IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1135 OF 2022
IN
COMMERCIAL ADMIRALTY SUIT NO.01 OF 2022

Aditya Birla Finance Limited ...Applicant/ Plaintiff

vs.

M.V. Tag 7 ...Defendant

Mr. Vishal Sheth a/w. Ms. Shweta Sadanandan i/b. Bimal Rajasekhar, for the Applicant/Plaintiff.
Ms. Nidhi Shah a/w. Ms. Nupur Shah i/b. Amir Arsiwala, for the Defendant.

CORAM : N. J. JAMADAR, J.
DATE : AUGUST 30, 2022

P.C.:

1. This is an application for a summary judgment under Order XIII-A read with Order VIII Rule 1 and Order VIII Rule 10 and Order XX Rule 6 of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act, 2015 for a sum of Rs. 58,84,41,765/- along with further interest on the principal sum of Rs. 43,69,73,400/- and Rs. 8,24,96,772/- at the agreed rate of interest.

2. The material averments in the plaint can be summarized as under:-

a] The plaintiff company is engaged, inter alia, in the business of extending finance and providing credit facilities to its borrowers.

MV Tag 7, the defendant, was a vessel flying an Indian flag.

b] Under a sanction letter dated 9th December, 2016 the plaintiff had extended credit facilities up to Rs. 70 Crores comprising a Term Loan facility of Rs. 50 Crores and Line of Credit facility of Rs. 20 Crores to “Tag Offshore Limited” (in Liquidation), (“Tag”), the then registered owner of the defendant and one Neo Precious Mercantile Goods Private Limited, the co-borrower. A loan agreement to extend the Line of Credit up to to Rs. 20 Crores was executed on 13th December, 2016 between the plaintiff and the Tag. The Term Loan agreement for an amount of Rs. 50 Crores was also executed on the very day. To secure the credit facilities extended by the plaintiff, Tag had executed a registered mortgage in respect of the defendant vessel.

d] On 21st May, 2018 the Term Loan and Line of Credit facilities were renewed. However, the plaintiff’s exposure came to be reduced as Tag remained the sole borrower. The plaintiff avers that the Tag repaid a small portion of the amount advanced. Tag committed default in repaying a substantial portion of the outstanding amount.

e] In the meanwhile, on 24th April, 2019 the National Company Law Tribunal, Bombay (NCLT) passed an order initiating a Corporate Insolvency Resolution Process (CIRP) against the Tag. By a subsequent order dated 26th September, 2019 NCLT directed liquidation of Tag. The plaintiff asserts that the initiation of CIRP against the Tag and its eventual insolvency constituted independent events of default under the loan agreements and thus the entire outstanding amount become due and payable thereunder.

3. In the wake of CIRP, the plaintiff submitted its claim to the liquidator on 25th October, 2019. The plaintiff was allowed to realise its security interest outside the liquidation. The liquidator has admitted the claim of the plaintiff to the tune of Rs. 55,10,94,099/- in its capacity as the financial creditor. The plaintiff thus has a mercantile claim against the defendant vessel and is entitled to proceed against the defendant vessel or its sale proceeds in rem.

4. The plaintiff has taken out this Interim Application with the assertion that pursuant to an application made by the plaintiff in the instant suit, the defendant vessel was arrested by an order dated 30th July, 2020. Despite service of warrant of arrest, none has entered appearance for the defendant vessel. By a subsequent order dated 21st June, 2021 the defendant vessel was sold for 'breaking' to One World System (Hong Kong) Limited for a consideration of Rs. 7,11,00,000/-.

5. No written statement has been filed on behalf of the defendant. Even otherwise, the applicant's claim, secured by an exclusive first charge and registered mortgage on the defendant vessel, constitutes a maritime claim under section 4(1)(c) of the Admiralty Act, 2017 (the Act, 2017). Thus, there is no real prospect of the defendant's vessel successfully defending the plaintiff's claim. Hence, this application for summary judgment.

6. The liquidator of defendant No. 1 has filed an affidavit in reply opposing the prayer for summary judgment. After setting out the facts leading to the appointment of the liquidator to liquidate Tag, the liquidator contends that the claim of the plaintiff stood admitted to the extent of Rs. 55,10,94,099/- and, thus, the plaintiff has participated in the liquidation process of the Corporate Debtor by submitting its claim and, therefore, the plaintiff has now subjected itself to the jurisdiction of the NCLT under Insolvency and Bankruptcy Code, 2016 (IBC). The liquidator further contends that the plaintiff has not complied with the direction to deposit the unpaid CIRP costs of Rs. 91,12,344/-. According to the liquidator, the failure on the part of the plaintiff to comply with the Liquidation Regulation has resulted in denuding the plaintiff of the security interest over the defendant vessel and, therefore, at this stage it can

not be said that the plaintiff has a maritime claim against the defendant vessel. Hence, the application deserves to be rejected.

