IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY AND VICE-ADMIRALTY JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 962 OF 2025

IN

COMMERCIAL ADMIRALTY SUIT NO. 36 OF 2022

The Board of Mumbai Port Authority … Applicant

In the matter between :

The Board of Mumbai Port Authority … Plaintiff

Versus

M.V. Brahmaputra Dolphin
(IMO 7608916) and others … Defendants

WITH

COMMERCIAL ADMIRALTY SUIT NO. 36 OF 2022

The Board of Mumbai Port Authority … Plaintiff

Versus

M.V. Brahmaputra Dolphin
(IMO 7608916) and others … Defendants

………..

Mr. Ajai Fernandes alongwith Ms. Nina Motiwall and Ms. Anjali Kotecha instructed by Motiwalla and Company, Advocate for the Applicant.

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CORAM : ABHAY AHUJA, J.

DATE : 9 MAY 2025

P.C. :

1. The Applicant/Plaintiff by this Interim Application has sought a Summary Judgment / Decree in favour of the Applicant and against Defendants in the sum of Rs.54,82,233/- together with interest at the

rate of 15% p.a. on the principal sum of Rs.51,63,155/- from 1st September 2021 till payment and/or realization.

2. The Applicant/Plaintiff are the owners of the docks and harbour and port facilities at the Port of Mumbai. They render various services including port facilities to the vessels coming to the Port of Mumbai.

3. The Applicant/Plaintiff have stated that the Defendant No.1 vessel "M.V. Brahmaputra Dolphin" ("the said vessel") made use of the Plaintiff's facilities and services such as port dues, pilotage, anchorage and monthly license fees for Bunders etc. for which the Marine and the Traffic Department (Bunders) of the Applicant have raised their bills/statement of outstanding.

4. The Applicant/Plaintiff have stated that the said vessel was arrested by this Court vide an Order dated 3rd February 2020 passed in Commercial Admiralty Suit (L) No. 6 of 2020 or Commercial Admiralty Suit No. 80 of 2021 and the said vessel was sold by an Order dated 13th September 2022 passed by this Court in Sheriff's Report No.55 of 2022 in Judge's Order No. 189 of 2021 in Commercial Admiralty Suit No. 36 of 2022 for the sum of Rs.3.85 Crores and was removed by the auction purchasers viz. M/s. RSG Ventures LLP from the port and harbour of Mumbai on 5th October 2022, for scrapping purposes.

5. The Applicant/Plaintiff have stated that they had raised bills with the Owners, Master and Agents of the said vessel. Further, despite raising the said bills and issuance of notices under Form I and Form II under Section 64 of the Major Port Trusts Act, 1963, the owners of the said vessel failed and neglected to make payment of the statutory dues to the Plaintiff. The statutory and maritime lien of the Plaintiff against the said vessel has now been transferred to the sale proceeds of the said vessel i.e. the Defendant No.1. The statutory dues of the Plaintiff's marine department along with interest works out to Rs.33,87,685/- as enumerated in the table which is at paragraph 6 of the Plaint or Paragraph 7(I) of the Interim Application.

6. The Applicant/Plaintiff have stated that the Plaintiff are also entitled to interest on the bills mentioned in the table at paragraph 6 of the Plaint or Paragraph 7(I) of the Interim Application, as per the applicable Scale of Rates (SoR) from 1st September 2021.

7. The Applicant/Plaintiff have stated that the 1st Defendant vessel came into the Port and Harbor of Mumbai on 4th May 2019, since then the 1st Defendant vessel is availing services of the Plaintiff. The 1st Defendant vessel availed service of the Plaintiff's Marine Department i.e. port, pilotage and anchorage services till 17th May 2021. Thereafter, the 1st Defendant vessel was shifted to Coal Bunder on 17th May 2021,

since then the 1st Defendant vessel is availing services of the Plaintiff's Traffic Department (Bunders) for which the Plaintiff are levying Monthly Lincese fees etc.

8. The Applicant/Plaintiff have stated that when the 1st Defendant vessel came into the Port and Harbour of Mumbai on 4th May 2019 it was at anchorage point. Hence, they kept on raising bills for anchorage charges. However, in June 2021 on checking the records, the Plaintiff noticed that the said vessel was at anchorage only upto 17th May 2021 and thereafter the same was shifted to Bunder's area which falls within the jurisdiction of the Traffic Department (Bunders).

9. The Plaintiff stated that the said vessel was shifted from PVC Anchorage to Coal Bunder on 17th May 2021 and it remained there till 11th June 2021. The said vessel was shifted from Coal Bunder on 12th June 2021 and was lying at Brick Bunder upto 4th October 2022. Hence, the Plaintiff's Marine Department has given credit for the period the vessel was not at anchorage point. Bill bearing No.2122M2414189 (DN-155) dated 12th May 2021 for Rs.31,20,844/- issued by the Marine Department of the Plaintiff. Bill bearing No.2122M2419120 (DN-275) dated 7th June 2021 for Rs.1,65,042/- issued by the Marine Department of the Plaintiff. The Plaintiff's Marine Department has issued Credit

Note of Rs.70,102/- on the aforesaid bill. Hence, the balance due against the aforesaid bill is Rs.94,940/-.

10. The Applicant/Plaintiff have annexed aforementioned bills and credit notes at Exhibit D to F of the Plaint and Exhibit A to B1 of the Application.

