

Kavita S. J. & JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS COMMERCIAL DIVISION
ADMIRALTY & VICE-ADMIRALTY JURISDICTION**

**INTERIM APPLICATION NO.2169 OF 2022
IN
COMMERCIAL ADMIRALTY SUIT NO.47 OF 2021**

Cockette Marine Oil DMCC **... Applicant/
Org. Plaintiff**

Versus

OSV BEAS Dolphin (IMO 9413482) & Ors., **... Defendants**

Mr. Dhruva Gandhi a/w Mr. Naishadh Bhatia i/b M/s Crawford Bayley & Co., for Applicant/Plaintiff.

Mr. Dharam Jumani a/w Shubham Agrahari, Rohan Mathur i/b Anoma Law Group LLP for Defendant Nos. 2 and 4.

CORAM : R.I. CHAGLA, J.

RESERVED ON : 19TH JULY, 2024.

PRONOUNCED ON : 23RD AUGUST, 2024.

ORDER:

1. By this Interim Application, the Applicant/Plaintiff is seeking Summary Judgment under Order XIII-A, Rule 1 read with Order XII Rule 6 of the Code of Civil Procedure, 1908 ("CPC").

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2. The present Suit has been filed by the Plaintiff seeking to enforce claims arising out of supplies of bunker made to the Defendant-Vessels – OSV Beas Dolphin; M.V. Sea Jaguar and M.V. ATH Melody. In so far as the Vessels-M.V. Sea Jaguar and M.V. ATH Melody are concerned, the Plaintiff has sought to enforce claims against the Defendant No.2 from the arrest and thereafter sale of the Defendant – Vessel on the ground that the Defendant – Vessel is beneficially owned by Defendant No.2, who at that point in time chartered the aforementioned two Vessels as time charterer.

3. It is relevant to refer briefly to relevant dates and events which are as under:

- **The dates and events pertaining to the bunker supplies to the three Vessels are for convenience categorized as Supply-I, II & III :**

Supply I (Defendant No.1-Vessel):

(i) By an e-mail dated 28th February, 2019, the Plaintiff issued a confirmation to Defendant No. 3 for a supply of 110MT bunkers to be made to Defendant No.1-Vessel. The Defendant No.3 was the Ship Manager and Commercial Manager of Defendant No.1-Vessel. The Bunker Confirmation recorded, “...*Late receipt of funds*

will incur an interest charge of 2(two) percent per month pro-rated on a daily basis....”. The Bunker Confirmation also recorded that it would be subject to the Plaintiff’s standard terms and conditions of sale.

(ii) On 2nd March 2019, the Plaintiff through its physical supplier (Shiny Shipping & Logistics P Ltd.) supplied 109.350MT of HF HSD to Defendant No.1-Vessel at Mumbai Port. The supply was confirmed/acknowledged by the Chief Engineer of the Defendant-Vessel, as is reflected in the Bunker Delivery Receipt of even date.

(iii) On 4th March, 2019, the Plaintiff raised an invoice (bearing No. S1901198) on Defendant No. 3 for the fuel supplied to Defendant No.1-Vessel. The invoice was for a sum of USD 93,494.25/- and due date under the invoice was 1st May 2019. The Defendant Nos.3 and 4 failed to clear the dues under this invoice.

➤ **Supply II (Sea Jaguar):**

(i) The Defendant No. 2 issued a Purchase Order upon the Plaintiff on 15th February, 2019 for two supplies.

1. A supply of 350KL of Fuel (HFHSD) to be made to the Vessel, M.V. Sea Jaguar.
2. A supply of 500KL of Fuel (HFHSD) to be made to the Vessel, AHT Sea Melody.

The Payment Terms recorded in this Order stated that payment would be made within 60 days of the supply.

(ii) By an e-mail dated 17th February, 2019, the Plaintiff issued a confirmation to Defendant No.2 for a supply of 350KL bunkers to be made to Vessel, M.V. Sea Jaguar. The Bunker Confirmation recorded, “...Late receipt of funds will incur an interest charge of 2(two) percent per month pro-rated on a daily basis....” The Bunker Confirmation also recorded that it would be subject to the Plaintiff’s standard terms and conditions of sale.

(iii) On 16th February, 2019, the Plaintiff, through its physical supplier (Bharat Petroleum Corporation Ltd.) supplied 336KL of HF HSD to M.V. Sea Jaguar at Mumbai Port. The supply was confirmed/acknowledged by the Chief Mechanic of the Defendant Vessel, as is reflected in the Bunker Delivery Note of even date.

(iv) On 3rd March, 2019, ~~the~~ Plaintiff raised an invoice (bearing No. S1901194) on Defendant No. 2 for the fuel supplied to M.V. Sea Jaguar. The invoice was for a sum of USD 359,520/- and the due date under the invoice was 17th April 2019. The Defendant No. 2 failed to clear the dues owed under this invoice.

➤ **Supply III (Sea Melody):**

(i) By and e-mail dated 17th February, 2019, the Plaintiff issued a confirmation to Defendant No. 2 for a supply of 150KL bunkers to be made to vessel, M.V. ATH Melody. The Bunker Confirmation itself recorded, “...Late receipt of funds will incur an interest charge of 2(two) percent per month pro-rated on a daily basis...” The Bunker Confirmation also recorded that it

would be subject to the Plaintiff's standard terms and conditions of sale.

(ii) On 16th February, 2019, the Plaintiff, through its physical supplier (Bharat Petroleum Corporation Ltd.) supplied 148KL of HF HSD to M.V. ATH Melody at Mumbai Port. The supply was confirmed/acknowledged by the Chief Engineer of the Defendant-Vessel, as is reflected in the Bunker Delivery Note of even date.

(iii) On 21st February, 2019, the Plaintiff raised an invoice (bearing no. S1901065) on Defendant No. 2 for the fuel supplied to the Vessel, AHT Sea Melody.

(iv) The invoice was for a sum of USD 158,360/- and the due date under the invoice was 16th April 2019. The Defendant No. 2 failed to clear the dues owed under this invoice.

➤ **Other relevant dates and events:**

(i) By emails dated 29th May, 2019 and 30th January, 2020, the Plaintiff issued reminders for the sums overdue

against the supply of bunker fuel made to Defendant No.1-Vessel.

(ii) By emails dated 02.05.2019 and 30.04.2020, the Plaintiff issued reminders for the sums overdue against the supply of bunker fuel made to M.V. Sea Jaguar and M.V. ATH Melody.

