

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE-ADMIRALTY JURISDICTION**

IN ITS COMMERCIAL DIVISION

REVIEW PETITION (L.) NO. 9091 OF 2022

IN

INTERIM APPLICATION (L.) NO. 875 OF 2021

IN

COMMERCIAL ADMIRALTY SUIT (L.) NO. 29203 OF 2021

Continental Radiance Offshore Pvt. ..Review Petitioner/
Ltd. (Orig. Plaintiff)

Versus

1. m.v. LEWEK ALTAIR (IMO No. ...Respondent No.1/
9413183) Org. Defendant

And

2. Lewek Altair Shipping Private ...Respondent No.2/
Limited, Being the Registered Org. Applicant
Owners of the
Defendant Vessel, m.v. LEWEK
ALTAIR
(IMO No. 9413183)

WITH

INTERIM APPLICATION (L.) NO. 9846 OF 2022

IN

COMMERCIAL ADMIRALTY SUIT (L.) NO. 29203 OF 2021

Continental Radiance Offshore Pvt. ... Applicant
Ltd.

In the matter of

Continental Radiance Offshore Pvt.
Ltd.

..Plaintiff

Versus

m.v. LEWEK ALTAIR
(IMO No. 9413183)

...Defendant

Mr.Venkatesh Dhond, Senior Advocate a/w. Mr.Ashwin Shanker, Mr.Rishi Murarka, Mr. Kunal Naik, Mr.Ram Jay Narayan i/b Ashwin Shanker for petitioner in RPCDL-9091-2022 & for applicant in IAL/9846/2021.

Mr.Prathamesh Kamat i/b Abhimanyu Singh for defendant/respondent.

Mr.Piyush Sharma a/w. Mr.Ativ Patel, Mr.Shreyas Patel, Darshit Dave and Harshad Vyas i/b AVP Partners for intervener in RPCDL-9091-2022.

CORAM : N.J. JAMADAR, J.
Reserved for Order on : 29th MARCH/
5th APRIL 2022
Pronounced on : 19th APRIL 2022.

ORDER :

1. The petitioner-plaintiff seeks review of the order dated 1st March 2022 in Interim Application (L.) No.875 of 2022 in Commercial Admiralty Suit (L.) No. 29203 of 2021, whereby this Court was persuaded to allow the interim application preferred by the applicant-respondent No.2 herein, and vacate/set aside the *ex-parte* order of arrest of m.v. LEWEK ALTAIR (IMO No. 9413183), the defendant vessel-respondent No.2 herein, dated 14th December 2021.

2. The background facts can be stated in brief as under :

(a) The respondent No.2 is the legal owner of m.v. LEWEK ALTAIR (IMO No.9413183) ('the defendant-vessel'). The plaintiff instituted a suit based on maritime claim against the defendant-vessel with the assertions that the plaintiff is the owner of two vessels, viz. m.v. CREST MERCURY 1 and m.v. CREST

MERCURY 2. The plaintiff entered into two charter parties with Vision Projects Technologies Private Limited (“Vision Projects”) on 19th October 2015 for the bare boat charter of the plaintiff’s vessels. Dispute arose between the plaintiff and Vision Projects under those demise charters giving rise to maritime claims against Vision Projects.

(b) The plaintiff averred that the defendant-vessel is an Indian flagged vessel, owned by Lewek Altair Shipping Private Limited, the respondent No.2. One Vision Maritime Private Limited is the ISM Manager of the defendant-vessel. Vision Maritime Private Limited is a wholly owned subsidiary of Vision Projects Technologies Pvt. Ltd. Vision Projects is the bare boat charterer/demise charterer of the defendant-vessel. Thus, the plaintiff having a maritime claim against Vision Projects is entitled to arrest and proceed against the defendant-vessel *in rem* as Vision Projects is the demise charterer of the defendant-vessel.

(c) On 14th December 2021, the plaintiff moved for an *ex-parte* order of arrest of the defendant-vessel by

taking out Judge's Order (L.) No. 29204 of 2021. Noting that the claims of the plaintiff fall within the meaning of a 'maritime claim' as defined in section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims), Act, 2017 ('the Admiralty Act, 2017'), this Court ordered the arrest of the defendant-vessel.