11. Further, the Applicant/Plaintiff have also relied upon the copy of the SoR dated 1st May 2019 which is annexed at Exhibit F-1 to the Plaint. At Exhibit G-2 to the Plaint is the copy of the SoR dated 3rd October 2019 and Exhibit G-3 to the Plaint is the copy of the SoR dated 1st May 2022 in respect of port dues, pilotage, anchorage and monthly license fees (MLF) and interest levied on delayed payment etc.

12. The Applicant/Plaintiff have stated that apart from the dues of the Marine Department, the Defendant No.1 vessel is also liable to pay to the Traffic Department (Bunders) of the Plaintiff's principal amount of Rs.19,47,371/- (MLF Rs.16,50,314.78 + GST @ 18% Rs.2,97,057/-) for the period 1st May 2021 till 4th October 2022, as per the applicable Scale of Rates (SOR). The relevant documents have been annexed at Exhibit G and G-1 to the Plaint or Exhibit C and D to the Interim Application.

13. The Applicant/Plaintiff have stated that the said vessel through its Owners, Master and Agents failed to pay the statutory dues

to the Applicant/Plaintiff. The Plaintiff issued notice under Form No.I under the provisions of Section 64 of the Major Port Trusts Act, 1963 on the Master of the said vessel on 23rd June 2020 calling upon them to pay the dues mentioned therein within a period of 7 days failing which the vessel will be distrained under the provisions of Section 64 of the Major Port Trusts Act, 1963. The notice has been annexed at Exhibit H to the Plaint and at Exhibit F to the Interim Application.

14. The Applicant/Plaintiff state that despite receipt of the said notice, the Owners, Master and Agents of the said vessel failed and neglected to pay the statutory dues in respect of the said vessel to the Applicant/Plaintiff. A further notice dated 5th July 2021 under Form No.II was issued by the Applicant/Plaintiff by which the said vessel was distrained under the provisions of Section 64 of the Major Port Trusts Act, 1963. The Notice has been annexed at Exhibit I to the Plaint and Exhibit G to the Interim Application.

15. The Applicant/Plaintiff submit that there has been no denial of their claim by the Master/Owners of the said vessel. There has been no objection to the bills and notices sent by the Applicant/Plaintiff to the Agents/Master and Owners of the said vessel.

16. The Applicant/Plaintiff state that the sale proceeds of the said vessel are to be appropriated towards the statutory dues of the

Applicant/Plaintiff in the sum of Rs.54,82,233/- together with interest at the rate of 15% p.a. on the sum of Rs.51,63,155/- from 1st September 2021 till payment and/or realization. The interest is levied as per Clause v(a) of Section 1.2 General Terms and Conditions of the SoRs which are 3rd October 2019.

17. Mr. Fernandesl, learned Counsel for the Applicant/Plaintiff submits that the claim of the port authority is towards statutory port dues and maritime claim under Section 4(1)(n) and 4(1)(k) read with Section 9(1)(d) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the "Admiralty Act").

18. I have perused the averments in the Interim Application as well as the Plaint and I am satisfied that there is a maritime claim of the Applicant/Plaintiff by the aforementioned bills and notices against the Defendants. There is no written statement which has been filed by the Defendants. Further, there is no Affidavit in Reply which has been filed to the Interim Application. Further, the Defendants have despite receiving the aforementioned bills and notices of the maritime claim of the Applicant/Plaintiff not denied the same. The Defendants have not objected to the aforementioned bills and notices sent by the Plaintiff to the Agents/Master/Owners of the said vessel.

19. Further, I am satisfied that the Applicant/Plaintiff are

entitled to levy interest @ 15% p.a. under Clause v(a) of Section 1.2 General Terms and Conditions of the SoR, which reads as under :

> "(a) The user shall pay penal interest on delayed payments and Port shall pay juxtaposed penal interest on delayed refunds at the rate of 15% per annum."

20. From a perusal of the Plaint and the Interim Application, I am satisfied that the Respondents have no real prospect of successfully defending the claim and there is no other compelling reason why the claim made by the Applicant should not be disposed of before recording of oral evidence.

21. In view thereof, there shall be a Summary Judgment / Decree in favour of the Applicant/Plaintiff in the sum of Rs.79,98,740/- i.e. interest at the rate of 15% p.a. on the principal sum of Rs.51,63,155/- from 1st September 2021 till 1st February 2025 amounting to Rs.26,48,061/- and further interest at the rate of 15% p.a. till payment and/or realization.

22. By order dated 24th January 2025, this Court has already determined the priorities whereby the priorities of the port authority in this Suit/Interim Application being maritime claim under Section 4(1)(n) and 4(1)(k) read with Section 9(1)(d) of the Admiralty Act have been ranked at priority No.2.

23. Accordingly, subject to the amounts being available in the account of the Prothonotary & Senior Master with respect to the sale proceeds of M.V. Brahmaputra Dolphin, after payment/earmarking of payments to the claimants ranked first in order of priority as determined by this Court on 24th January 2025, the Prothonotary & Senior Master of this Court is directed to release the sum of Rs.81,30,294/- i.e. interest at the rate of 15% p.a. on the principal sum of Rs.51,63,155/- from 1st September 2021 till 1st February 2025 amounting to Rs.26,48,061/- and further interest at the rate of 15% p.a. till payment and/or realization from the sale proceeds of the said vessel lying to the credit of the account in Commercial Admiralty Suit No.36 of 2022, as per the Order of priorities, which shall be released within a period of three weeks from the date of this Order.

24. Interim Application is accordingly allowed and disposed of.

25. In view of this Order, the Commercial Admiralty Suit is disposed of in the above terms.

(ABHAY AHUJA, J.)