Sayali Upasani

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

INTERIM APPLICATION NO-4803 OF 2022
IN
ADMIRALTY SUIT NO-20 OF 2015

Transtar Offshore Services Pvt Ltd ...Applicant
In the matter between
Transtar Offshore Services Pvt Ltd ...Plaintiff
Vs.
DLB Nand Gaurav and Anr ...Defendants

Mr. Balaji Iyer i/b Mr. Ashwin Shanker, for Applicant-Plaintiff.
Dr. Sneha Goyal, for Official Liquidator.

CORAM:- N. J. JAMADAR, J.
DATED:- 8th FEBRUARY, 2023

ORDER:-

1) The applicant-plaintiff has preferred this application for a judgment on admission under the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 ("the Code").

2) The substance of the applicant's claim is that it is engaged in the business of providing and/or arranging Vessels/tugs on hire for towing barges/Vessels used *inter alia*, in various offshore services. DLB Nand Gaurav, the defendant No. 1, was the

Accommodation Work Dumb Barge. Essar Offshore Subsea Ltd, the defendant No. 2 was the registered owner of defendant No. 1.

3) The applicant-plaintiff had chartered a Vessel, Tug Transtar, to defendant No. 2 on 29th May, 2014 and 3rd June, 2014. As the charter hire remained outstanding the applicant instituted the instant Suit, seeking a decree in sum of Rs.44,94,400/-, and sought arrest of DLB Nand Gaurav, the defendant No. 1. An order of arrest was passed on 29th October, 2015.

4) During the pendency of the Suit, on 15th May, 2018, the defendant No. 2 entered into consent terms with the plaintiff. The defendant No. 2 agreed to pay a sum of Rs.35,41,483/-, to the plaintiff towards full and final settlement of plaintiff's claim. The amount was to be paid in two installments. First installment of Rs.19,60,000/-, was paid, as agreed. However, the second installment of Rs.15,81,843/-, which was to be paid not later than 31st August, 2018, remained outstanding.

5) In the meanwhile, by an order dated 2nd August, 2018, passed in Company Petition No.347 of 2016, the defendant No. 2 was ordered to be wound up and Official Liquidator came to be appointed as the Liquidator.

6) Since there is a clear and categorical admission of the liability in the consent terms, which were recorded by the Court on 23rd May, 2018. The applicant-plaintiff is entitled to a judgment on admission. Hence, this application.

7) An affidavit-in-reply is filed by the Official Liquidator of defendant No. 2. It is contended that pursuant to an order dated 7th July, 2022, passed by this Court in Interim Application (L) No.3260 of 2021 in Commercial Admiralty Suit (L) No. 18 of 2022, DLB Nand Gaurav, the defendant No. 1- Vessel was ordered to be sold and the sale proceeds are lying with Prothonotary and Senior Master of this Court. The Official Liquidator claims that he had received an amount of Rs.5,23,707.82/-, which was standing to the credit of the current account of the defendant No. 2 company in liquidation and has also invited the claims. According to the Official Liquidator, the sale proceeds are required to be utilized for the purpose of disbursing the claims of the workmen in accordance with Section 529-A of the Companies Act, 1956.

8) Evidently, the application is based on the admissions contained in the consent terms executed between the plaintiff and defendant No. 2, before it went into liquidation. The relevant part of the consent terms dated 15th May, 2018, reads as under:-

> "2. The parties have now agreed to fully and finally settle the matter and hereby consent on the following terms:-
>
> (a) The Defendants have agreed to pay and the Plaintiff has agreed to accept a sum of Rs.35,41,483/-(Thirty Five Lakhs Fourty One Thousand Four Hundred and Eighty Three only) towards full and final settlement of the claim amount in the captioned petition. (hereinafter referred as "**Settlement Consideration"**)
>
> (b) The Settlement Consideration shall be payable in Two installments as per the following:
>
> (I) The fist installment of Rs.19,60,000/-(Rupees Ninteen Lakhs Sixty Thousand) only to be paid immediately upon signing of this consent terms but not later than 21.05.2018.
>
> (II) The second and final installment of Rs.15,81,483/-(Rupees Fifteen Lakhs Eighty One Thousand Four Hundred and Eighty Three) only to be paid not later than 31.08.2018."

9) Indisputably, the first installment has bee paid. The aforesaid admission of liability is clear and unequivocal. Moreover, it has the imprimatur of the Court as the consent terms were accepted by the Court by an order dated 23rd May, 2018. The undertakings therein were also accepted as the undertakings to the Court. On the basis of the consent terms, the order of arrest of defendant No. 1-Vessel was also vacated.

10) In the aforesaid view of the matter, the plaintiff-applicant is fully justified in seeking a judgment on admission. The admissions in the consent terms can form a legitimate basis of the finding. It would be wholly unwarranted to relegate the parties to trial.

11) Hence, the following order.

-:ORDER:-

(i) The application stands partly allowed.

(ii) There shall be a decree in the sum of Rs.15,81,843/- along with interest at the rate of 12% p.a. from 1st September, 2018 till payment and/or realisation against the sale proceeds of defendant No. 1 and defendant No. 2, jointly and severally.

(iii) The defendants do pay the costs of the plaintiff.

(iv) Refund of Court fees, if any, in accordance with Rules.

(v) The plaintiff-applicant is entitled to seek the determination of priority and pay out, in accordance with Rules.

(vi) The Suit stands decreed in the aforesaid terms.

Decree be drawn accordingly.

[N. J. JAMADAR, J.]