



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-01-2026

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THE HON'BLE MR JUSTICE N.ANAND VENKATESH

A. No.4720 of 2025

in

C.S. (Comm. Div.) No.134 of 2024

Owners and Parties interested in the
Motor Tug (MT) INTAN T 3501 (IMO 9424337)
A Motor Tug flying the flag of Singapore presently
lying at the Port of Tuticorin and
represented by its Master.

..Applicant/
Defendant(s)

Vs

Nila Logistics LLP
Rep.by its Managing Director Mr.Shanmugaraj
5/582/26B, Netaji Nagar, Tuticorin 682 002.

..Respondent/
Plaintiff(s)

PRAYER: Application filed under Order XIV Rule 8 of Original Side Rules read with Rule 38 of the Admiralty Rules read with Section 151 of Code of Civil Procedure and Order 31 Rule 9 of Original Side Rules praying to direct payment out for a sum of Rs.1,63,00,000/- together with accrued interest to Mr.S.Vasudevan, Counsel for Applicant/Defendant, which amount is lying in the form of a Fixed Deposit Receipt dated 03/09/2024 to the credit of the present suit, by making an endorsement in the said Fixed Deposit Receipt as follows “Pay the amount of Rs.1,63,00,000/- together with accrued interest to



Mr.S.Vasudevan, Advocate for the Applicant/Defendant for onward payment to the Applicant/Defendant”.

For Applicant(s): Mr.S.Vasudevan

For Respondent(s): Ms.Radhika Kabra

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ORDER

This application has been filed to permit the defendant/ applicant to withdraw the amount deposited to the tune of Rs.1,63,000/- together with accrued interest which is lying in the form of fixed deposit receipt dated 03.09.2024 to the credit of the present Suit.

2. The background of the present case and the order passed in Application No.5196 of 2024 dated 03.03.2025, which lead to the present application is extracted hereunder:

“The plaintiff entered into two time charter parties with the defendant in respect of the vessel “ASL Courageous” 2900 HP (the tug) and barge “ASLCO 3008” (the barge). Both the tug and the barge were operating under Singapore flags. As the charterer under these time charters, the plaintiff approached this Court by way of an action in rem under the the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the Admiralty Act) by asserting a maritime claim. The suit claim is for recovery of a sum of Rs.1,66,66,666/~ with further interest thereon at 18% p.a. from the date of suit till realization. The plaintiff had also prayed for the arrest of the tug and barge and for the sale thereof so as to enable



the suit claim to be discharged from the sale proceeds.

2. *By order dated 30.07.2024, a warrant of arrest was issued. Upon receipt of notice, the defendant came forward to provide security for the suit claim. After noticing that the interest claim was only from the date of plaint, by order dated 12.08.2024, a warrant of release was directed to be issued upon receiving banker's cheque dated 08.08.2024 for a sum of Rs.1,66,66,666/~, which represents the principal suit claim. The Registrar General of this Court was directed to invest the proceeds of the banker-s cheque in an interest bearing fixed deposit account with the Indian Bank, Madras High Court Branch, to the credit of the suit. Such deposit was directed to be for an initial period of one year with the obligation to renew the same periodically until the disposal of the suit.*

3. *The defendant presented this application in the above facts and circumstances under Section 45 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) seeking reference of the dispute to arbitration. The affidavit in support of the application was affirmed on 18.09.2024. Thereafter, the defendant filed an application to condone the delay of 89 days in filling the written statement. The said application is pending.*

4. *Learned counsel for the plaintiff submitted that the dispute is liable to be referred to arbitration for the following reasons:*

(i) *Time charter party dated 02.03.2024 in respect of the tug contains a dispute resolution clause, which provides for arbitration before the Singapore Chamber of Maritime Arbitration. Likewise, the charter party relating to the barge also provides for dispute resolution through arbitration by the Singapore Chamber of Maritime Arbitration.*