(d) Respondent No.2 filed Interim Application No.875 of 2022 for vacating the aforesaid order of arrest. The respondent No.2 asserted that plaintiff's claim that Vision Projects is the bare boat charterer of the defendant-vessel was unsustainable. Since the plaintiff's claim was admittedly not against the defendant-vessel, and there was no material to substantiate the claim of the plaintiff that Vision Projects was the demise charterer of the defendant-vessel, an action *in rem* against the defendant-vessel was not maintainable. It was contended, *inter-alia*, that Vision Projects is neither the registered owner nor the demise charterer of the defendant-vessel. Hence, the respondent No.2 prayed for setting aside of the *ex-parte* order of arrest of the defendant-vessel, dated 14th

December 2021.

3. An affidavit-in-reply was filed by the plaintiff. The contentions of the defendant were put in contest. The plaintiff asserted that despite the plaintiff having served a requisition on respondent No.2, the later refused to furnish documents. This refusal on the part of the respondent No.2 to make a clean breast of the transaction qua the defendant-vessel justifies drawing of adverse inferences (a) that the defendant-vessel was on demise charter at the time cause of action arose and also at the time the vessel was arrested; (b) the arrest order is valid and properly been directed; and (c) Vision Projects and the applicant are alter-egos of each other. The plaintiff further asserted that the respondent No.2 has not specifically denied that the respondent No.2 is a bare boat/demise charterer of the defendant-vessel.

4. After appraisal of the rival contentions and submissions across the bar, this Court was persuaded to allow the interim application and vacate the *ex-parte* order of arrest. The Court was of the view that the basis of the claim in the admiralty suit was a contractual relationship between the plaintiff as owner and Vision Projects as bare boat charterer/demise charterer of the plaintiff's two vessels. However, as asserted in the plaint, the plaintiff could

not demonstrate that Vision Projects is the demise charterer of the defendant-vessel. The claim of the plaintiff that adverse inference be drawn against the respondent No.2-applicant therein, was misconceived. Moreover, the contention that Vision Projects was an alter-ego of the applicant was taken for the first time in the affidavit-in-reply to the interim application and the said case was never pleaded in the plaint. Thus, the order of arrest was clearly unsustainable.

5. Being aggrieved, the plaintiff preferred an appeal being Commercial Appeal (L.) No.7556 of 2022. By an order dated 21st March 2022, the Appeal Bench permitted the appellant/plaintiff to withdraw the appeal with liberty to file a review petition in respect of the order dated 1st March 2022.

6. Availing the aforesaid liberty, the plaintiff has preferred this review petition. Review is sought on the grounds, *inter-alia*, that there is no denial whatsoever of the existence of the demise charterer qua the defendant-vessel at the time of the accrual of cause of action and passing of the order of arrest. In view of the failure on the part of respondent No.2 to place the documents on record, an adverse inference ought to have been drawn against the respondent No.2. Placing reliance upon the documents, namely, (a)

Time Charter Party, dated 24th March 2019, (b) Equasis report of the plaintiff's vessels, (c) Memorandum of Association of respondent No.2, (d) Financial Statements of respondent No.2 for the financial year 2019-2020, and (e) copy of the Haliburton's Interim Application (L.) No. 8213 of 2022 in Commercial Appeal (L.) No. 7556 of 2022 (which were sought to be placed on record of the Court though not annexed to the plaint, initially), the plaintiff claimed that there was adequate material to demonstrate that the Vision Projects is the bare boat charterer of the defendant-vessel. It would be contextually relevant to note that, in the appeal, the plaintiff-appellant had preferred an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 ('the Code') seeking permission to produce the aforesaid documents.

7. The respondent No.2 has filed a short affidavit-in-reply. It is reiterated that the defendant-vessel is not under a demise charterer and/or defacto demise charter to Vision Projects. There is neither any error on the face of the record nor any case is made out to exercise the review jurisdiction. Nor the plaintiff has made out a case for production of additional documents.

8. During the pendency of this review petition, the plaintiff preferred an application to amend the plaint and bring the

aforesaid documents on record. By an order dated 4th April 2022, the plaintiff was permitted to amend the plaint.

9. Thereupon, by way of abundant caution, the plaintiff has taken out Interim Application (L.) No. 9846 of 2022 seeking an order of arrest of the defendant-vessel, in the event the Court holds that the plaintiff is not entitled to rely upon those documents, in the review petition. An affidavit-in-reply is filed to the interim application controverting the prayer for a fresh order of arrest.

