

IN THE HIGH COURT AT CALCUTTA
ADMIRALTY JURISDICTION
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

AS/6/2019
IA NO: GA/4/2023, GA/5/2023
SIDDHARTHA INSURANCE LIMITED
VS
THE OWNERS AND PARTIES
INTERESTED IN THE VESSEL M.V VSL SSL KOLKATA

AS/7/2019
IA NO: GA/4/2023, GA/5/2023
IME GENERAL INSURANCE LIMITED
VS
THE O AND P INTERESTED IN THE
VESSEL M V VSL SSL KOLKATA AND ORS

AS/8/2019
IA NO: GA/3/2023, GA/4/2023
SIDDHARTHA INSURANCE LTD.
VS
THE OWNERS AND PARTIES
INTERESTED IN THE VESSEL M .V. VSL SSL KOLKATA AND ORS

AS/9/2019
IA NO: GA/3/2023, GA/4/2023
NECO INSURANCE LTD
VS
THE O/P INT IN THE VESSEL M V
VSL SSL KOLKATA AND ORS

AS/10/2019
IA NO: GA/4/2023, GA/5/2023
LUMBINI GENERAL INSURANCE LIMITED
VS
THE OWNERS AND PARTIES
INTERESTED IN THE VESSEL M V VSL SSL KOL AND ORS

AS/11/2019
IA NO: GA/4/2023, GA/5/2023
IME GENERAL INSURANCE LIMITED
VS
THE OWNER AND PARTIES
INTERESTED IN THE VESSEL M V VSL SSL KOLKATA AND ORS

For the Plaintiff : Mr. Tilak Kumar Bose, Senior Advocate
 Mr. Swatarup Banerjee, Advocate
 Mr. Rohit Mukherji, Advocate
 Mr. Ramanuj Raoy Chowdhury, Advocate
 Ms. S. Das, Advocate

For the Defendant No.1 : Mr. Ratnanko Banerji, Sr. Adv.
 Ms. Sristi Barman Roy, Adv.
 Mr. Souvik Kundu, Adv

Judgment on : 05.09.2024

Ravi Krishan Kapur, J:

1. All these admiralty suits have been filed in the Admiralty Jurisdiction before the Ordinary Original Division of this Court and raise a common question whether or not post promulgation of the Commercial Courts Act 2015 (CC Act), the suits should have been filed before the Commercial Division of this Court?
2. It is contended on behalf of the plaintiffs that each of the claims in the respective suits is a maritime claim as defined under section 2(f) read with section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and are maintainable before the Ordinary Original Division by virtue of clause 31 of the Letters Patent, 1865. It is also contended that the Calcutta High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules 2019 were notified only on 22nd November 2019, after the filing of all the above suits. As such, on a combined reading of sections 2(a), 3 and 12 of the Admiralty Act 2017 read with the CC Act, the Commercial Court is barred from entertaining any suit or application even if it relates to a commercial dispute. Section 3 of the Act of 2017 creates a specific and exclusive admiralty jurisdiction based on the limits of territorial waters of the State. Section

11 of the CC Act prohibits the Commercial Court from entertaining any suit, even if it relates to a commercial dispute in respect of which the jurisdiction of a Civil Court is expressly or impliedly barred. It is also contended that the Act of 2017 is a complete Code in itself and maintains the historical exclusivity of the Admiralty Court having special jurisdiction. The Rules of the High Court also do not refer to the CC Act. In the above circumstances, there is no question of filing these suits before the Commercial Division of this Court. In any event, without prejudice to the above contentions, the plaintiffs have filed separate applications praying that each of the suits be transferred to the Commercial Division of this Court in order to ensure procedural compliance. In support of such contention, the plaintiffs rely on the decisions in *M.V. Elisabeth vs. Harwan Investment and Trading Pvt. Ltd.* 1993 Supp (2) SCC 433 and *Liverpool & London P&I Ltd. vs. MV Sea Success* (2004) 9 SCC 512.

3. On behalf of the defendants it is contended that, all these suits had been filed on 31st October 2019 long after commencement of the CC Act which came into force on 23rd October 2015, and should have been filed only before the Commercial Division of this Court. In such circumstances, the suits having been filed before an incorrect forum are not maintainable and are liable to be rejected and the respective plaints returned. In any event, the prayer to have the suits transferred before the Commercial Division of this Court is inconsistent and contradictory to the submissions of the plaintiffs that these suits as filed are maintainable before the Ordinary Original Division of this Court.