(iii) In response to a reminder dated 08.08.2019, Mr. Navpreet Singh, the Managing Director of Defendant No. 3 by Letter dated 14th August, 2019 admitted that monies were payable to the Plaintiff against the three aforementioned supplies. It is relevant to note that Navpreet Singh is also shown as the Joint Managing Director of Defendant No.2 in its Annual Returns. The Plaintiff has claimed that this is another factor which serves to establish that Defendant Nos. 2, 3 and 4 were a common group, and that there was a significant overlap in how the companies operated.

(iv) On 21st September, 2019, The Vessel OSV Beas Dolphin was arrested by crew member in Suit(L) No.63 of 2019.

(v) By e-mail dated 7th February, 2020, Defendant No. 2 through its Joint Managing Director (i.e. Navpreet Singh) admitted that dues were outstanding from both '*Dolphin Offshore Enterprises and Dolphin Offshore Shipping*', and undertook to clear them in instalments. However, these dues remained unpaid, necessitating the institution of the present Suit.

(vi) On 16th July, 2020, in insolvency proceedings against Defendant No.2, the Petition was admitted and CIRP instituted and moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was ordered to commence and infact commenced.

(vii) The present Suit was filed on 13th August, 2020.

(viii) There was an order of arrest of Defendant-Vessel in the present Suit on 20th August, 2020.

(ix) By Order dated 24th September, 2020, the sale of Defendant-Vessel in favour of one M/s. Shivansh Offshore & Marine Services Pvt Ltd. for a sum of Rs. 9,50,00,000/- was confirmed.

4. Mr. Dharam Jumani, learned Counsel appearing for the Defendant No.2 has raised a preliminary objection as to the maintainability of the present Interim Application seeking Summary Judgment against the Defendant No.2.

5. Mr. Jumani has referred to the pleadings in the Plaint and in particular Paragraph 31 of the Plaint, wherein the Plaintiff has pleaded that the Defendant No.2 was the Charterer of Vessel Sea Jaguar and Vessel Sea Melody and was “*the party liable in personam in respect of the Plaintiff's claim*” for supply of bunkers to the said Vessels i.e. Supply II and Supply III. It is thus now not open to the Plaintiff to contend that the said claims are not in personam claims.

6. Mr. Jumani has submitted that the present Suit against the Defendant No.2 is not maintainable in view of Section 14 of the IBC. He has submitted that it is well settled that in personam claims are to abide by the provisions of the IBC, including Section 14 thereof. He has placed reliance upon the Judgment of this Court in *Raj Shipping Agencies v. Barge Madhwa & Anr.*¹ and in particular Paragraph 60 thereof.

1 *Judgment Dtd.12th February, 19th May, 2020*

7. Mr. Jumani has submitted that the Suit insofar as it pertains to the in personam claim against the Defendant No. 2 is bad in law, could not have been instituted and is not maintainable in view of Section 14 of the IBC. This is because a Petition under Section 9 of the IBC was admitted against the Defendant No. 2 by the NCLT, Mumbai vide Order dated 16th July, 2020 and the moratorium under Section 14 of the IBC was ordered to commence and in fact commenced on the date of admission of the said Petition. He has submitted that it is pertinent to point out here that the erstwhile management and board of directors stood suspended and divested from the management of the Defendant No. 2 from this date.

8. Mr. Jumani has submitted that the Suit having been affirmed on 13th August, 2020 was lodged on 17 December, 2020 i.e. subsequent to the order of admission / commencement of the moratorium, and no proceedings could have been instituted by the Plaintiff against the Defendant No. 2 for in personam claims on or after 16 July, 2020. He has submitted that the Suit insofar as it pertains to in personam claims against Defendant No. 2 i.e. Supply II and Supply III was instituted in the teeth of Section 14 of the IBC

and during the operation of the moratorium and is *non est* in law, a nullity and cannot be maintained or entertained by this Court.

9. Mr. Jumani has placed reliance on the Judgment of the Supreme Court in *Alchemist Asset Reconstruction Company Ltd. v Hotel Gandavan Pvt. Ltd. & Anr.*² and has referred to in particular Paragraphs 3, 5 & 6 thereof.

10. Mr. Jumani has submitted that the Plaintiff's claims for Supply II and Supply III are accordingly liable to be dismissed forthwith, with costs.

11. Mr. Jumani has also submitted that the Plaintiff's claims which are subject matter of the present Suit against Defendant No.2 have stood extinguished. He has submitted that pursuant to the NCLT's Order, the Interim Resolution Professional ("IRP") published a Public Announcement dated 21 July, 2020 inviting claims from all creditors of Defendant No. 2 alongwith proof in support thereof on or before 31 July, 2020 as per Section 18 of the IBC. He has submitted that the Plaintiff as an alleged creditor of the Defendant was mandated under the provisions of the IBC to submit its claim to

² *Civil Appeal No.16929/2017 – Judg. Dtd.23/09/2017*

the IRP. The Plaintiff has not submitted its claim and thus its claim stood extinguished. This has been asserted by the Defendant No.2 in its Reply to the present Application and no rejoinder has been filed by the Plaintiff rebutting the same and therefore the said fact is admitted by the Plaintiff.

12. Mr. Jumani has submitted that the Corporate Insolvency Resolution Process (“CIRP”) of the Defendant No. 2 was carried out successfully and a Resolution Plan submitted by M/s. Deep Industries was approved and accepted by the NCLT vide its Order dated 29 September, 2022. The Defendant No. 2 was taken over by new management and ownership of M/s. Deep Industries on and from 29th September, 2022. The Plaintiff not having chosen to lodge its Suit claims with the Resolution Professional, therefore the same did not form part of the Resolution Plan. Upon the acceptance of the Resolution Plan, the Plaintiff's Suit claims, which did not form part of the Resolution Plan, stood extinguished on the date of approval of the Resolution Plan i.e. 29 September, 2022 and do not survive thereafter.

13. Mr. Jumani has submitted that the Plaintiff is not entitled to recover its claim and / or institute / continue any legal proceedings to recover the Suit claims, which have stood extinguished on 29 September, 2022. He has placed reliance upon the decisions of the Supreme Court in *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*³ at Paragraphs 67 to 69, 74, 93, 95 to 97, 102.1, 102.3, 138 & 139 ; *Ruchi Soya Industries v. Union of India & Ors.*⁴ at Paragraphs 11 & 12.