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(ii) Upon the release of the tug and barge by providing security for the suit claim, the suit is converted from an action in rem to an action in personam. In support of this contention, learned counsel referred to and relied upon the judgment of the Hon-ble Supreme Court in *M.V.Elisabeth and others v. Harwan Investment and Trading Pvt. Ltd.*, 1993 Supp (2) SCC 433 (*M.V. Elisabeth*), particularly paragraph 83 thereof. Reliance was also placed on the judgment of a Division Bench of the Bombay High Court in *Angsley Investments Limited v. Jupiter Denizcilik Tasimacilik Mumessillik San. Ve Ticaret Limited Sirketi and Others*, 2023 SCC OnLine Bom 559 (*Angsley Investments*), especially paragraphs 11 and 12 thereof. By relying on the judgment of the Division Bench of the Bombay High Court in *OSV Crest Mercury 1 (IMO 9724398) v. Vision Projects Technologies Pvt. Ltd. (OSC Crest Mercury 1)*, order dated 07.05.2024 in *Commercial Appeal (L) No.30604 of 2022*, he submits that the Bombay High Court concluded that the action in rem gets converted into an action in personam only upon the defendant providing security for the suit claim and not merely upon the defendant entering appearance in the suit (Paragraph 15). Since security was provided in this case and the tug and barge were released, he contends that the suit is now an action in personam.

(iii) The dispute is an arbitrable dispute as per the judgment in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. & others*, 2011 (5) SCC 532 (*Booz Allen*) and the subsequent judgment in *Vidya Drolia & Others v. Durga Trading Corporation*, (2021) 2 SCC 1 (*Vidya Drolia*).

(iv) Article 7 of the *International Convention on Arrest of Ships, 1999 (the Ship Arrest Convention)* provides that the courts



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of the state in which arrest was effected may direct parties to arbitration, if parties have agreed thereto. By relying on the judgment of the Full Bench of the Bombay High Court in *J.S. Ocean Liner LLC v. M.V. Golden Progress*, 2007 (3) CTC 113 (*J.S. Ocean Liner*), learned counsel submitted that the applicability of Article 7 of the Ship Arrest Convention was recognised in the said case by the Full Bench. He also pointed out that the Full Bench concluded that an action in rem under the admiralty jurisdiction for recovery of a money claim and for the arrest of the vessel may be proceeded with in accordance with Article 7 of the Ship Arrest Convention after security is provided for the release of the vessel.

(v) By referring to the judgment of the Hon'ble Supreme Court in *Avitel Post Studioz Limited and Others v. HSBC Pi Holdings (Mauritius) Limited and Others*, (2021) 4 SCC 713 (*Avitel Post*), learned counsel contended that mere allegations of fraud would not render the dispute non-arbitrable and that the working tests formulated in *Rashid Raza v. Sadaf Akhtar*, 2019 (8) SCC 710 (*Rashid Raza*), were cited with approval in *Avitel Post*. Apart from making baseless allegations of fraud, learned counsel submits that the plaintiff has not established that fraud permeates the entire contract thereby rendering it void or that it has implications in the public domain.

(vi) By referring to the judgment of the Supreme Court in *Shin ~Etsu Chemical Co. Ltd. v. Aksh Optfibre Ltd. and Another*, (2005) 7 SCC 234 (*Shin~Etsu*), learned counsel submitted that reference under Section 45 is liable to be made unless the Court finds prima facie that the contract is null and void, inoperative, or incapable of being performed. If such prima facie view were to be taken, learned counsel submits that no case is made out to decline



to make such reference.

5. In response to these contentions, learned counsel for the plaintiff submitted as follows:

(i) The charter parties are incapable of being performed. By drawing reference to the time specified for performance under the charter parties, learned counsel submitted that the defendant entered into these contracts without the intention of performing obligations thereunder. Without abiding by the instructions of the charterer, learned counsel submits that the tug and barge completely deviated from course in spite of the plaintiff providing requisite bunkers.

(ii) The defendant's tug and barge entered and exited from the territorial waters of India without obtaining requisite permission from the customs authorities. Therefore, learned counsel contends that the defendant violated the Customs Act, 1962 and rules and regulations framed thereunder. He also submits that the plaintiff received notices in this regard from the customs authorities.

(iii) The charter parties are vitiated by fraud perpetrated by the defendant, thereby causing huge losses to the plaintiff.

6. In the backdrop of the rival contentions, at the outset, it is pertinent to set out Section 45 of the Arbitration Act. The provision reads as follows:

“45. Power of judicial authority to refer parties to arbitration.

~ Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have



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made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, [unless it prima facie finds] that the said agreement is null and void, inoperative or incapable of being performed.”

The text of Section 45 contains the following requirements or conditions for exercise of power thereunder:

(i) A judicial authority should be seized of an action in a matter wherein the parties have entered into an agreement referred to in Section 44.