4. Admittedly, these suits were all instituted long after the commencement of the CC Act. The object of the CC Act was to provide for speedy disposal of high value commercial disputes by setting up of Commercial Courts. The CC Act came into force on 23 October 2015 (notified on 31 December 2015) and the suits were filed long thereafter on 31 October 2019. Section 2(1)(c) of the CC Act creates an independent and separate Division in the High Courts for adjudication and settlement of commercial disputes. Section 2(1)(b) read with Section 3 of the CC Act defines Commercial Court. In this connection, relevant sections of the CC Act are set out below:

2(1)(b) “Commercial Court” means the Commercial Court constituted under sub-section (1) of section 3;

2(1)(c): “commercial dispute” means a dispute arising out of—

- (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;*
- (ii) export or import of merchandise or services;*
- (iii) issues relating to admiralty and maritime law;*
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;*
- (v) carriage of goods;*
- (vi) construction and infrastructure contracts, including tenders;*
- (vii) agreements relating to immovable property used exclusively in trade or commerce;*
- (viii) franchising agreements;*
- (ix) distribution and licensing agreements;*
- (x) management and consultancy agreements;*
- (xi) joint venture agreements;*
- (xii) shareholders agreements;*

3. Constitution of Commercial Courts.—(1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

[Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:

Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.]

[(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.]

(2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The [State Government may], with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a [Commercial Court either at the level of District Judge or a court below the level of a District Judge].

4. Constitution of Commercial Division of High Court.—(1) In all High Courts, having [ordinary original civil jurisdiction], the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.

6. Jurisdiction of Commercial Court.—The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.—Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

13. Appeals from decrees of Commercial Courts and Commercial Divisions.—(1) 1 [Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order. (1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order: Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and

section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).] (2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

15. Transfer of pending cases.—(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court: Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance 3 [with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908): Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.—(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908

(5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.

5. Section 2(1)(c)(iii) of the CC Act provides that issues relating to admiralty and maritime law fall within the scope of a 'commercial dispute'. Section 7 of the CC Act requires all suits relating to commercial disputes of a prescribed value filed in the High Court being heard and disposed of by the Commercial Division of this Court. On a plain reading of each of the complaints filed in the above suits it is indisputable that the issues in each of the suits relate to admiralty and maritime law and are of a specified value. This is also unequivocally admitted in the applications for transfer filed by the plaintiffs. Section 6 of the CC Act confers jurisdiction only upon the Commercial Court to try all suits and applications relating to commercial disputes. In view of the clear language of the provisions of the CC Act read with the Admiralty Act of 2017, there is no merit in the contention that the Act of 2017 does not confer any power on the CC Act to entertain or decide admiralty suits. The Admiralty Act of 2017 while conferring admiralty jurisdiction did not remove the applicability of the CC Act. The fact that the Admiralty Rules of this Court were notified on November 22, 2019 and the suits were filed on October 31, 2019 is of no relevance at all. (*CMOG Fuel DMCC vs. OSS Altus Uber Unreported decision dated 16 June 2022 in Commercial Admiralty Suit No.51 of 2018 High Court at Bombay*).
6. Prior to the Admiralty Act 2017, all admiralty suits were filed before this Court by virtue of the provisions of Clause 31 of the Letters Patent, 1865. Section 2(a) of the Act of 2017 defines the jurisdiction exercisable by a High Court under section 3 of the Act of 2017 in respect of maritime

claims specified under the Act. In this connection, the relevant sections of the Admiralty Act of 2017 are set out below:

2(1)(f): “maritime claim” means a claim referred to in section 4;

3. Admiralty jurisdiction.—Subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act: Provided that the Central Government may, by notification, extend the jurisdiction of the High Court up to the limit as defined in section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976).

4. Maritime claim.—(1) The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any—

- (a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;*
- (b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;*
- (c) mortgage or a charge of the same nature on a vessel;*
- (d) loss or damage caused by the operation of a vessel;*
- (e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;*
- (f) loss or damage to or in connection with any goods;*
- (g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;*
- (h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;*
- (i) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;*
- (j) towage;*
- (k) pilotage;*
- (l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;*
- (m) construction, reconstruction, repair, converting or equipping of the vessel;*
- (n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;*
- (o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958 (44 of 1958);*
- (p) disbursements incurred on behalf of the vessel or its owners;*

- (q) particular average or general average;
- (r) dispute arising out of a contract for the sale of the vessel;
- (s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;
- (t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;
- (u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;
- (v) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and
- (w) maritime lien.

Explanation.—For the purposes of clause (q), the expressions “particular average” and “general average” shall have the same meanings as assigned to them in sub-section (1) of section 64 and sub-section (2) of section 66 respectively of the Marine Insurance Act, 1963 (11 of 1963).

12. *Application of Code of Civil Procedure.*—The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall apply in all the proceedings before the High Court in so far as they are not inconsistent with or contrary to the provisions of this Act or the rules made thereunder.

14. *Appeal.*—Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from any judgment, decree or final order or interim order of a single Judge of the High Court under this Act to a Division Bench of the High Court.

