

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.744 OF 2023**

HAL OFFSHORE LTD.

..Petitioner

Vs.

COMMISSIONER OF CUSTOMS & ANR.

..Respondents

**WITH
INTERIM APPLICATION NO.3422 OF 2022**

Mr.Prashant Pratap, Senior Counsel with Mr.Nishaan Shetty with Ms.Vaidehi Kolhe i/b. Bose And Mitra and Co., for Petitioner.

Mr.Karan Adik with Ms.Sangeeta Yadav, for Respondents

**CORAM : G. S. KULKARNI &
RAJESH S. PATIL, JJ.**

DATE : JUNE 06, 2023

PC.:

1. We have heard Mr.Pratap, learned Senior Counsel for the petitioner and Mr.Adik, learned Counsel for the respondents – Union of India.

2. The facts of the case are quite peculiar. The respondents have a customs demand against the petitioner – a charter party, of an amount of Rs.4,49,35,190/-, interalia on the ground that the petitioner breached the terms and conditions of the re-export bond executed by it, whereunder the petitioner had failed to re-export the vessel “OSV BEAS

DOLPHIN” (for short ‘**the vessel**’). It is not in dispute that the vessel came to be arrested under the orders passed by this Court in admiralty proceedings, which were initiated by the crew of the vessel. The petitioner being a Charter party was not liable to discharge any monetary liability of the owner of the vessel towards the crew.

3. It appears that the vessel was ultimately sold in pursuance to the orders passed by this Court and the sale proceeds amounting to about Rs.8.75 crores stand deposited in this Court to the credit of Commercial Admiralty Suit (lodg) No.63 of 2019 alongwith the other companion proceedings. Mr.Pratap has drawn our attention to an order dated 6 September 2022 passed by the learned Single Judge of this Court passed on the said proceedings, in which the Court has considered the determination of the priority of the claims in regard to the amounts to be disbursed as realized from the sale proceeds of the said vessel.

4. As noted above, the petitioner faces respondents claim towards duty of an amount of Rs.4,49,35,190/-. In such context Mr.Pratap has drawn the Court’s attention to prayer clause (c) of the petition whereby the petitioner has prayed for a direction that the respondents be ordered to lodge their claim against the sale proceeds of the vessel OSV BEAS DOLPHIN lying with the Prothonotary and Senior Master of this Court and subject matter of admiralty proceedings. Mr.Pratap would also submit that the petitioner has also filed an independent suit being

Commercial Admiralty Suit No.49 of 2022, whereby reliefs are sought against the respondents including in terms of the demand as raised by the respondents against the petitioner and subject matter of the present proceedings.

5. It is his contention, that today there are two proceedings, which are pending before this Court namely the Admiralty proceedings filed by the members of the vessel's crew for their suit claim, which are to be satisfied from the amounts received from sale of the said vessel, and secondly, the suit filed by the petitioner.

6. We made a query to the learned Counsel for the Revenue, as to whether would it not be suitable and appropriate in the unusual facts of the case for the Revenue to make an endeavour to recover the dues payable by the petitioner from the proceeds of the amounts which are available and lying deposited in this Court in the admiralty proceedings, when it is stated that the said amount is sufficient not only to take care of the claim of the members of the crew (the plaintiffs in the said proceedings) but also the Port and the Revenue's customs claim in question. Responding to such query, learned Counsel for the Revenue is not in a position to take an effective stand. He would also submit that there are no instructions in this regard.

7. On the above backdrop, taking into consideration the peculiar facts of the case, it is clear to us that in pursuance of the orders passed

by this Court in the admiralty proceedings, the vessel being already sold is not available for confiscation, *albeit* the amounts to be recovered by the revenue, are very much available as deposited in this Court. In these circumstances, in our opinion, it would be appropriate that the Revenue moves an application in the pending admiralty proceedings so that it can recover the duty demand against the petitioner.

8. Mr.Pratap has fairly informed that if such an application is being moved by the Revenue in the suit proceedings, certainly there would be no objection of the petitioner to enable the revenue to have such amounts. In our considered opinion, if recovery of the revenue's dues is feasible in such manner, certainly the revenue without prejudice to its rights and contentions needs to take steps to recover the said amounts from the petitioner, from the amounts lying in this Court in the admiralty proceedings rather than being entangled into unwarranted litigation for recovery of the amounts from the petitioner.

9. It also needs to be observed that the amounts lying deposited and available in the admiralty proceedings from sale of the said vessel, is certainly a situation of sufficient security being available to the revenue so as to recover the duty demand. We may also observe, that as fairly submitted by Mr.Pratap, there would not be any opposition to such claim of the revenue from the petitioner. Mr.Pratap also submits that the owners of the vessel may also not contest the proceedings as the sale

itself was not contested by the owners of the vessel.

10. The total claim of the crew is stated to be Rs.1.35 crores. As noted above, the duty dues as demanded by the respondents from the petitioner subject matter of this proceedings is an amount of Rs.4,49,35,190/-, whereas the amount realized from the sale of the vessel is about Rs.8.75 crores. We are also informed that there is also a claim of the Port Trust in the tune of Rs.1.85 crores. It is stated that even considering such claims sufficient amount is available which would secure the interest of the revenue, subject matter of the present proceedings. Thus, prima facie it appears that there is sufficient amount available to satisfy not only the dues of the crew, Port Trust, but also the duty demand in question.

11. In these circumstances, we keep open all contentions of the petitioner as also the respondents, to enable the respondents – Revenue to move an application in the admiralty proceedings to recover the duty demand as raised against the petitioner, for which the petitioner shall provide all assistance to the respondents.

12. We accordingly dispose of this petition with liberty to the petitioner to revive the present proceedings or to file a fresh petition as may be appropriate, in the event needs so arises. We also keep open all contentions of the respondents, not only to recover the amounts due by moving the Admiralty Court as noted above, but also on any failure to

recover such amounts and / or in the event of any impediment in that regard, to follow the course of law as may be available to recover the duty dues from the petitioner.

13. Disposed of in the above terms. No costs.

14. In view of disposal of the petition, the pending interim application also stands disposed of.

[RAJESH S. PATIL, J.]

[G. S. KULKARNI, J.]