(ii) A request should be made by one of the parties to such agreement or any person claiming through or under him.

(iii) The Court shall make such reference unless it prima facie finds that the agreement is null and void, inoperative or incapable of being performed.

7. The arbitration clause in the time charter party in relation to the tug is as under:

“37(c)* This Charter Party shall be governed by and construed in accordance with Singapore**/English law **

Any dispute arising out of or in connection with this Charter Party, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration



proceedings are commenced.

The arbitration clause in the time charter party in relation to the barge is as under:

“32(d): Singapore law/Singapore arbitration - Single Arbitration by Singapore Chamber of Maritime Arbitration (SCMA).

It is pertinent to note that the governing law is Singapore law.

*8. The defendant has placed on record the complete text of the relevant time charter parties relating to both the tug and barge. The plaintiff does not deny execution of these documents. The contention of the plaintiff, however, is that these agreements are incapable of being performed. Consequently, it becomes necessary to consider the scope of the expression “incapable of being performed”. In *Shin~Etsu*, which was pronounced prior to the amendment of Section 45 by Act 33 of 2019, by majority view, the Supreme Court concluded that only a prima facie view should be recorded while making the reference. After the amendment to Section 45, as noticed above, Parliament has expressly stipulated that reference should be made unless the Court finds prima facie that the agreement is null and void, inoperative or incapable of being performed.*

9. The contention of learned counsel for the plaintiff was that the defendant did not intend to perform obligations under the charter parties, and that such inference may be drawn from the conduct of the defendant. The expression “incapable of being performed” is used in juxtaposition with the expressions “null and void” and “inoperative”. If a contract is held to be null and void,



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either under the Indian Contract Act, 1872 or equivalent legislations in other common law countries such as Singapore, the implication is that parties should return to the position that they held before the contract was executed to the extent possible. In other words, the consequences are fundamentally different from a situation wherein one party terminates the contract. In this situation, contractual obligations would be binding up to the date of termination.

10. If the expression “incapable of being performed” were to be construed as applicable in every situation where the parties to the contract are no longer capable of or in a position to fulfil obligations thereunder, reference to arbitration would not be possible in situations wherein the contract is terminated by one of the parties thereto or even in a situation where the obligations were to be performed at a specified time or place but were not so performed. By way of illustration, if the cargo were to be discharged at a port, but such discharge did not take place and the vessel has sailed out therefrom due to breach, contractual obligations are no longer capable of being performed. The intention of Parliament in using the expression “incapable of being performed” is clearly not to rule out reference to arbitration in such situation. Therefore, in my view, both the expressions, “inoperative” and “incapable of being performed” would take colour from the expression “null and void” on application of the principle of *noscitur a sociis* and be confined to contracts which were incapable of being performed at the time of contract formation or subsequently due to frustration as per Section 56 of the Contract Act, thereby rendering the contract void. It is profitable to refer to the judgment of this Court in *Ramasamy*



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Athappan and another v. The Secretariat of the Court, International Chamber of Commerce and others, 2008 SCC OnLine Mad 789, in this regard. In this case, the plaintiff admits to the execution of these charter parties and alleges blatant breach in the performance of obligations thereunder by the defendant. These contracts cannot be construed as incapable of being performed under these circumstances.

11. The question whether the dispute is non-arbitrable falls for consideration next. In Booz Allen, the Supreme Court concluded that certain categories of disputes such as those relating to infractions of criminal law, matrimony, insolvency, guardianship, testamentary and intestate succession are non-arbitrable. Such conclusion was recorded in the context of a mortgage suit by holding that such mortgage suit is also not arbitrable. Later, this issue fell for consideration before the Supreme Court in Vidya Drolia. At para 76 of the lead judgment, the Court held as under:

“76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:

76.1. (1) when cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

76.2. (2) when cause of action and subject-matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;

76.3. (3) when cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest



functions of the State and hence mutual adjudication would be unenforceable;

76.4. (4) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

76.5. (5) These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.

76.6. However, the aforesaid principles have to be applied with care and caution as observed in *Olympus Superstructures Pvt. Ltd.*:

“35...Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (*Keir v. Leeman*). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (*Soilleux v. Herbst, Wilson v. Wilson and Cahill v. Cahill*).”

