

Santosh

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

**INTERIM APPLICATION NO. 2163 OF 2022
IN
COMM ADMIRALTY SUIT NO. 46 OF 2021**

**SANTOSH
SUBHASH
KULKARNI**

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Date: 2022.09.20
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IDBI Bank Ltd. ...Applicant

In the matter between

IDBI Bank Ltd. ...Plaintiff

Versus

MV TAG 20 (IMO No,9126039) & anr. ...Defendants

Mr. Zarir Bharuch, a/w Rishi Thakur, Dhvani Gala, i/b ZBA,
for the Applicant.

CORAM: N. J. JAMADAR, J.

DATED : 2nd AUGUST, 2022

ORDER:-

1. The plaintiff has taken out this application for a summary judgment under Order XIII-A of the Code of Civil Procedure, 1908 ("the Code") as amended by the Commercial Courts Act, 2015 and/or a decree on admission under Order XII Rule 6 of the Code in an admiralty action instituted in *rem* against the sale proceeds of vessel – MV TAG-20, defendant no.1.
2. The plaintiff is a banking company within the meaning of Banking Regulation Act, 1949. The plaintiff had sanctioned a Foreign Currency Loan of US\$ 4.875 million to defendant no.2, the registered owner of defendant no.1 – vessel, on the terms

and conditions incorporated in the sanction letter dated 22nd June, 2016. Pursuant to the Loan Agreement executed on 28th June, 2016, defendant no.2, in consideration of the said facility, had furnished security in the nature of a first and exclusive charge on the vessel – MV TAG-20, defendant no.1. A Deed of Statutory Mortgage of vessel thus came to be executed on 29th June, 2016, whereby and whereunder the first and exclusive charge of MV TAG-20 was created in favour of the plaintiff. Simultaneously, an unattested Memorandum of Hypothecation was created in favour of the plaintiff under which defendant no.1 – vessel was hypothecated.

3. Defendant no.2 committed default in repayment of the loan account in accordance with the terms of the contract. Consequently, the account of the defendant was declared a Non-Performing Assets (MPA).

4. Eventually, under Judge's Order (L) No.9026 of 2020, dated 18th December, 2020, defendant no.1 – vessel came to be arrested. By a subsequent order dated 31st March, 2021, defendant no.1 – vessel was sold and the sale proceeds have since been realized. The plaintiff has instituted this suit in *rem* against the sale proceeds of defendant no.1 for the sum of US\$ 37,24,334.45 comprising the principal loan amount and the interest accrued thereon as of 10th December, 2020, along with

further interest. The plaintiff has taken out this application with the assertions that the claim of the plaintiff constitutes an admitted liability and there is no real prospect of successfully defending the suit claim.

5. I have perused the averments in the plaint and the interim application and the documents annexed with it. I have heard Mr. Bharucha, the learned Counsel for the plaintiff – applicant. The claim of the plaintiff that it had advanced a Foreign Currency Loan finds requisite support in the sanction letter dated 22nd June, 2016 incorporating the terms and conditions, which were acceded to by defendant no.2 and the consequent loan agreement dated 30th June, 2016. The plaintiff had agreed to advance a Foreign Currency Loan of US\$ 4.875 Million equivalent to Rs.33 Crores, in the maximum (Exhibits A and C). Defendant no.2 had agreed to pay interest at the rate of 5.25% p.a. The stated purpose of the loan was repayment of loan of HERO CORP Limited and reimbursement of internal accruals towards acquisition of vessel – MV TAG-20. It was, *inter alia*, agreed that defendant no.2 would secure the said loan by (I) exclusive charge on the vessel – MV TAG-20 and; (II) exclusive charge on the USD Bank account/escrow account, in which all cash flows related to the vessel – MV TAG-20 would be deposited. The Deed of Mortgage executed on 20th June, 2016

evidences the creation of the mortgage in respect of defendant no.1 – vessel MV TAG-20. Further claim of the plaintiff that the said charge has been duly registered with Mercantile Marine Department and the Registrar of Companies finds support in the letter dated 19th July, 2016 (Exhibit-E) and a copy of Form No. CHG-1 (Exhibit-F).

6. In order to lend support to the claim that defendant no.2 had acknowledged the liability and the suit claim constitutes an admitted liability, the plaintiff has relied upon the balance confirmation dated 6th April, 2018 executed by defendant no.2, wherein the latter had acknowledged, *inter alia*, the outstanding liability to the tune of US\$ 42,44,101, as of 31st March, 2018.

7. The situation which thus obtains is that there is adequate material to show that defendant no.2, the owner of defendant no.1 – vessel MV TAG-20, had availed a credit facility from the plaintiff and in order to create security, had executed documents including a Deed of Mortgage thereby creating a first charge on defendant no.1 – vessel. Under Clause (c) of Sub-section (1) of Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claim) Act, 2017 (“the Admiralty Act, 2017”), mortgage or a charge of the same nature on vessel constitutes a maritime claim. Such a maritime claim furnishes

a sustainable ground for an action in *rem* under Section 5 of the Admiralty Act, 2017.

8. In the case at hand, the plaintiff's claim is supported by documents of unimpeachable character. Moreover, there is a clear and unequivocal acknowledgment of the liability in the balance confirmation letter. In the totality of the circumstances, the sale proceeds of defendant no.1 – vessel MV TAG-20 does not seem to have real prospect of successfully defending the plaintiff's claim. I am, therefore, impelled to pass a summary judgment under Order XIII-A of the Code.

9. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) There shall be summary judgment against the sale proceeds of MV TAG-20 in the sum of US\$ 37,24,334.45 along with further interest at the rate of 5.25% p.a. on the principal amount of US\$ 34,12,500 from the date of the suit till realization.
- (iii) The plaintiff is entitled to refund of Court-fees in accordance with the Rule.
- (iv) The suit stands partly decreed in the aforesaid terms.
- (v) Decree be drawn and sealed expeditiously .

[N. J. JAMADAR, J.]