14. Mr. Jumani has submitted that for this reason alone, the Plaintiff's claims for Supply II and Supply III are liable to be dismissed forthwith, with costs.

15. Mr. Jumani has submitted strictly without prejudice to each of the above submissions, in any view of the matter, the Suit claims of the Plaintiff insofar as they pertain to Supply II and Supply III are not maritime claims and cannot be enforced as an *in rem* claim against the Defendant No.1-Vessel and/or its sale proceeds. The Plaintiff has itself admitted in the Plaint that the claims on account

³ (2021) 9 SCC 657

⁴ (2022) 6 SCC 343

of Supply II and Supply III are in personam claims against the Defendant No. 2. Therefore, the Plaintiff cannot turn around and seek to contend contrary to its Pleat that the said claims are in rem maritime claims and / or that they can be enforced against the Defendant No.1- Vessel and / or its sale proceeds. He has submitted that this Court while deciding an application for Summary Judgment under Order XIII-A, ought to hold the Plaintiff to its pleadings.

16. Mr. Jumani has submitted that it is well settled that a claim for supply in respect of Vessel A can be enforced against Vessel B only if they are sister ships. In turn, Vessel A would be the sister ship of Vessel B only if (i) the registered owner of both vessels is one and the same; or (ii) if the demise / bareboat charterer of Vessel A is the owner of Vessel B. It is only in these two scenarios that Vessel A and Vessel B would be considered to be sister ships, and the claim in respect of Vessel A could be enforced against Vessel B by arrest and sale thereof.

17. Mr. Jumani has submitted that in the present case, the Defendant No. 2 is not the registered owner of the Defendant No. 1 Vessel. It is not sufficient that the Defendant No. 2 is shown in the

Lloyd's Report to be the beneficial owner of Defendant No. 1 Vessel. No case of fraud is pleaded or made out for lifting the corporate veil and / or for going after the beneficial owner of the Defendant No.1 Vessel. In the absence thereof, no claim can lie against the beneficial owner of the Defendant No.1 Vessel for supplies made to Sea Melody and Sea Jaguar. Further, no claim in respect of Sea Melody and Sea Jaguar can thus be enforced against the Defendant No.1-Vessel and/or its sale proceeds, even if the supplies were made to the said ships at the instance of Defendant No. 2. He has placed reliance upon the decisions of this Court in *M/s. Universal Marine v. M.T. Hartati*⁵ at Paragraphs 33, 35, 37, 42 & 43 and *M.T. Pamboor 2 & Anr. v. Polygreen International DMCC*⁶ at Paragraphs 49 & 50.

18. Mr. Jumani has submitted that assuming for the sake of argument that the Defendant No.2 was the owner of the Defendant No.1-Vessel and requested the Plaintiff to supply bunker fuel to Sea Melody and Sea Jaguar, then in that event also, the Suit claims for Supply II and Supply III cannot be enforced against the Defendant No.1-Vessel and/or its sale proceeds for the simple reason that the Defendant No.2 was only a time charterer (and not a demise /

⁵ 2014 SCC Online Bom 223

⁶ Dated 19th August, 2022 in Commercial Appeal (L) No. 18306 of 2022

bareboat charterer) of Sea Melody and Sea Jaguar. He has submitted that the Defendant No. 2 being time charterers of Sea Melody and Sea Jaguar is undisputed. Therefore, Sea Melody and Sea Jaguar are not sister ships of the Defendant No.1-Vessel and any alleged claim in respect of supplies made to Sea Melody and Sea Jaguar cannot be recovered by arrest and sale of the Defendant No.1-Vessel. He has placed reliance upon the Judgment of this Court in *Continental Radiance Offshore Pvt. Lad. v. M. V. Lewek Altair*⁷ at Paragraphs 2(b) & (d), 4, 18, 24, 30, 36, 43 & 44 in this context.

19. Mr. Jumani has submitted that the Plaintiff's entire case in the Plaint for seeking to enforce its alleged claim on account of Supply II and Supply III against the Defendant No.1-Vessel is that the Defendant No.2 placed the orders for Supply-II and III and the same can be enforced against Defendant No.1-Vessel as the Defendant No. 2 is the real owner thereof (even though the Defendant No. 4 is the registered owner). He has submitted that to that end, the Plaintiff has alleged that the Defendant No.4 is only a nominee owner and alter ego of Defendant No.2 and prayed that this Court be pleased to lift the corporate veil and consider

⁷ 2022 SCC Online Bom 931

Defendant No.2 as the real owner. He has submitted that the Plaintiff does not seek to impute liability on Defendant No.2 on the basis that it was the beneficial owner of Defendant No.1-Vessel.

20. Mr. Jumani has submitted that for the purpose of the present Application, it is suffice to say that there is no ground made out for lifting the corporate veil. In any event, a Court cannot lift the corporate veil in an application seeking Summary Judgment without evidence being led and without a full-fledged trial. Such a plea can only be decided after a full-fledged trial, if the evidence so warrants. The Plaintiff has not chosen to press these averments into service at this stage. But the Plaintiff is bound by its own pleadings and cannot seek to contend contrary to or inconsistent with its own pleadings.

21. Mr. Jumani has submitted that the Application for Summary Judgement must fail in view of the pleadings contained in Paragraphs 31 to 41 of the Plaintiff alone.

22. Mr. Dhruva Gandhi, learned Counsel appearing for the Plaintiff has submitted that the Plaintiff's contention on behalf of the Defendant No.2 that the Plaintiff has sought to hold Defendant No. 2 liable in personam by placing reliance in particular on Paragraphs

5(h) and 31 of the Plaintiff is a contention made without considering the said Paragraphs in its true perspective. He has submitted that the Plaintiff in Paragraph 5(h) of the Plaintiff has stated that the Defendant No.2 is liable to the Plaintiff for the bunkers supplied to M.V. Sea Jaguar and M.V. ATH Melody and was the Beneficial Owner of Defendant No.1-Vessel when it was arrested by the Plaintiff. Further, in Paragraph 31 of the Plaintiff, the Plaintiff has though referring to Defendant No. 2 being the party liable in personam in respect of the Plaintiff's claim, states that the Plaintiff is entitled to arrest any vessel in the ownership of Defendant No.2 as per the provisions of Section 5(2) read with Section 5(1)(a) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

23. Mr. Gandhi has submitted that the Defendant No.2 in contending that the Plaintiff has sought to hold Defendant No.2 liable in personam, has failed to understand that every maritime claim originates as an in personam claim. It is the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("the Admiralty Act") which allows an entity to proceed *in rem* against a *res* (in this case, Defendant No.1-Vessel) in respect of a defined class

of maritime claims (spelled out in Section 4). Just because a maritime claim originates as an *in personam* claim, does not mean that an admiralty action ceases to be an action *in rem*.