12. In the concurring judgment of Justice N.V.Ramana, the Supreme Court considered *Booz Allen* and the judgments on fraud

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and eventually held that the court-s scrutiny and finding should be on prima facie basis. In fact, at Para 244.4, the Court concluded that “when in doubt, do refer”.

13. In the case on hand, it was concluded earlier that it cannot be said that the contract is incapable of being performed at the time of contract formation or that it was frustrated in terms of Section 56 of the Contract Act or even as per common law. The plaintiff has also failed to place on record any material to support a prima facie finding that the agreement is either null and void or inoperative.

14. The suit was admittedly instituted as an action in rem. In the specific context of an admiralty claim, the rem refers to the vessel. As discussed earlier, upon the defendant providing security for the suit claim, the tug and barge were directed to be released. On the date when such release was directed, it is pertinent to notice that no other maritime claim was lodged in respect of the vessel. Indeed, it is no longer possible to do so because the vessel is not within the jurisdiction of this Court. In multiple judgments cited by learned counsel for the defendant such as *M.V. Elisabeth*, *Angsley Investments* and *OSV Crest Mercury 1*, it was concluded that the action in rem is converted into an action in personam upon the defendant providing security and obtaining release of a vessel. Thus, in this case, the action in rem has been converted into an action in personam. Being an action in personam, it clearly does not fall within any of the categories of non-arbitrable disputes as per the judgments in *Booz Allen and Vidya Drolia*.

15. One final issue remains to be considered, namely, whether reference should not be made in light of the allegations of fraud. The original position, as per the judgment of the Supreme



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Court in Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72, was that a dispute should not be referred for arbitration if allegations of fraud are levelled by the party resisting such reference. This judgment was expressly overruled in Vidya Drolia. In Avitel Post, the matter was re-examined and the Court concluded that reference to arbitration under Section 8 of the Arbitration Act would be declined only if the court is satisfied that the allegations of fraud are serious and complicated in nature and that it would be more appropriate for the court to deal with the subject matter rather than relegating the parties for arbitration. In so holding, the Supreme Court cited with approval the judgment in Rashid Raza.

16. The allegations of fraud in the case at hand pertain to the alleged blatant breach of the terms of the charter parties. These allegations are controverted by the defendant by referring to documents indicating that performance of obligations was affected by adverse weather conditions. From the nature of allegations, it is evident that such allegations do not pertain to the execution of the charter parties and are confined to performance of obligations thereunder. Even otherwise, the arbitration laws in most jurisdictions, including Singapore, recognize the kompetenz~kompetenz principle by treating the arbitration clause in a contract as separate from the rest of the contract so as to enable the arbitral tribunal to rule on all allegations with regard to execution and validity of such contract. In the facts and circumstances outlined above, the allegations of fraud by the plaintiff are insufficient to meet the exacting standard for the Court to decline the reference on that basis.

17. Before concluding, one significant aspect should be taken



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note of. The defendant agreed to provide security for the entire principal suit claim as a condition for the release of the tug and barge. Since this Court exercised jurisdiction upon recognizing that the tug and barge were within the admiralty jurisdiction of this Court, the warrant for release would not have been issued but for the defendant providing such security. Therefore, it is just and necessary that the defendant continues to maintain such security, as directed by this Court in order dated 12.08.2024, until the conclusion of arbitral proceedings. Thereafter, the security shall abide by the outcome of such proceedings.

18. For reasons aforesaid, this application is disposed of on the following terms:

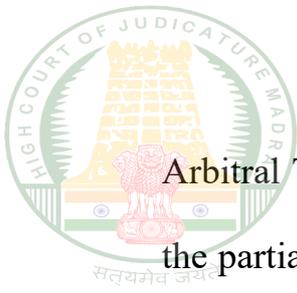
(i) The disputes between the parties is referred to arbitration in accordance with the dispute resolution clauses in the time charter parties pertaining to the Tug ASL Courageous and the Barge ASLCO 3008.

(ii) Such reference is subject to the condition that the defendant maintains the security by ensuring periodical renewal of the fixed deposit in the Indian Bank, Madras High Court Branch, until the arbitral proceedings are finally concluded.

(iii) The security shall abide by the outcome of the arbitral proceedings and the successful party shall be entitled to apply to this Court in terms of the arbitral award.

(iv) The arbitral tribunal may decide whether to consolidate proceedings pertaining to the tug and barge in accordance with applicable Singapore law.”

