

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE-ADMIRALTY JURISDICTION
[COMMERCIAL DIVISION]

JUDGE'S ORDER NO.51 OF 2022

IN

COMMERCIAL ADMIRALTY SUIT (LODGING) NO.18896 OF 2022

Kroll Trustee Services Ltd.

.. Applicant-Plaintiff

Vs.

M.V. Aeon (IMO No.9576818)

.. Defendant

Mr. Shyam Kapadia, with Mr. Rishabh Saxena, Ms. Shruti Sardesai and Mr. Raghuvendra Desai, i/by Bose and Mitra and Co., for the Applicant-Plaintiff.

None for the Defendant.

CORAM : A. K. MENON, J.

DATE : 20TH JUNE, 2022.

P.C. :

1. In a suit filed by the plaintiff-trustee company to recover a sum of USD 22,354,332.41 and interest thereon and legal costs, the plaintiff has approached this court seeking arrest of the defendant-vessel. The total liability is said to be in the region of USD 23,132,644.10. It arises out of a Facility Agreement dated 24th July 2017, under which the defendant-vessel has incurred this liability.

2. Mr. Kapadia, learned counsel for the plaintiff has taken me through the documentation forming basis of the present suit and has demonstrated that the defendant-vessel was described as "Ship D" in the Amending and Restating Agreement dated 26th May 2020, annexed at Exhibit-I to the plaint. The defendant-

vessel was earlier known as “Golden Pacific”, later it came to be known as “Selene” and is presently known as “M.V. Aeon”.

3. The Equasis Report dated 9th June 2022 submitted in the present suit bearing same IMO number is tendered across the bar. It demonstrates change of the name of the vessel from time to time. The defendant-vessel is said to be subject matter of the mortgage deeds in favour of the plaintiff. The plaintiff, then known as Lucid Trustee Services Ltd., had issued demand notice upon default on 9th August 2021 to the four borrowers and including the registered owner of the defendant-vessel Samnium Maritime Ltd. That demand notice is to be found at Exhibit-U to the plaint. It sets out the background under which the facility agreement contemplated securing the loan of USD 31,797,573.60. The default notice sets out the fact that a total of USD 2,367,625.83 is due as of 31st March 2020, later till September 2020, repayment of which was deferred upto January 2021 by virtue of the aforesaid Amending and Restating Agreement. However, the default has continued and a notice of repossession of the defendant-vessel has been issued on 25th May 2022. Change of name of the plaintiff-company is evident from Exhibit-A to the plaint. The notice of repossession also sets out the fact that the plaintiff now proposes to repossess the vessel. Particulars of Claim sets out the amount that is now due. It appears that some particulars payments have been made bringing down the amount to the current claim.

4. Having heard learned counsel for the applicant-plaintiff, I find that the plaintiff has made out a case for arrest of the defendant-vessel. Registry confirms that no Caveat has been filed on record. The claim is a maritime claim and a claim within

the meaning of Section 5(1)(c) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 being dues based on mortgage. In that view of the matter, I am of the view that this Judge's Order deserves to be allowed. Accordingly, I pass the following order :-

- (i) I order arrest of the defendant-vessel "M.V. Aeon (IMO No.9576818)" lying and being within the admiralty jurisdiction of this court, along with hull, engines, gears, tackles, bunkers, machinery apparels, furniture, fixtures and all appurtenant thereto, paraphernalia and plant & machinery lying and being in the territorial waters of India.
- (ii) Warrant of arrest is dispensed with.
- (iii) Judge's Order is signed separately.
- (iv) Equasis Report dated 9th June 2022 is taken on record and marked "X" for identification.
- (v) Suit shall be numbered and all office objections shall be removed within four weeks from today.
- (vi) Sheriff to act on authenticated copy of this order, to be served by e-mail and/or fax.
- (vii) Parties to act on an ordinary copy of this order duly authenticated by the Associate of this court.

(A.K. MENON, J.)