7. It would be contextually relevant to note at this stage itself that in a petition filed by the plaintiff, being Writ Petition (L) No. 9711 of 2020, inter alia, assailing the validity of Regulation 2A and Regulations 21A(2) and (3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the order passed by the NCLT on 15th December, 2020 directing the plaintiff to deposit the aforesaid amount, has been stayed subject to deposit of an amount of Rs. 91,00,000/-. The plaintiff has, in terms of the order dated 23rd December, 2020 passed by this Court in Writ Petition (L) No. 9711 of 2020, deposited the amount of Rs. 91 lakhs in this Court.

8. The claim of the plaintiff that it had sanctioned the Term Loan and Line of Credit facilities to Tag, the then registered owner of the defendant vessel, is substantiated by the sanction letter dated 9th December, 2016 and the amendment thereto vide letter dated 12th December, 2016 (Exhibit A and B) respectively. The Line of Credit facilities agreement dated 13th December, 2016 (Exhibit C) and Term Loan agreement of an even date (Exhibit D), incorporate the

terms and conditions subject to which the credit facilities were extended by the plaintiff to the defendant. Creation of security interest over the defendant vessel is evidenced by the mortgage executed by Tag in favour of the plaintiff and registered under the Merchant Shipping Act, 1958 with the mercantile marine department (Exhibit E). A letter dated 13th April, 2017 addressed by the Registrar of Indian Ships, Mercantile Marine Department, Mumbai to Tag records the registration of the mortgage on the defendant vessel on 13th April, 2017.

9. In the face of the aforesaid documents, and the incontestible facts as regards initiation of Insolvency Resolution Proceedings against Tag, eventual appointment of liquidator by NCLT to liquidate Tag, the arrest of the defendant vessel, consequent sale thereof and the deposit of the sale proceeds with this Court, there does not seem any contest on the merits of the plaintiff's claim. Indisputably, the applicant was permitted to enforce the security interest by remaining out of the liquidation process. It would be suffice to note that in the affidavit in reply, the liquidator has categorically asserted that pursuant to public announcement, consequent to the order of liquidation dated 26th September, 2019 passed by NCLT, Mumbai, the plaintiff submitted its claim and,

thereupon, the plaintiff's claim stood admitted to the extent of Rs. 55,10,94,009/- only.

10. The bone of contention between the plaintiff and the liquidator is the liability of the plaintiff to proportionately contribute towards the liquidation expenses. By an order dated 15th December, 2020, in Interim Application No. 1196 of 2020 filed by liquidator of Tag, the NCLT, Mumbai Bench, directed the respondents including respondent No. 2, the plaintiff herein, to contribute proportionately to the liquidation costs as per regulation 21A of the Liquidation Process Regulations. Assailing the said direction, the plaintiff filed Writ Petition (L) No.9711 of 2020; wherein by an order dated 23rd December, 2020 a Division Bench, stayed the direction given by NCLT, Mumbai Bench in the impugned order dated 15th December, 2020 subject to the petitioner/plaintiff depositing the sum of Rs. 91 lakhs in this Court within a period of one week thereof.

11. The aforesaid order, as indicated above, has been complied with by the plaintiff. As this Court has stayed the directions in the order dated 15th December, 2020 and the plaintiff has complied with the condition, subject to which the stay was granted, at this stage,

in my considered view, it is not open for the liquidator to turn around and assert that the plaintiff is denuded of the character of secured creditor and the right of the plaintiff to proceed under section 52(4) of the IBC has come to an end. It is imperative to note that the substratum of this contention is the alleged refusal to contribute to the liquidation costs. Once, the plaintiff complies with the conditional order, subject to which stay has been granted by this Court to the direction of NCLT, Mumbai, the plaintiff cannot be again visited with the consequences which flow from the non compliance of the directions of NCLT, Mumbai.

12. Resultantly, as indicated above, there is no challenge, on merits, to the claim of the plaintiff. In fact, in the face of the documents of unimpeachable character on which the plaintiff's claim rests, the defendant vessel or for that matter the liquidator of Tag has no real prospect of successfully defending the plaintiff's claim. On the contrary, the liquidator of Tag is estopped from contesting the claim of the plaintiff as the plaintiff's claim to the extent of Rs. 55,10,94,099/- is admitted by the liquidator.

13. In the circumstances of the case, I do not find that there is any other compelling reason not to dispose of the suit before recording

of oral evidence. Hence, the following order.

ORDER

1] There shall be a summary judgment in favour of the plaintiff and against the sale proceeds of the defendant vessel M.V. Tag 7 in the sum of Rs. 55,10,94,099/- along with interest thereon @ 9% p.a. from the date of institution of the suit till payment and/or realization.

2] The plaintiff is entitled to the costs of the suit quantified at Rs. 4,00,000/-.

3] The plaintiff is entitled to refund of Court fees, if any, in accordance with the rules.

4] Decree be drawn accordingly.

5] Interim Application disposed.

(N. J. JAMADAR, J.)