3. Pursuant to the above order, the proceedings were initiated before the



Arbitral Tribunal at Singapore Chamber of Maritime Arbitration. A reading of the partial final award dated 05.03.2025 point out to the fact that the respondent in this case who is the plaintiff, did not file any defense to the claim made and hence the Arbitral Tribunal proceeded further and passed the partial final award in the following terms:

“1. The respondents to pay the sum of USD 218,160.00 being the total amount of the sums due and payable under Invoice S124-01327, Invoice S124-01450 and Invoice S124-01514.

2. The respondent to pay the Claimant contractual interest of USD 3,036.07 accrued up to 30 August 2024;

3. The respondent to pay the claimant interest on the sum of USD 218,160.00 at the daily rate of USD 29.80 (5% per annum divided by 366 days, 2024 being a leap year) for the remainder of 2024;

4. The respondent to pay the claimant interest on the sum of USD 218, 160.00 at the daily rate of USD 29.88 for the year of 2025 (5% per annum divided by 365 days) and beyond until the payment is received, save that the daily rate shall be USD 29.80 in a leap year.

5. All remaining issues in this arbitration including issues relating to the quantification of the costs of this arbitration are reserved.

6. Within 14 days of the date of this Partial Final Award, the parties are to (i) identify any remaining issues in this arbitration and (ii) propose directions for the disposal of those issues.”

4. The Arbitral Tribunal has stated that within 14 days of the date of this



partial final award, the parties will identify the remaining issues which includes quantification of the cost and proposed directions for the disposal of those issues.

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5. The learned counsel for the applicant submitted that the respondent/plaintiff was not inclined to participate in the arbitration proceedings and to substantiate the same, the learned counsel brought to the notice of this Court the e-mail dated 09.09.2024 enclosing the reply to the arbitration notice dated 04.09.2024 wherein the respondent/ plaintiff made it clear that they are refusing to participate in the arbitration proceedings.

6. The learned counsel for the applicant further submitted that this conduct on the part of the respondent/ plaintiff continued and in spite of several opportunities given by the Arbitral Tribunal, they did not choose to file the statement of defense. This has also been recorded in the partial final award dated 05.03.2025.

7. In view of the above, it was contended by the learned counsel for the applicant that no further issues have been pointed out to the arbitral tribunal to proceed further with the case and virtually the partial final award dated



05.03.2025 has become final. In the light of this development, the present application has been filed to order payment out of the amount that was deposited by the applicant / defendant as security. The learned counsel submitted that what has been awarded by way of partial final award roughly worked out to a sum of Rs.2.5 crores and what was given as a security by the applicant/ defendant was roughly a sum of Rs.1.67 crores.

8. During the earlier hearing, a memo was filed on behalf of the respondent/ plaintiff wherein it was brought to the notice of this Court that by virtue of the order passed by the NCLT Chennai, dated 25.11.2025, the respondent/ plaintiff was admitted into the Corporate Insolvency Resolution Process and an Interim Resolution Professional (IRP) has been appointed. A copy of the order was also filed along with the memo.

9. Ms.Radhika Kabra, had entered appearance on behalf of the respondent/ plaintiff on being engaged by the IRP representing the respondent/ plaintiff. The learned counsel sought for time to file a counter and to argue the application finally. Accordingly, the matter listed on 16.12.2025 was adjourned for hearing to 08.01.2026. The applications were again listed for hearing on 27.01.2026 and the following order came to be passed by this Court:

“Heard Mr.S.Vasudevan, learned counsel for the



applicant/defendant.

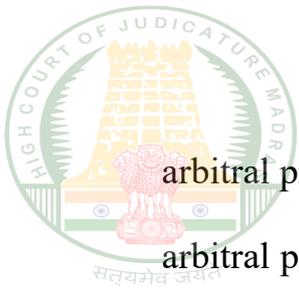
2. Ms.Radhika Kabra, learned counsel appearing for the plaintiff/ Company, engaged by IRP once again seeks for time.

3. When these matters came up for hearing on 16.12.2025, this Court gave sufficient time for more than four weeks to enable the learned counsel appearing for the plaintiff to respond and once again the learned counsel seeks for time.