10. I have heard Mr. Dhond, the learned Senior Counsel for the petitioner-plaintiff and Mr. Kamat, the learned counsel for the applicant-respondent No.2, at some length. The learned counsels have taken me through the pleadings and the documents placed on record.

11. Mr.Dhond, the learned senior counsel for the plaintiff canvassed a multi-pronged submission. The first plank of the submission of Mr.Dhond was that in the interim application, the applicant had not specifically and unequivocally denied the fact that the applicant was the demise charterer of defendant-vessel. Taking the Court through the pleadings in the application for vacation of the order of arrest, Mr.Dhond would urge that the averments therein manifest a clever drafting with a view to artfully

evade the core issue of jural relationship between the applicant and defendant-vessel. Since, the applicant being the registered owner of the defendant-vessel, the applicant had the special knowledge of the said jural relationship. In the circumstances, failure on the part of the applicant to place the documents on record and disclose the true nature of the relationship warranted drawing of an adverse inference and the omission to do so justifies the review of the said order. Secondly, according to Mr.Dhond, the material placed on record initially by itself raised a triable issue. Laying emphasis on the test to be applied, at the stage of the arrest of the vessel, which has been universally recognized to be that of reasonably best arguable case, the arrest was otherwise in order. The failure to adhere to this test also furnishes a ground for review. Thirdly, Mr.Dhond urged that in the hindsight, it can be said that the plaintiff misread the situation in not placing the documents on record under an impression that failure on the part of the registered owner to make a full and true disclosure would warrant drawing of an adverse inference. Since the plaintiff has amended the plaint and placed the documents on record which clearly make out a case that Vision Projects was the demise charterer of the defendant-vessel, or in any event, a *de-facto* demise charterer, the

order whereby the arrest was vacated is required to be reviewed.

12. Mr.Dhond further submitted that the resistance on the part of the respondent No.2 to the production of those documents and consideration thereof at this stage, would deprive the plaintiff of the legitimate rights as the plaintiff would be precluded from establishing a reasonably arguable best case, that too at the nascent stage of the suit. Such an approach, according to Mr.Dhond, would not be in consonance with the fundamental principles of judicial process.

13. In opposition to this, Mr.Kamat, the learned counsel for the applicant-respondent No.2 strenuously submitted that the review petition does not satisfy the tests under Order XLVII of the Code. None of the grounds envisaged by Order XLVII justifying the exercise of the review jurisdiction are made out by the plaintiff. There is neither any error apparent on the face of the record nor there is material to indicate that there is discovery of new and important matter or evidence which, despite due diligence, the plaintiff could not produce when the order in question was passed. Nor there is any other sufficient reason to review the said order.

14. Amplifying the submission, Mr.Kamat would urge that it is indisputable that when the order was passed, the plaintiff could

not produce any material on record to substantiate its stated case that Vision Projects was the demise charterer of the defendant-vessel. Failure on the part of the plaintiff to sustain the case which the plaintiff had pleaded would justify no other inference than that of the arrest being unsustainable. Thus, it would be preposterous to contend that there was an error apparent on the face of the record. As regards the endeavour of the defendant to produce the documents adverted to above, Mr.Kamat submitted that the very documents indicate that either the plaintiff had been in possession of those documents or those documents were within the knowledge of the plaintiff. The Equasis report sought to be relied upon by the plaintiff pertains to plaintiff's own vessel. The copy of the Time Charter Party, dated 24th March 2019 was received by the plaintiff on 14th December 2021 itself. The Memorandum of Association and Financial Statements of respondent No.2 are public documents, copies of which have been procured by the plaintiff. Thus, the crucial element of non-production of those documents, despite exercise of due diligence, can be said to have been made out. In the circumstance, according to Mr. Kamat, review would be legally impermissible.

15. Mr. Kamat would further urge that even if the case of the

plaintiff is taken at par, and the documents sought to be relied upon by the plaintiff are taken into account, yet no case for review of the order is made out. Those documents do not indicate that Vision Projects was the demise charterer of the defendant-vessel, even if construed rather generously. It was incumbent upon the plaintiff to establish that the Vision Projects was the demise charterer of the plaintiff on the date the maritime claim arose and also on the date of the arrest of the vessel. This burden was initially sought to be discharged by the plaintiff by relying upon the principle of drawing an adverse inference when the circumstances did not warrant such exercise and, later on, by pressing into service the aforesaid documents, which positively negate the case of the plaintiff that the Vision Projects was the demise charterer. Mr.Kamat further submitted that the submission on behalf of the plaintiff that the test to be applied for the arrest of the vessel is that of “reasonably arguable best case” is not worthy of acceptance especially after the enactment of Admiralty Act, 2017. The plaintiff is enjoined to make out a case under section 5(1)(b) of the Admiralty Act, 2017. In any event, it is well recognized that the term “reasonably arguable best case” has no magic and only means that the plaintiff has to make out a *prima-facie* case justifying the

arrest of the vessel.

