiff has placed on record documents which indicate that the plaintiff did provide repair and refurbishment services to MV Karnika. The invoices (Exhibits-F to F3) evidence the services rendered by the plaintiff to the MV Karnika. The invoice dated 6th April, 2019 (Exhibit-F3) records part payment of US$ 30,00,000 and the outstanding amount of US$ 10,60,165. The said invoice also contains the term of payment and charge of interest at the rate of 1.5% per month for the delayed payment. The material on record thus establishes beyond the pale of controversy that the applicant had rendered repair and refurbishment services to MV Karnika.

10. The claim of the plaintiff that Jalesh had confirmed the outstanding balance by executing the balance confirmation is substantiated by the balance confirmation (Exhibit-J) dated 6th February, 2020. Jalesh had thereunder acknowledged the liability in the sum of US$ 144,851.43. The liability to pay interest on the outstanding amount at the rate of 1.5% per month was also duly acknowledged. Jalesh agreed to repay the outstanding amount by 12th April, 2019.

11. It becomes evident that thereafter Jalesh faced financial constraints. Initially in response to the demand by the plaintiff, Jalesh assured the plaintiff that it was in the process of arranging the funds and the outstanding amount would be cleared soon. The communications dated 28th July, 2020 (Exhibit-K), 27th August, 2020 (Exhibit-K) and 28th September, 2020 (Exhibit-L) clearly indicate that Jalesh assured to pay the outstanding amount. It does not appear that at any point of time Jalesh disputed the liability. In the weight of the circumstances which ensued in the wake of Covid-19 Pandemic, Jalesh seems to have imploded resulting in liquidation, arrest and sale of the defendant – vessel.

12. In the totality of the circumstances, especially the clear and explicit acknowledgment of liability by executing balance confirmation and addressing letters assuring to clear the outstanding amount, coupled with indisputable rendering of services by the plaintiff to MV Karnika, for which a substantial part payment had already been made, there does not seem to be any real prospect of defendant successfully defending the suit.

13. I find substance in the submission of Mr. Narayan, that the claim for repairs and refurbishment charges of the vessel constitutes a maritime claim under Section 4(1)(m) of the Admiralty Act.

14. In view of the admitted liability and there being no compelling reason not to pass a decree without leading evidence, I do not find any impediment in allowing the application.

15. Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) There shall be a summary judgment and decree in favour of the applicant – plaintiff and against the sale proceeds of MV Karnika in the sum of US$ 14,25,921.93 along with further interest at the rate of 8% p.a. on the principal amount of US$ 10,60,165 from the date of the the suit till payment.

(iii) The plaintiff is also entitled to costs quantified at Rs.5,00,000/-.

(iv) The suit stands decreed in aforesaid terms.

(v) Decree be drawn accordingly.

[**N. J. JAMADAR, J.**]