17. *Repeal and savings.*—(1) The application in India of the following enactments are hereby repealed—

- (a) the Admiralty Court Act, 1840 (3 and 4 Vict., c. 65);
 - (b) the Admiralty Court Act, 1861 (24 and 25 Vict., c. 10);
 - (c) the Colonial Courts of Admiralty Act, 1890 (53 and 54 vict., c. 27);
 - (d) the Colonial Courts of Admiralty (India) Act, 1891 (16 of 1891); and
 - (e) the provisions of the Letters Patent, 1865 in so far as they apply to the admiralty jurisdiction of the Bombay, Calcutta and Madras High Courts.
- (2) Notwithstanding the repeal, all admiralty proceedings pending in any High Court immediately before the commencement of this Act shall continue to be adjudicated by such court in accordance with the provisions of this Act.
- (3) Anything done or any action taken, under the provisions of the repealed enactments, shall in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of the Act as if the said provisions were in force when such thing was done or such action was taken and shall continue to be in force accordingly until superseded by anything done or any action taken under this Act or rules made thereunder.
- (4) Any rule, regulation, bye-law made or order or notice issued under the repealed enactments, shall so far as it is not inconsistent with the provisions of this Act or rules made thereunder be deemed to have been done or taken under the corresponding provisions of this Act.

7. There is no quarrel with the proposition laid down in *M.V. Elisabeth v. Harwan Investment & Trading Pvt. Ltd.*, AIR (1993) SC 1014. Historically, admiralty jurisdiction has always been treated as having exclusive and special jurisdiction exercised by the Admiralty Court. [See Paras 12, 14, 17, 35, 64 and 66 *M.V. Elisabeth (supra)*]. Now, section 17 of the Act of 2017 expressly repeals the various Acts which governed admiralty proceedings prior to its coming into force including the Letters Patent 1865. The only saving clause is to be found in section 17(2) which saves only suits pending *before* the commencement of the Admiralty Act of 2017.
8. On a combined and harmonious reading of sections 2(1)(b), 2(1)(c) read with sections 3(1) and (4) of the CC Act, it is only the Commercial Division of this Court which can entertain these suits. That is only the Division which has now been expressly designated for the purpose of exercising jurisdiction in such suits. In view of the above, all these complaints should necessarily be returned for filing before the Commercial Division of this Court. The filing of any of these suits before any other Division save and except the Commercial Division is now barred. For the above reasons, as on the date of filing of these suits, compliance with the provisions of the CC Act was mandatory and all these suits could only have been filed before the Commercial Division of this Court.
9. Section 15 of the CC Act which provides for transfer of proceedings only enables transfer of suits which were *pending* before the introduction and commencement of the Act. As stated hereinabove, admittedly all these suits have been filed post introduction of the CC Act. Accordingly, there is no question of transferring any of the suits to the Commercial Division

of this Court since each of the above suits has been improperly instituted post commencement of the CC Act. In such circumstances, there is a defect in the filing of these suits before any Division other than the Commercial Division of this Court. If a suit has been instituted before an incorrect Division after the introduction of the CC Act, Order VII Rule 10 of the Code of Civil Procedure, 1908 mandates that the Court has no option but to return the plaint filed in such a suit and present the same before the Appropriate Division. (*Laxmi Polyfab Pvt. Ltd. and Ors. vs. Eden Realty Ventures Pvt. Ltd. and Ors.* AIR 2021 Cal 190). A strict construction of the provisions of the CC Act is imperative in order to achieve the object and purpose of the Act. (*Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP*, (2020) 15 SCC 585). The CC Act has also been given precedence insofar as appeals arising out of admiralty proceedings are concerned. (*Owners and Parties Interested in the Vessel M.V. Polaris Galaxy Versus Banque Cantonale De Geneve*, 2022 SCC OnLine SC 1293).

10. For the above reasons, G.A 4 of 2023 in A.S No. 6 of 2019, G.A 4 of 2023 in A.S No. 7 of 2019, G.A 3 of 2023 in A.S No. 8 of 2019, G.A 3 of 2023 in A.S No. 9 of 2019, G.A 4 of 2023 in A.S No. 10 of 2019 and G.A 4 of 2023 in A.S No. 11 of 2019 filed by the plaintiffs praying for transfer of the suits to the Commercial Division are rejected.
11. In view of the above, G.A 5 of 2023 in A.S No. 6 of 2019, G.A 5 of 2023 in A.S No. 7 of 2019, G.A 4 of 2023 in A.S No. 8 of 2019, G.A 4 of 2023 in A.S No. 9 of 2019, G.A 5 of 2023 in A.S No. 10 of 2019 and G.A 5 of 2023 in A.S No. 11 of 2019 filed by the defendants praying for return of the respective plaints in each of the suits are allowed. The plaints filed in AS 6 of 2019, AS 7 of 2019, AS 8 of 2019, AS 9 of 2019, AS 10 of 2019 and

AS 11 of 2019 shall be returned for presentation before the Appropriate Division of this Court. There shall be an order in terms of prayer (3) of the respective Master's Summons in each of the above applications. Interim orders, if any, stand vacated.

(Ravi Krishan Kapur, J.)

Later:

After pronouncement of the judgment, the plaintiff prays for stay of operation of the order.

The prayer for stay is considered and rejected.

(Ravi Krishan Kapur, J.)