16. Mr.Kamat further submitted that the plaintiff's stand as regards the jural relationship between the Vision Projects and defendant-vessel has wavered from one end to another. Initially it was the stand of the plaintiff that Vision Projects was the demise charterer. Realising the difficulty in surmounting the challenge to the said case, the plaintiff has endeavoured to bank upon the relationship in the nature of beneficial ownership of the defendant-vessel. This endeavour of the plaintiff is also demonstratively unsustainable, urged Mr. Kamat.

17. The aforesaid submissions now fall for consideration.

18. To start with, uncontroverted facts. The plaintiff is the registered owner of the vessels m.v. CREST MERCURY 1 and m.v. CREST MERCURY 2. Two charter-parties were entered with Vision Projects on 19th October 2015. Indubitably, Vision Projects is the bare boat charterer of those vessels. The dispute between the plaintiff and Vision Projects has its genesis in the said charter party. Indisputably, the respondent No.2 is the registered owner of the defendant-vessel. By and large, there is no controversy over the fact that a charter party was executed between the respondent No.2 and Vision Projects on 24th March 2019 in respect of the

defendant-vessel. The controversy, however, revolves around the nature of the said charter party agreement. Was it a demise charter?

19. I deem it expedient to approach the controversy in two parts. First, the justifiability of exercise of review jurisdiction. Second, the prayer for continuing the arrest of the defendant-vessel on the strength of the amended pleadings and documents placed on record, post the order of vacation of arrest, dated 1st March 2022. This second part of the consideration would be *de-hors* the finding on the question as to whether, in the circumstances of the case, the order passed on 1st March 2022 deserves to be reviewed. I am persuaded to adopt this approach as, in the ultimate analysis, the controversy would boil down to the justifiability of continuing the arrest of the defendant-vessel.

20. The parameters for the exercise of review jurisdiction, in the context of the provisions contained in section 114 read with order XLVII Rule 1 of the Code are well settled. A review of a judgment or order can be sought in the following situations :

(a) Upon the discovery of new or important matter or evidence which, after exercise of due diligence was not within the knowledge of the applicant;

(b) Such important matter or evidence could not be

produced by the applicant at the time when the order was passed;

(c) on account of some mistake or error apparent on the face of the record;

(d) any other sufficient cause.

21. Clauses (a) and (b) above, are self-explanatory. An error apparent on the face of the record, as the term signifies, is an error which is self evident from the record and does not require an elaborate examination and scrutiny of the matter. If the error is not self evident and its detection requires a long process of reasoning, it cannot be treated as an error apparent on the face of the record. It is also well recognized that 'any other sufficient reason', appearing under Order XLVII Rule 1 means a reason sufficient on grounds at least analogous to those specified in the said rule.

22. In this context, the reliance placed by Mr.Kamat, on the judgment of the Supreme court in the case of *Shri Ram Sahu (Dead) Through L.Rs. & Ors. vs Vinod Kumar Rawat & Ors.*¹, appears well founded. In said case, after an elaborate analysis, the Supreme Court enunciated that an order can be reviewed by a Court only on the prescribed grounds mentioned in Order XLVII Rule 1 of the Code. An application for review is more restricted

¹ (2020) SCC OnLine SC 896

than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order XLVII Rule 1 of the Code itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.

23. On the aforesaid touchstone, the plaintiff's prayer for review is required to be appreciated.

24. A painstaking effort was made by Mr.Dhond to draw home the point that the averments in the interim application were, at best, evasive. There was no positive assertion that the Vision Projects was not the demise charterer of the defendant-vessel. Instead, the pleadings were artistically drafted on the line that the plaintiff failed to substantiate the said claim. I am afraid to accede to this submission. It would be suffice to note that in paragraph No.11(d), the respondent No.2, categorically asserted that Vision Projects was neither the registered owner nor the demise charterer of the defendant-vessel. Therefore, the action *in rem* against the defendant-vessel was entirely misplaced. In sub-para (e), it was further reiterated that Vision Projects was not the owner and certainly not the demise charterer of the defendant-vessel. These categorical assertions were sufficient to put the plaintiff on notice

that the applicant was controverting the plaintiff's case that the Vision Projects was the demise charterer of the defendant-vessel.

