

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO-4807 OF 2022

IN

COMMERCIAL SUIT NO 73 OF 2016

Sumayla Marine Services	...Applicant
In the matter between	
Sumayla Marine Services	...Plaintiff
Vs.	
DLB Nand Gaurav and Ors	...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 summary judgment under Order XIII-A read with Order VIII, Rule 10 of the Code of Civil Procedure, 1908 ("the Code").

2) The substance of the plaintiff's claim is that it is engaged in the business of providing, *inter alia*, various Offshore marine Services including providing Vessels on charter basis to various entities for offshore service purposes. During the period 2013 to

2015 at the request of Essar Offshore Subsea Ltd, defendant No. 2, the then registered owner of DLB Nand Gaurav, an Accommodation Work Dumb Barge, had provided tugs m.t. REVTI/m.t.RAJAJI on charter hire to remain on stand-by/assist/tow DLB Nand Gaurav, defendant No. 1, Barge SCANLAY-1, also owned by defendant No. 2, and other barges taken on hire by defendant No 2.

3) The plaintiff's claim to have supplied necessities as well to those Vessels and crew. A sum of Rs.1,22,99,386/-, remained outstanding against the services rendered by the plaintiff. Hence, the plaintiff was constrained to institute the Suit seeking a decree in the sum of Rs.1,22,99,386/-, along with interest at the rate of 12% p.a. The plaintiff also sought the arrest of defendant No. 1- Vessel. An order of arrest was granted 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.1,05,19,161/-, 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.57,90,000/-, was paid, as agreed. However, the second

installment of Rs.47,29,161/-, 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 Nineteen 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 summary judgment. The admissions in the consent terms can form a legitimate basis of the finding. In view of clear and categorical admission of the liability and payment of an installment in part discharge of the said liability, there is no real prospect of the defendants successfully defending the claim. Nor there is any other compelling reason why the claim should not be disposed of before recording of oral evidence.

11) Hence, the following order.

:-ORDER:-

- (i) The application stands partly allowed.
- (ii) There shall be a summary judgment against the sale proceeds of defendant No. 1 and defendant No. 2, jointly and severally, in the sum of Rs.47,29,161/-, along with interest at the rate of 12% p.a. from 1st September, 2018 till payment and/or realisation.

(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.]