24. Mr. Gandhi has placed reliance upon the decision of this Court in *Raj Shipping Agencies (supra)* and in particular Paragraphs 12.1, 12.2, 12.4 and 12.5 thereof. He has submitted that in Paragraph 12.2, the learned Single Judge of this Court has held that although the owner must be liable in personam in respect of a maritime claim, the action in rem can proceed against the res independently of the owner and the claim can be adjudicated and decided without having to sue the owner in personam. He has submitted that the Plaintiff has in Paragraph 31 of the Plaint referred to the *in personam* liability of Defendant No. 2 only to establish as to how the pre-conditions for the invocation of Section 5 of the Admiralty Act are satisfied.

25. Mr. Gandhi has submitted that the Defendant No.2's submission that the Plaintiff is wholly or in part pursuing an *in personam* claim against Defendant No. 2 is misconceived. He has placed reliance upon Paragraphs 39, 40, 43, 46, 47, 51, 51.4, 51.6,

51.11, 52, 52.1, 52.3 of the Judgment in ***Raj Shipping Agencies (supra)***. He has submitted that it is indisputable from these Paragraphs that Section 14 of the IBC does not constitute a bar against the initiation of an *in rem* proceeding against a maritime vessel. He has submitted that the Defendant No.2 cannot be heard to argue that the whole or any part of the Plaintiff's Suit was not maintainable and/or that it was barred by Section 14 of the IBC. He has submitted that the judgments relied upon by the Defendant No. 2 are inapplicable to the facts of the present case.

26. Mr. Gandhi has submitted that the Defendant No.2 has tried to wriggle out of the applicability of ***Raj Shipping Agencies (supra)*** by placing reliance on Paragraph 60 of the said Judgment. In Paragraph 60, the learned Single Judge has inter alia observed that, “... *The Admiralty Act also permits actions in personam against the owner of the ship. Such Suits which are in personam, as against the owner, would have to abide by the provisions of section 14 of the IBC...*” He has submitted that reliance on this observation is misconceived for the simple reason that the Plaintiff has not approached this Court under Section 6 of the Admiralty Act. Instead, it is apparent from Paragraph 31 of the Plaintiff itself that the Plaintiff

has invoked the jurisdiction of this Court under Section 5 of the Admiralty Act, and not under Section 6.

27. Mr. Gandhi has submitted that the second defence adopted by Defendant No.2 is that as far as the Plaintiff's claim arising out of the supply of bunkers to the vessels M.V. ATH Melody and M.V. Sea Jaguar are concerned the Plaintiff was not entitled to arrest Defendant No.1 and to proceed *in rem* against Defendant No. 1 for these claims. He has submitted that the basis of the Defendant No.2's contention is that Defendant No.2 was the time charterer of these Vessels.

28. Mr. Gandhi has placed reliance upon Section 5 of the Admiralty Act which is arrest of a Vessel in rem and in particular relies upon Section 5(2) read with Section 5(1) (a) thereof. To maintain an arrest under Section 5(1), the Plaintiff under Section 5(1)(a) must establish that the person who owned the Vessel at the time when the maritime claim arose is liable for the claim and is the owner of the Vessel when the arrest is effected. Further, Section 5(2) of the Admiralty Act permits arrest of any other Vessel other than the offending Vessel. This can arise in a plethora of

circumstances. For instance, a time charterer may be in default of charter hire. This may give rise to a maritime claim under Section 4(1)(h) of the Admiralty Act. Likewise, a time charterer may be liable for bunkers supplied to a vessel taken by it on time charter (as in the facts of the present case). Situations such as these would give rise to a maritime claim wherein the time charterer is liable *in personam*. An arrest of the Vessel in respect of which the maritime claim arose would be counter-productive in these situations. It is to deal with such situations that the Admiralty Act permits the arrest of any other vessel under Section 5(2). He has submitted that for invoking Section 5(2), a plaintiff must establish a maritime claim under Section 4 of the Admiralty Act; Identify the time charterer who is liable for the maritime claim; Identify a vessel which is owned / beneficially owned by the said time charterer; establish that the vessel is owned by that time charterer when the arrest is affected.

29. Mr. Gandhi has submitted that in the facts and circumstances of the present case, the Plaintiff has cleared this threshold, and has satisfied these four ingredients. Thus, even though Defendant No. 2 may have been the time charterer of the

vessels, M.V. ATH Melody and M.V. Sea Jaguar, the Plaintiff is entitled to arrest a vessel owned / beneficially owned by Defendant No. 2.

30. Mr. Gandhi has submitted that the Statement of Objects and Reasons of the Admiralty Act states, “...*An Act to consolidate the laws relating to admiralty jurisdiction, legal proceedings in connection with vessels, their arrest, detention, sale and other matters connected therewith or incidental thereto...*”. Thus, the Admiralty Act is a consolidating statute. He has submitted that the primary purpose of a consolidating statute is to consolidate the various strands of common law which were in force prior to the enactment of a statute. Thus, the endeavour of a court ought to be to interpret the terms of the statute in a manner which is consistent with the common law in force at the time when the statute was enacted.

31. Mr. Gandhi has submitted that prior to the enactment of the Admiralty Act, the arrest of ships in India was *inter-alia* governed by the International Convention on Arrest of Ships, 1999. He has placed reliance upon Article 3(2) of this Convention which

inter-alia states, “.. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:... (b) demise charterer, time charterer or voyage charterer of that ship.” He has submitted that therefore, under Article 3(2), the arrest of a time charterer’s vessel was explicitly permitted. Unless it is apparent from the bare text of Section 5 of the Admiralty Act that the Parliament intended to amend the law, this Court must adopt a submission which is consistent the terms of Article 3(2) of the Convention.