25. From this stand point, no question of drawing an adverse inference against the respondent No.2 on the strength of evasive pleadings arises. The reliance placed by Mr.Dhond on the judgment of the Supreme Court in the case of *Sheikh Abdul Sattar vs Union Of India (UOI)*² is of no assistance to the plaintiff.

26. Mr.Kamat was well within his rights in assailing the prayer for review on the ground that all the documents which have now been pressed into service, were either in the possession or knowledge of the plaintiff. The charter-party agreements between the plaintiff and Vision Projects, the equasis folder of the plaintiff's vessels were undoubtedly in the power and possession of the plaintiff. The Time Charter Party agreement dated dated 24th March 2019 between Vision Projects and respondent No.2, as the record indicates, was also received by the plaintiff on 14th December 2021, the day the vessel was arrested. It is imperative to note that the copy of this charter party agreement between the Vision Projects and respondent No.2 was not placed on record by the plaintiff alongwith its affidavit-in-reply to the interim application for vacating the order of arrest. This omission militates against the

2 (1970) 3 SCC 845

claim of the plaintiff that the relevant documents could not be produced when the order was passed as they were neither in its possession nor knowledge.

27. Viewed through the aforesaid prism, in my considered view, the case put-forth by the plaintiff does not fall within any of the grounds prescribed under Order XLVII Rule 1 of the Code.

28. This takes me to the second part of the analysis on the basis of the material available on record.

29. Section 5 of the Admiralty Act, 2017 provides the cases in which the High Court may order arrest of a vessel. Section 5, relevant for the determination of the controversy at hand, reads as under :

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).....

(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

.....

(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.

30. On a plain reading of section 5, the High Court would be

justified in ordering the arrest of a vessel if it has reason to believe that there is a maritime claim and the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is also the demise charterer or owner of the vessel when the arrest is effected. Sub-section (2) empowers the High Court to also order arrest of any other vessel in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1). This implies that even if the provisions contained in sub-section (2) are invoked to arrest another vessel, it is obligatory to establish that the claim falls within any of the five clauses of sub-section (1). In the instant case, it has to be seen whether Vision Projects was the demise charterer of the defendant-vessel.

31. The distinction between a voyage charter party, time charter party and charter party by demise is well recognized. Demise charter may be of two types. One, a bare boat charter where the hull is the subject matter of the charter party. Two, charter with Master and crew, under which the ship passes to the charterer in a state fit for the purposes of mercantile adventure. The owner is divested of all control over the ship or the master and crew. The

owner has the right to obtain the hire-charges and take back the vessel when the charter party comes to an end. Likewise, the owner is under no liability to the third parties.

32. In the case of *The Great Eastern Shipping Co. Ltd. Vs. State of Karnataka and Ors.*³, the Supreme Court adverted to various types of charter parties and extracted the test to determine whether a charter party operates as a demise, from the Halsbury's Laws of England, and enunciated the law as under :

"53 Halsbury's Laws of England, 4th Edn., Vol. 43, has also been referred to in which the following discussion has been made:

.....
405. Test whether charter party operates as demise : Whether a charter party operates as a demise or not is a question of construction, to be determined by reference to the language of the particular charter party. The principal test to be applied is whether the master is the employee of the owner or of the charterer. Even where the charter party provides for the nomination of the master by the charterer, he must be regarded as the owner's employee if the effect of the charter party is that he is to be paid or dismissed by the owner and that he is to be subject to the owner's orders as to navigation. However, if the charter party is otherwise to be regarded as a demise, it is immaterial that the owner reserves the right, in certain circumstances, of removing the master and appointing another in his place, or of appointing the chief engineer.

In a charter-party by demise, it may be charter without master or crew or bare boat charter, and another may be a charter with master and crew under which ship passes to the charterer for the purposes of mercantile adventure. As held in this case, full control has been given, and use is exclusively for the charterer. He has the right to use the space and burden. The discussion in Halsbury's also makes it clear that each and every charter-party need not be a

3 (2020) 3 SCC 354

service contract to provide services only.

