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C.S.(Comm Div) No.117 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

C.S.(Comm Div) No.117 of 2023

Arb.Appln.No.267 of 2023 &

O.A.No.446 of 2023

A.Nos.2696, 2721, 2722, 2726 of 2023

C.S.No.117 of 2023

The Ramco Cements Ltd.,

a Company registered under the Indian Companies Act,
1956/2013, and having its Corporate office at

'Auras Corporate Centre', 5th Floor,

98-A, Dr Radhakrishnan Salai,

Mylapore, Chennai – 600 004.

Represented herin by its

Senior General Manager Legal Mr.T.Mathivanan

. . . Plaintiff

Vs

1.Owners and Parties interested in the vessel

MV Pearl Ivy having IMO No.9580015

now lying at the Karaikal Port, Karaikal, Puducherry,

Rep., herein by her Master.

2.Shimsupa GmbH

No.22, Sullivan Garden Road, B-3,

Sullivan Apartments, Mylapore

Chennai – 600 004

Rep., by its Director Mr.Annamalai.

3.HDFC Bank Ltd.,



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759, ITC Centre,

Anna Salai, Chennai – 600 002.

. . . Defendants

PRAYER: Civil Suit filed under Order XLII Rules 1, 2 and 3 of the Original Side Rules read with Order VII Rule 1 of C.P.C. Section 2(1)(c) (iii) of the Commercial Courts Act, 2015 (as amended) and Section 4(1)(f) &(g) and Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, for the following reliefs : a) to order the arrest and sale of the Vessel Pearl Ivy, having IMO:9580015, flying the flag of Panama, now lying at the anchorage of the Karaikal Port, Karaikal, Puduchery within the jurisdiction of this Court along with her hull, gear, tackle, engines, machinery, bunkers, equipment, furniture, fixture and all other paraphernalia and appurtenances, presently lying at the Karaikal Port, Puduchery and direct the deposit of the sale proceeds in this Court towards satisfaction and by way of security towards the plaintiff's claim b) for an order and decree in favour of the plaintiff and against the 1st Defendant for a sum of US\$ 41,40,892, which is equivalent to Rs.34,02,15,687/- as on 12.05.2023 (US\$ 1 is equal to Rs.82.16 as per the exchange rate prevalent today) (Rupees Thirty four crores Two Lakhs and fifteen thousand and six hundred and eighty seven only) together with further interest at the rate of 15% per annum on the said sum from the date of the institution of the Suit till payment/realization, together with costs and poundage; c) to direct the first defendant to pay the costs of the above suit.

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M/s.Aurora of the sea Shipping Corporation

Having its registered office at

Ajel Take Island Majura



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MH 96960

The Marshall Islands register nbr: 74029

Rep., by its Power of Attorney

Mr.D.K.Murali Rao

Having office at TCR Regency Building,

10, Judge Jumbulingam Road, Mylapore,

Chennai – 600 004.

... Applicant

Vs.

1.M/s.Shimsupa GmbH

Hanauer Landstrasse 204, 60314,

Frankfurt am Main, Germany,

Vat No: 047 243 38722

Rep., by its Director,

2.M/s.The Ramco Cements Limited,

“RAMAMANDIRAM”, Virudhunagar District,

Rajapalayam Tamil Nadu – 626 117

Rep., by its Director,

3.HDFC Bank Limited,

Ramon House, 169, Backbay Reclamation,

HT Parekh Marg, Churchgate,

Mumbai – 400020

also having office at,

Empire Plaza, 1st Floor,

LBS Marg, Chandan Nagar,

Vikhroli West, Mumbai – 400083

Also having office at

No.759, ITC Centre

Anna Salai, Chennai – 600 002.

.... Respondents



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Prayer: Arbitration Application has been filed under Order XIV Rule 8 of the Original Side Rules r/w Section 9 (1) (ii)(a), (b),(c) & (e) of the Arbitration and Conciliation Act, 1996, for the following reliefs:-

(a) this application should not be treated as urgent.

(b) to pass an order calling upon the respondents to jointly and severally furnish security for a sum of US\$ 3962807.38 within such time frame as fixed by this Court, failing which may be pleased to pass an order of attachment over the cargo of 27,558.917 MT of Green Delayed Petroleum Coke in Bulk covered under the bill of lading dated 08.11.2022 now lying at the port of Karaikal, pending disposal of the arbitration proceedings arising out of charter party agreement/Fixture Recap dated 15.10.2022.

For Plaintiff : Mr.Sathish Parasaran Sr., Counsel for
Mr.P.J.Rishikesh

For Defendants : Mr.Srinath Sridevan Sr., counsel for
Mr.P.Giridharan for D1

Mr.T.R.Rajagopalan Sr., counsel for
Mr.M.Sridhar for D2

Mr.C.Mohan for
M/s.King & Partridge for D3

COMMON JUDGMENT

A joint memo of compromise dated 05.06.2023 had been filed by the plaintiff, the owner of the vessel who is the first Defendant and the 2nd defendant and the same is taken on record and the judgment is made based on the memo of compromise.



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2. It has been submitted by the respective counsels that the amount of USD 2.5 million had been transferred by the plaintiff to the owner of the vessel and that discharge of cargo has already begun. As per the terms of memo of compromise, discharge of cargo would have to be completed by 8.00 pm on 10.06.2023. However, the plaintiff apprehends delay in discharging of cargo for various reasons. Since, discharge of cargo has already begun, the first defendant/the owner of the vessel is directed to cooperate with the plaintiff for the discharge of the entire volume of cargo from the vessel.

3. On discharging of cargo from the vessel and on completion of other formalities, the vessel is permitted to sail away from Karaikal Port and the order of arrest is lifted. This Civil Suit is decreed as being settled out of Court in terms of the Joint Memo of Compromise arrived at between the parties on 05.06.2023.

4. The learned counsel appearing for the third defendant would submit that even on 07.06.2023, they have been served with a notice of Arbitration proceedings and hence he would seek protection of his rights, from the terms of memo of compromise, the parties to the dispute have



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decided to unconditionally withdraw the civil suit.

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5. It has been agreed between the parties in the memo of compromise that they shall withdraw the Civil Suit as well as the Arbitration Application as per clauses 8 & 9. Further as per clause 9, they have agreed to inform the memo of compromise which has been arrived between them to the Arbitral Tribunal and request the Arbitrator to stay the further proceedings till the deed of compromise is performed in full by all the parties. This clause in my view protects the interest of the third respondent bank.

6. In view of the memo of compromise entered upon between the parties, the Civil Suit in C.S.(Comm Div) No.117 of 2023 is dismissed as withdrawn as settled out of Court in terms of the joint memo of compromise. The Arbitration Application in Arb. Appln.No.267 of 2023 and O.A.No.446 of 2023 are also dismissed as withdrawn. Consequently, connected Miscellaneous Applications are also closed.

08.06.2023

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Index/ Yes/No

Speaking order: Yes/No

Neutral citation: Yes/ No



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Note(1): Registry is directed to issue warrant of release of the vessel Pearl Ivy, IMO 9580015, flying the flag of Panama on 10.06.2023

Note(2): Issue order copy on 09.06.2023

K.KUMARESH BABU,J.

Pbn

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