32. Mr. Gandhi has placed reliance upon the decision of the Supreme Court in *Sunil B Naik v Geowave Commander*⁸. The Supreme Court while dealing with a situation where arrest was sought to be effected of a vessel taken on demise charter by a time charterer, rejected the proposition that such Vessel cannot be arrested. Thus, the Supreme Court upheld the proposition that a vessel owned by a time charterer could be arrested. He has submitted that the consistent position of law at the time of enactment of the Admiralty Act was that a vessel owned by a time

⁸ [(2018) 5 SCC 505]

charterer could be arrested to secure a maritime claim for which the time charterer was liable.

33. Mr. Gandhi has submitted that the Plaintiff's contention in this regard is also supported by the decision of a Division Bench of this Court in *Altus Uber v Siem Offshore Rederi*⁹. He has submitted that in the facts of that case, the Division Bench of this Court has observed that any vessel can also be arrested for the purpose set out in sub-Section (1) of Section 5 where this Court has reason to believe that it was on demise charter and its demise charterer was liable for the maritime claim when it arose and is the demise charterer of the said Altus Uber when the arrest is effected. The Court considered the provision of Section 5(2) read with section 5(1)(b) and has held that the Plaintiff is entitled to arrest a vessel which is either owned by or on demise charter to MEDS (the owner / demise charterer of the Vessel 'Altus Uber') when the arrest is effected.

34. Mr. Gandhi has submitted that to effect an arrest under Section 5(1)(a) read with Section 5(2), what is of critical

⁹ AS 2019 (5) Bom CR 256

importance is that the owner of the vessel must be liable for the maritime claim when it arose, and must be the owner of the Vessel sought to be arrested when the arrest is affected. He has submitted that for these reasons, the Defendant No.2's contention that a Vessel owned by a time charterer cannot be arrested also deserves to be rejected.

35. Mr. Gandhi has submitted that the third defence adopted by Defendant No. 2 is that the arrest of a Vessel under the beneficial ownership of an entity is not permissible under the Admiralty Act and that even if it is, a plea of beneficial ownership cannot be canvassed under Order XIII-A of the CPC, as amended by the Commercial Courts Act, 2015. He has submitted that the arrest of a Vessel under the beneficial ownership of an entity has always been permissible, and that it continues to be permissible even after the enactment of the Admiralty Act.

36. Mr. Gandhi has placed reliance upon the decision of this Court in *Lufeng Shipping v. M.V. Rainbow Ace*¹⁰. This Court has upheld the proposition that a Vessel under the beneficial

¹⁰ Judgment dated 6th May, 2013, in Notice of Motion No. 235 of 2013 in Admiralty Suit No. 29 of 2013

ownership of an entity can in fact be arrested. He has submitted that the decision of the learned Single Judge has been upheld by the Division Bench of this Court in **Lufeng Shipping Company Limited v. M. V. Rainbow Ace**¹¹. He has submitted that both the learned Single Judge and Division Bench of this Court were, of the view that in the facts of that case the Plaintiff had not been able to establish beneficial ownership. What is pertinent though, for the present purposes is that the arrest of a Vessel which is beneficially owned by an entity has always been permissible under Indian law, even prior to the enactment of the Admiralty Act.

37. Mr. Gandhi has submitted that the proposition that a Vessel under the beneficial ownership of an entity can also be arrested under the Admiralty Act has also been recognized (albeit implicitly) by a Division Bench of this Court in the ***Polygreen International DMCC v. M.T. Pamboor & Anr.***¹². He has placed reliance upon Paragraph 45 of this decision, where the Division Bench of this Court has recognized that an argument of beneficial ownership can in fact be canvassed under the Admiralty Act. The

¹¹ (2013) (4) ABR 1412.

¹² Judgment dated 19th August, 2022 in Interim Application (L) No.11655 of 2022 in Commercial Admiralty Suit (L) No.10641 of 2022

Division Bench of this Court in Paragraphs 56 and 57 has also considered whether in the facts of that case, beneficial ownership had been established. The Division Bench of this Court came to the conclusion that a plea of beneficial ownership had not been established.

38. Mr. Gandhi has submitted that the contention of the Defendant No. 2 that under the Admiralty Act only a Vessel under the registered ownership of an entity can be arrested, and not one under beneficial ownership is entirely misconceived. He has submitted that it has been a consistently recognized position of law that a Vessel which is under the beneficial ownership of an entity who is liable for a maritime claim can in fact be arrested.

39. Mr. Gandhi has submitted that the Defendant No.2 has contended that a plea of beneficial ownership can be established and the corporate veil can only be lifted if the Plaintiff is able to assert and establish a case of fraud. He has submitted that this plea too deserves to be rejected. He has placed reliance upon Paragraph 46 of the decision of the Division Bench in *M.T. Pamboor (supra)*, where the words “also asserting a case of fraud” has been used for establishing beneficial ownership. He has submitted that the use of

the word “also” is important. The Division Bench of this Court has not held that the only way in which a case of beneficial ownership and/or lifting of a corporate veil could be established was by asserting a case on fraud. The Division Bench of this Court has recognized that a plea of beneficial ownership can be established in several other ways, which do not involve asserting a case on fraud.

40. Mr. Gandhi has submitted that in the present case, the Plaintiff has relied upon the Lloyds Intelligence Report which is commonly recognized and accepted by this Court as proof of ownership of Vessels. This report unequivocally states that the beneficial owner of Defendant No.1 is Defendant No.2. Additionally, the Plaintiff has also relied upon the Annual Report of Defendant No.2 for the year 2017-18. In its own Annual Report, Defendant No.2 has recognized that both Defendant No.3 and Defendant No.4 are its wholly owned subsidiaries. Not only that, it has also stated that the accounts of Defendant No. 4 have been consolidated in the accounts of Defendant No.2. The audited statements further state that the financial statements of the parent company and its subsidiaries have been combined. More importantly, the audited report itself states that the parent company

controls a major portion of the operations of the subsidiary. It is a publicly available document pertaining to and prepared by Defendant No. 2 itself and hence, Defendant No.2 cannot dispute this document. Therefore, it follows from Defendant No. 2's own documents that Defendant No. 2 and Defendant No. 4 are alter egos, and that Defendant No. 2 is in fact the beneficial owner of Defendant No. 1 Vessel.