54. The argument based upon the foreign courts decisions as to the charter agreements are only for service purpose, is not correct. As already discussed, even in the abovementioned foreign court's decisions, it depends upon the charter-party, and there is no super-check formula to find out the nature of the contract. It depends upon the terms and conditions of each contract. Merely use of specific words, as mentioned above, is not determinative, but the real crux is to be seen as per relevant conditions as agreed to between the parties."

33. In the case of *Epoch Enterrepots Vs. M.V. WON FU*⁴, the incidences of a charter by demise were explained as under :

"36 Even, however, assuming the agreement has in fact been entered into by the disponent owner, unless sufficient evidence is laid that the charter was by demise, whereby the possession and control of the vessel was given to the disponent owner, question of pursuing the cause of action against the vessel would not arise. Needless to add that charter parties are of three kinds; (a) Demise Charter; (b) Voyage Charter; and (c) Time Charter. Whereas in demise charter, the vessel is given to the charterer who thereafter takes complete control of the vessel including manning the same, in both voyage charter and time charter, master and crew are engaged by the owner who act under owner's instructions but under the charterer's directions. Simply put, voyage charter is making available the vessel for use of carriage for a particular voyage and the time charter correspondingly is where the vessel is made available for carriage of cargo for a fixed period of time."

34. Whether a charter party operates as a demise or not is very often a question of construction of charter party agreement. In the instant case, it is necessary to note that with the production of the

⁴ (2003) 1 SCC 305

charter party agreement, dated 24th May 2019, by the respondent No.2, the criticism sought to be advanced on behalf of the plaintiff on the ground of furnishing a redacted copy of the said charter party agreement and the prayer for drawing an adverse inference on that count pales in significance. The time charter party dated 24th March 2019 between the Vision Projects and respondent No.2 is titled, "Time Charter for vessel m.v. 'LEWEK ALTAIR' ". It provides that the Vision Projects, the contract holder, has entered into a agreement with respondent No.2 for the provision of defendant-vessel's services to Haliburton India Operations Pvt. Limited, the principal, who in turn, has entered into a contract with Oil and Natural Gas Corporation Limited, India (ONGC). The respondent No.2 has agreed to provide the defendant vessel and its full services/in full working condition, as per the agreement with the contract holder, for the principal. The charter party further provides as under :

It is also hereby agreed that the OWNER shall indemnify to keep the CONTRACT HOLDER against all claims, demands and causes of action based on any actual or alleged failure by the Owner/Vessel to perform the Services under this AGREEMENT. This indemnity shall include without limitation all penalties, liquidated damages, award and judgments, demands and causes of action and shall survive any termination of this AGREEMENT as per the Main Contract and also as per the Contract between the Contract Holder and Principal.

The contract holder shall pay the owner the Daily Charter Rate detailed in the table within provided. Item Nos.11 and 12 of the said table read as under :

<u>Sr.No.</u>	<u>Description</u>	<u>Rate in US\$ per day</u>
..
11	Accommodation Rate	10 person/day
12	Meal Rate	10 meal/person/day

Duration : The charter party was for the duration of three (3) years commences from the date of ONGC taking on-hire the defendant-vessel.

35. It is trite that the nomenclature of the charter party as “Time Charter” is not decisive. What is of critical significance is the jural relationship brought about by charter party agreement. The charter party agreement in question, on its reading as a whole, does not indicate that it was a bare boat charter. Nor the charter party suggests that the master and crew were to be employed by the charterer. It does not appear that the respondent No.2 divested all the control over the ship or the master and crew. Nor there is any indication that the charterer undertook the liability to the third parties. The daily charter rate contained in the charter party further suggests that the charterer was to make payment towards accommodation @ 10 US\$ per person per day and towards meal @

10-US\$ per meal per person per day. The charter party nowhere indicates that the vessel was to be manned by the crew to be appointed by the charterer. Had that been the case, the charterer would not have been obliged to make payment towards accommodation and meal. On a meaningful reading of the charter party as a whole, it is difficult to draw an inference that it was a case of demise charter. The agreements entered into between the Vision Projects and Haliburton, which were sought to be pressed into service on behalf of the plaintiff, do not alter the said jural relationship as the purpose for which the defendant-vessel was hired finds mention in the charter party itself.

36. This propels me to the second limb of the submission on behalf of the plaintiff that Vision Projects is the alter-ego of the respondent No.2. Banking upon the documents referred to above, the plaintiff has sought to build a case on the following lines :

(1) The Time Charter has been executed on behalf of the Vision Projects by Mr. Murthy Avasarala. The latter is 99.99% share holder of respondent No.2.