41. Mr. Gandhi has submitted that the Defendant No.2 being a beneficial owner of Defendant Nos.3 and 4 is also established unequivocally by emails addressed from time to time. He has referred to the Email dated 14th August 2019 addressed in response to an Email dated 8th August 2019 issued by the Plaintiff and by which Mr. Navpreet Singh, Managing Director, Defendant No. 3, acknowledged that payments were due to the Plaintiff for bunkers supplied to Defendant No.1-Vessel as well as to the Vessels M.V. Sea Jaguar and MV ATH Melody. The said email further goes on to state that the Plaintiff's outstandings would be cleared between August 2019 and October 2019.

42. Mr. Gandhi has submitted that the same gentleman, i.e. Mr. Navpreet Singh, had then addressed an email dated 7th January 2020 to the Plaintiff. However, this time around, he had signed off as the Joint Managing Director of Defendant No. 2. In this email, the said Mr. Navpreet Singh stated that dues were outstanding from Dolphin Offshore Enterprises and Dolphin Offshore Shipping, and that these dues would be cleared in two installments by 31st March 2020. These emails indicate that not only were the same personnel in charge of the operations of Defendant Nos. 2, 3 and 4, but they also indicate that there was no distinction drawn in the liabilities owed to the Plaintiff by Defendant No.2 and/or Defendant No.3 and/or Defendant No.4. He has submitted that in the the light of these emails, it cannot be contended that there was no commonality/unity of identity amongst Defendant Nos. 2, 3 and 4. These emails establish that Defendant No. 2 was indeed the beneficial owner of Defendant No.1-Vessel.

43. Mr. Gandhi has submitted that in the alternative, the Defendant No.2 has submitted that a plea of beneficial ownership can only be asserted and proved at trial, and that for this reason, an application under Order XIII-A of the CPC should be rejected. He has

submitted that the plea that there are triable issues involved, and that the matter deserves to be sent to trial is often raised when a Defendant has no other plea available. He has submitted that in the present case, the Defendants have no defence whatsoever to offer in response to the fact that the Plaintiff was liable to be paid for the bunkers supplied to Defendant No. 1, MV Sea Jaguar, and MV ATH Melody.

44. Mr. Gandhi has submitted that the Defendants have only raised technical issues as have been addressed above. He has submitted that not only are these technical pleas, they are all defences which only (at best) raise a question of law, and do not by any means establish that triable issues have arisen which require the leading of oral evidence. He has placed reliance upon the decision of the Delhi High Court in *Su-Kam Power Systems Limited v. Kunwar Sachdev*¹³, in particular Paragraph 49, 50, 52, 91 and 92 thereof. He has submitted that the Delhi High Court has gone into the legislative intent behind introducing Summary Judgment under Order XIII A of the CPC and which is to provide a remedy independent, separate and distinct from Judgment on admissions

¹³ (2019) SCC OnLine, Del 10764

and Summary Judgment under Order XXXVII of the CPC. Further, the Delhi High Court was of the opinion that there will be no real prospect of successfully defending the claim' when the Court is able to reach a fair and just determination on the merits of the application for Summary Judgment. This will be the case when the process allows the Court to make the necessary finding of fact, apply the law to the facts, and the same is a proportionate, more expeditious and less expensive means to achieve a fair and just result. Further, Rule 3 of Order XIII A, CPC empowers the Court to grant a Summary Judgment against the Defendant where the Court considers that the Defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

45. Mr. Gandhi has submitted that in the facts and circumstances of the present case the documentary evidence which would be required for this Court to adjudicate the Plaintiff's case is already on record. There is no question of fact which has arisen that would require oral evidence to be led. He has submitted that if this Court were to send the dispute to trial, it would not only be disproportionate, but also unduly expensive. Given that there has

been an admission of liability on the part of Defendant Nos. 2, 3, and 4, the Defendants clearly lack any real prospect of successfully defending the Plaintiff's claim, even if the matter is sent to trial. He has submitted that no genuine issue which requires a trial has been raised in the present case. He has submitted that for all these reasons, the plea on beneficial ownership put forth by Defendant No.2 also deserves to be rejected.

46. Mr. Jumani has dealt with the Judgments relied upon by the Plaintiff. He has submitted that the Judgment of the Supreme Court in *Sunil B Naik Vs. Geowave Commander (Supra)* is of no assistance to the Plaintiff because it was under the old Act. The position has changed under the 2017 Act and this change is confirmed by the Division Bench of this Court in *Altus Uber & Ors. v. Siem Offshore (supra)* at Paragraph 139. Further, the 2017 Act does not incorporate the provisions of Article 3(2) of the International Arrest Convention. Thus, this Judgment which relies upon this Article cannot be pressed into service. Further, the facts of the case are also distinguishable as in that case, the Supreme Court has held while dismissing the SLPs, that the test is whether ownership is common or the demised charterer owns another ship.

This test is not met in the present case simply because Defendant No. 2 was not the demise charterer of Sea Melody and Sea Jaguar and is not the owner of the Defendant No. 1 Vessel. He has submitted that the Supreme Court noted the distinction between a demised charter and time charter.

47. Mr. Jumani has also distinguished the Judgment relied upon by the Plaintiff viz. *Altus Uber & Ors. v. Siem Offshore Rederi (supra)* as the facts of the said case were different. A Suit therein was filed to recover charter rent and damages arising out of breach of a demised / bareboat charter party agreement. Though the parties, without prejudice to and while reserving their rights under the demised/ bareboat charter, agreed to enter into a time charter also, the time charter was to come into force only upon furnishing of a bank guarantee by the charterer. Such a bank guarantee was not provided. Therefore, the time charter never came into force. Thus, this Judgment is of no assistance to the Applicant/ Plaintiff.

48. Having considered the rival submissions, I find from perusal of the pleadings in the suit that the Plaintiff though claiming Defendant No.2 to be a party liable *in personam* in respect of the

Plaintiff's claim has stated in paragraph 31 of the Plaintiff that the Plaintiff is entitled to arrest any vessel in the ownership of Defendant No.2 as per the provisions of Section 5(2) read with Section 5(1) (a) of the Admiralty Act. Thus, the Plaintiff has proceeded in rem against a res i.e. against the Defendant No.1 vessel claimed to be beneficially owned by Defendant No.2 in respect of defined class of maritime claim against the vessels viz. M.V. Sea Jaguar and M.V. ATH Melody under Section 4 of the Admiralty Act. This is permissible under Section 5 (2) of the Admiralty Act, which is subject to the provisions of sub Section (1) thereof. Under Section 5(1), the Court may order arrest of the vessel in rem which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where under (a) the Court has reason to believe that the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected.

49. In the present case, the Plaintiff had supplied bunkers to the vessels M.V. Sea Jaguar and M.V. ATH Melody and which had not been paid for by Defendant No.2 (the time charterer of the

aforementioned vessels). Accordingly, the Plaintiff has sought to enforce its maritime claims under Section 4(1) (h) of the Admiralty Act, against the Defendant No.1 Vessel, (against whom separate claim arises for bunker supplied) which the Plaintiff claims is beneficially owned by the Defendant No.2. Thus, the contention of the Defendant No.2 that the Plaintiffs' claim is an *in personam* claim against Defendant No.2 and that precludes the Plaintiff from proceeding in rem against the res cannot be accepted.

50. It has been held by the learned Single Judge of this Court in paragraph 12.2 of *Raj Shipping Agencies (Supra)* that although the owner must be liable *in personam* in respect of a maritime claim (which is not a maritime lien), the action in rem can proceed against the res independently of the owner. Thus, for there to be a maritime claim, there has to be an *in personam* liability on the part of the owner. However, once there is an *in personam* liability, the Plaintiff is not precluded from proceeding in rem. In the present case, the Defendant No.2 being the party liable *in personam* in respect of the Plaintiff's claim, would entitle the Plaintiff to arrest any vessel in ownership of Defendant No.2 as per the provisions of Section 5(2) read with 5(1) (a) of the Admiralty Act.

51. The contention on behalf of the Defendant No.2 that the Suit pertains to an *in personam* claim against Defendant No.2 and hence such claim has to abide by the provisions of the IBC, in particular the moratorium imposed under the Section 14 thereof and thus would not be maintainable is misconceived. This contention on behalf of Defendant No.2 is by placing reliance upon Paragraph 60 of the *Raj Shipping Agencies (Supra)*. However, Paragraph 60 of the *Raj Shipping Agencies (Supra)* cannot be read in isolation and has to be read with the findings in the other Paragraphs, including Paragraph 12.2 thereof. Thus, there is no merit in the contention of Defendant No.2 that an *in personam* claim against Defendant No.2 is barred by Section 14 of the IBC, as it overlooks the entitlement of the Plaintiff to proceed in rem against the res independently of the owner.

52. The decision relied upon by the Defendant No.2 namely *Alchemist Asset Reconstruction Company Ltd. (Supra)* is inapplicable in the present case, considering the above finding that the Plaintiff is entitled to proceed in rem against the res (Defendant No.1 Vessel) in respect of its *in personam* claim against Defendant

No.2. This would however be subject to Defendant No.2 establishing itself as the owner of the Defendant No.1 vessel.

53. Accordingly, I do not find any merit in the contention of the Defendant No.2 that the claim of the Plaintiff against Defendant No.2 stood extinguished in the NCLT proceedings as the Plaintiff has not submitted its Suit Claim with the Resolution Professional and upon approval of the Resolution Plan, the Plaintiff's claim stood extinguished and will not survive thereafter. Further, the decisions relied upon by the Defendant No.2 in support thereof, namely, ***Ghanashyam Mishra & Sons Pvt. Ltd. (Supra)*** and ***Ruchi Soya Industries (Supra)*** are inapplicable in the present case. This is in view of the above finding that the Plaintiff has an independent action in rem and can proceed against the res, although the Plaintiffs' claim was initially instituted as an in personal claim against Defendant No.2.

54. It has been held in ***Raj Shipping Agencies (Supra)*** that an action in rem against the ship and / or sale proceeds thereof is not an action against the owner of the ship who may be corporate debtor as defined under the IBC. Further, the principle that an

action in rem continues as an action in rem notwithstanding that the owner may have entered appearance, if the security is not furnished for release of the vessel. Thus, it is a settled position of law that Section 14 of the IBC does not prohibit an action in rem or continuation of in rem proceedings against the maritime vessel. The Plaintiff has approached this Court under Section 5 of the Admiralty Act and not under Section 6 of the Admiralty Act and has thus clearly expressed its entitlement to proceed in rem against the Defendant No.1 vessel for the *in personam* claim against Defendant No.2 on the premise that the Defendant No.2 is the beneficial owner of the Defendant No.1 vessel.

55. The second defence raised by the Defendant No.2 against the Plaintiff is that the Plaintiff was not entitled to arrest Defendant No.1 and / or proceed in rem against Defendant No.1 for claims arising out of supply of bunkers to vessels M.V. Sea Jaguar and M.V. ATH Melody as Defendant No.2 was a time charterer of these vessels. This defence of Defendant No.2 is in my view made overlooking Section 5 of the Admiralty Act. It is necessary in this context to reproduce Section 5 of the Admiralty Act.

“5. Arrest of vessel in rem.—(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or

(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1):

Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.”

56. Section 5(1) of the Admiralty Act provides for arrest of a vessel in rem and for maintaining an arrest, the Plaintiff must (i) identify an offending vessel, (ii) establish that the owner of the Offending Vessel is liable for a maritime claim and (iii) the Owner continues to be the owner when the arrest is effected. Further, Section 5(2) permits arrest of any other vessel other than the

offending vessel. In order to invoke Section 5(2), the Plaintiff must,

- (a) establish a maritime claim under Section 4 of the Admiralty Act;
- (b) Identify the time charterer who is liable for the maritime claim;
- (c) Identify a vessel which is owned by the said time charterer and
- (d) Establish that the vessel is owned by that time charterer when the arrest is affected.

57. Although, the contention was raised on behalf of the Defendant No.2 that, Section 5(2) does not contemplate a scenario wherein a vessel owned by a time charterer can be arrested. Such contention in my view is misconceived. There is nothing in Section 5(2) of the Admiralty Act to exclude arrest of a vessel owned by a time charterer. Prior to the enactment of the Admiralty Act, arrest of ships was governed by the International Convention on Arrest of Ships, 1999. Article 3(2) of this Convention *inter alia* states “...Arrest is also permissible of any other ship or ships which, when the arrest is affected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose.... (b) demise charterer, time charterer or voyage charterer of that ship.” Although, under Article 3(2) of the Convention, the arrest of a time charterers vessel was expressly permitted and there is no express

permission under Section 5 of the Admiralty Act, in my view Section 5 cannot be read in a restrictive manner and must be read in a purposive manner in order to subserve the objections and reasons of the Admiralty Act.