(2) Vision Projects through its wholly owned subsidiary, Vision Maritime acting as ISM Manager of the defendant-vessel, provided the crew for the defendant-vessel.

(3) Respondent No.2, Vision Projects and Vision Maritime are one and the same; and

(4) Vision Projects was both in possession and control of the defendant-vessel and thus satisfies the description of a demise charterer.

37. Evidently, the linchpin of the aforesaid case is that Mr. Murthy Avasarala is 99.99% share-holder of the respondent No.2 and the same person has executed the Time Charter on behalf of the Vision Projects. The Memorandum of Association (Exh.C) indicates that Mr.Avasarala Murthy held 9999.99% shares of the respondent No.2. The said position was as of 10th March 2011. The stand alone financial statement for the period 1st April 2019 to 31st March 2020 tells a completely different story. During the said period, 99.99% shares were held by one Tunil Oil Pte Ltd. and the rest 0.01 % by Adarsh Kumar Chiranjilal Amarnath. When the maritime claim arose, evidently, Mr.Murthy Avasarala was not even a shareholder of the respondent No.2.

38. It would be contextually relevant to note that form No.32 (Exh.B) annexed to the affidavit-in-reply to the Interim Application (L.) No. 9846 of 2022 indicates that Mr.Murthy Avasarala resigned from the directorship of the respondent No.2-Company with effect from 29th February 2012. These documents snap the link between

Vision Projects and respondent No.2 which was sought to be forged by the persona of Mr.Avasarala Murthy.

39. Mr.Dhond would next urge that since Vision Maritime, a wholly owned subsidiary of Vision Projects was the ISM Manager of the defendant-vessel, under clause 6.2 of the International Safety Maritime Code, it was the responsibility of the ISM Manager to ensure that the defendant-vessel was manned with qualified, certificated and medically fit seafarers in accordance with the national and international requirements. Support was sought to be drawn from the definition of the term 'company' contained in the said Code which means, 'the owner of the ship or any other organization or the person such as the Manager, or the bare-boat charterer, who has assumed the responsibility for operation of the ship from the ship-owner and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the Code'. Since Vision Maritime is the wholly owned subsidiary of Vision Projects, according to Mr.Dhond, the charter in question can only be termed as a 'demise charter'.

40. I find it rather difficult to agree with the aforesaid submissions . The International Safety Maritime Code is essentially an International Standard for the safe management and operation

of ships. The stipulations therein cannot be read *de-hors* the contractual relationship arrived at between the parties. In the absence of material to demonstrate that the charter was in the nature of demise, an inference of demise cannot be, in my view, drawn solely on the basis of the fact that the time charterer appointed its owned subsidiary as an ISM Manager.

41. Though Mr. Dhond and Mr. Kamat advanced submissions for and against the lifting of the corporate veil, in the face of fact-situation, which emerges from the record, I deem it superfluous to delve into the said aspect of the matter. With the snapping of the link between the respondent No.2 and Mr. Murthy Avasarala, the consideration of the necessity of lifting the corporate veil, would be wholly unwarranted.

42. Mr. Dhond lastly urged that at the stage of arrest of the ship, what has to be seen is a reasonably arguable best case. Mr. Kamat countered by canvassing a submission that the efficacy of this test stands substantially eroded with the enactment of Admiralty Act, 2017 under which “the High Court ought to have reason to believe”, about the circumstances enumerated therein. In my view, in the facts of the case at hand, this controversy as to which test to be applied, does not present itself. For the plaintiff has simply not

succeeded in showing, *prima-facie*, that the Vision Projects is the demise charter of the defendant-vessel. Resultantly, the semantics of “reasonably arguable best case” or “*prima-facie* case”, do not matter.

43. The conspectus of aforesaid consideration is that neither a case for review is made out nor a case for continued arrest of the defendant-vessel is made out, even after full consideration of amended pleadings and documents placed on record on behalf of the plaintiff. Thus, both Review Petition and Interim Application for the arrest of the vessel deserve to be rejected.

44. Hence, the following order :

O R D E R

- (i) Review Petition (L.) No. 9091 of 2022 stands rejected.
- (ii) Interim Application (L.) No.9846 of 2022 also stands rejected.
- (iii) Interim order stands vacated.

No costs.

[N.J. JAMADAR, J.]