58. The decision relied upon by the Plaintiff namely, ***Sunil B Naik Vs. Geowave Commander (Supra)***, although having been passed by the Supreme Court, under the old Act and prior to the enactment of the 2017, Admiralty Act, would be required to be taken into consideration in the present case, considering that it was a consistent position of law at the time of enactment of the Admiralty Act that the vessel owned by a time charterer could be arrested to secure a maritime claim for which the time charterer was liable. Further, in the decision of the Division Bench of this Court in ***Altus Uber and Ors. (Supra)***, which was a decision passed under the 2017 Admiralty Act, the Division Bench of this Court has in the context of demise charter held that when the demise charterer is liable for a maritime claim, Section 5(2) permits the arrest of any other vessel of which the demise charterer is either the demise charterer or owner of that vessel when the arrest is effected. This decision does not in any manner lay down that there cannot be an

arrest of any other vessel owned by a time charterer against whom the maritime claim is made, subject to meeting the requirement of Section 5(1) of the Admiralty Act. This decision has also referred to the judgment of Supreme Court in ***Sunil Naik Vs. Geowave Commander (Supra)*** and distinguished this judgment passed on facts as that case concerned a time charter and not a demise charter. The Division Bench has also observed that the Plaintiffs in that case had a claim against the time charterer and not a demise charterer and therefore could arrest any other ship owned by the time charterer and not a ship of the demise charterer.

59. Thus, in order to affect an arrest under Section 5 (1) (a) read with Section 5 (2), the owner of the vessel must be liable for a maritime claim and must be the owner of the vessel sought to be arrested when the arrest is effected. There is no restriction in so far as a time charterer is concerned who is liable for a maritime claim provided that the time charterer is the owner of the other vessel when the arrest is affected. Accordingly, the defence raised by the Defendant No.2 that a vessel owned by a time charterer cannot be arrested is rejected.

60. The third defense raised by the Defendant No.2 is that arrest of vessel under the beneficial ownership of an entity is not permissible under the Admiralty Act and a plea of beneficial ownership cannot be canvassed under Order 13A of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, 2015.

61. In Section 5 (1) (a) of the Admiralty Act, the words used are “the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected.”. Thus, the issue which arises is whether the word used in that provision viz. ‘owner’ applies to a registered owner or a beneficial owner. In *M/s. Universal Marine (Supra)*, the learned Single Judge of this Court has in the context of the Arrest Convention 1999 i.e. prior to the 2017 Admiralty Act, construed the expression ‘owner’ under Article 3(2) of the Arrest Convention 1999 to be a “registered owner”. The learned Single Judge has held that the reason why owner is meant registered owner is because the only person who could be held to be liable for a claim against the ship, is the person who owns all the shares in the ship and who would be liable on the claim in an action *in personam*.

If the “owner” could be meant to be ‘beneficial owner’, the Convention would have said ‘beneficial owner’. This is because the beneficial owner need not mean he is the registered owner. On the contrary, the registered owner or the owner in whose name the ship is registered would also be beneficial owner unless otherwise proved.

62. The Plaintiff has controverted this by placing reliance upon the decision of the learned Single Judge of this Court in *Lufeng Shipping Company (Supra)*, where under the Arrest Convention, the expression “owner” was construed as “beneficial owner”. This was upheld by the Division Bench of this Court. However, in that case there was a trial and after the trial, the Plaintiff was held to have not established beneficial ownership.

63. The Defendant No.2 has also relied upon the decision of the Division Bench of this Court in *Polygreen International DMCC Vs. M. T. Pamboor 2 and Anr. (Supra)*, where, the Division Bench of this Court has referred to the decision of the learned Single Judge in *Universal Marine and Anr. (Supra)* and has held that it is not possible to arrest a ship not owned by the person liable for the

maritime claim, unless fraud is established. In some cases, the Courts may look behind the registered owner, but it can do this, (and do it more than once) only if the necessary ingredient is satisfied that the independent Company is nothing but a sham, an attempt to defraud the creditors. Otherwise, an *in personam* claim lies only against the registered owner.

64. I am of the considered view as held in ***M.T. Pamboor 2 (Supra)*** that in order to arrest a ship not owned by the registered owner but by a beneficial owner who is liable for the maritime claim, it would be for the Plaintiff to establish that the registered owner is not the real owner and that the beneficial owner is the real owner.

65. I am of the view that it is not sufficient for Defendant No.2 to merely place reliance upon the Lloyd's Report which shows the Defendant No.2 to be the beneficial owner of Defendant No.1 vessel. Accordingly, I find that it would be necessary for Plaintiff to establish its case of looking beyond the registered owner of the Defendant Vessel and / or for lifting the corporate veil and

considering Defendant No.2 who is alleged to be the beneficial owner as the real owner of the Defendant vessel.

66. Accordingly, I am of the considered view that the Plaintiff cannot seek summary judgment in respect of supplies II and III without evidence being led and a full fledged trial for establishing that the Defendant No.2 is the real owner of the Defendant No.1 vessel.

67. Accordingly, the Summary Judgment must fail against Defendant No.2 in respect of Supplies II and III for which the Plaintiff has a maritime claim. The Suit shall continue against Defendant No.2 in respect of Supplies II and III.

68. In so far as supply I is concerned, the Plaintiff has a maritime claim against the Defendant Nos.3 and 4 for the bunkers supplied to Defendant No.1 vessel of which the Defendant No.3 is the Ship Manager and Defendant No.4 is the Registered Owner. The maritime claim would fall under Section 4(1) (h) of the Admiralty Act and which maritime claim has been admitted by Defendant Nos.3 and 4, through the email correspondence addressed by Mr.

Navpreet Singh, Managing Director of the Defendant No.3 on 14th August, 2019 that monies were payable to the Plaintiff against the Supply I.

69. Accordingly, there shall be summary judgment and decree in favour of the Plaintiff against the sale proceeds of Defendant No.1 vessel, which sale proceeds have been deposited with this Court pursuant to the order dated 24th September, 2020, in the sum of US\$ 124,674 (detail breakup of which is provided in the particulars of claim annexed at Exhibit 'D' to the Plaintiff) along with further interest @ 2% p.a. from the date of institution of the Suit till payment and / or realization.

70. Interim Application is accordingly disposed of. There shall be no order as to costs.

71. The Suit shall proceed against Defendant No.2.

[R.I. CHAGLA, J.]

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