4. Hence, as a last chance post these cases on 29.01.2026 under the caption "Part heard case".

10. The learned counsel appearing for the respondent/ plaintiff submitted that some more time is required for the respondent to file an affidavit. This request made by the learned counsel is rejected for the simple reason that the matter has been adjourned at least on two occasions and the application cannot be kept pending endlessly considering the nature of relief sought for in this application and more particularly considering the partial final award passed by the Arbitral Tribunal dated 05.03.2025. In view of the same, this Court permitted the learned counsel for the respondent/ plaintiff to make her oral submissions and express the objections on the part of the respondent/ plaintiff.

11. The learned counsel for the respondent/ plaintiff submitted that even when the order was passed on 03.03.2025, it was made clear that the applicant/ defendant must continue to maintain the security until the conclusion of the



arbitral proceedings and thereafter the security shall abide by the outcome of the arbitral proceedings. Admittedly, only a partial final award has been passed and the arbitral proceedings has not reached finality and therefore the applicant/defendant is not entitled to seek for payment of award amount lying to the deposit of the Suit. The learned counsel further submitted that the moratorium is now in force by virtue to Section 14 of Insolvency and Bankruptcy Code (IBC) and therefore the amount that has been kept in deposit cannot be permitted to be withdrawn by the applicant since it will virtually amount to recovering the amount which is barred due to the moratorium. The learned counsel in order to substantiate the submission brought to the notice of this Court the order passed by NCLT dated 25.11.2025. Accordingly, the learned counsel sought for the dismissal of this application.

12. This Court has carefully considered the submissions made on either side and the materials placed on record.

13. When this Court disposed of Application No.5196 of 2024 dated 03.03.2025, this Court had referred the parties to arbitration in accordance with the Dispute Resolution Clauses in TIME Charter parties. In order to ensure that the security amount deposited by the applicant/ defendant is kept intact along with the accrued interest, this Court made it clear that the security will be continued to be maintained until the conclusion of the arbitral proceedings. In



other words, the security given by the applicant/ defendant will be subject to the outcome of the arbitral proceedings.

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14. When this Court had specifically referred the parties to the Arbitral Tribunal, it is quite unfortunate that the respondent/ plaintiff took a stand that they decline to participate in the arbitration proceedings. The same is evident from the e-mail dated 09.09.2024 that was sent by the counsel for plaintiff to the counsel for the defendant. The said stand was further reiterated in the reply notice that was given. This stand on the part of the respondent/ plaintiff continued even during the arbitral proceedings. In the partial final award dated 05.03.2025, on carefully reading paragraphs 15 to 27 of the award, it is seen that in spite of repeated opportunities given by the arbitral Tribunal, the respondent/ plaintiff did not file any statement of defense. Hence, the arbitral Tribunal was left with no other alternative except to proceed further with the case and the award came to be passed on 05.03.2025. The operative portion of the order has already been extracted supra. By virtue of this award, the respondent/ plaintiff has to pay a sum of nearly USD 218,160/- apart from interest. This roughly works out to more than Rs.2.5 crores. Even though the Arbitral Tribunal had directed the parties to identify any remaining issues apart from the issue relating to the quantification of cost, nothing further has emanated from the side of the respondent/ plaintiff, therefore, the respondent/ plaintiff continues to maintain the same stand of not participating in the arbitration proceedings. As a result,



even if a final award is passed, it is not going to improve the case of the respondent/ plaintiff.

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15. It must be kept in mind that the present application has been filed by the defendant not for recovering any amount from the respondent/ plaintiff pursuant to the arbitral award. If any such action had been initiated, obviously the moratorium will come into operation. The claim that has been made by the applicant/ defendant is to permit withdrawal of the amount along with accrued interest since the applicant has an award in their favour against the respondent/ defendant, which is much more than the amount that was deposited as a security. Therefore, according to the applicant, the security amount need not continue in the same deposit and it will not serve any purpose in the light of the award passed by the Tribunal on 05.03.2025.

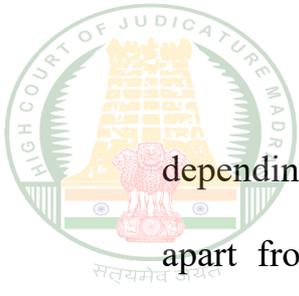
16. Insofar as the issue of moratorium that was raised by the learned counsel appearing on behalf of the respondent, the same will not have any impact in the present application. As per the order passed by NCLT dated 25.11.2025, it is made clear that the moratorium as envisaged under Section 14(1) will operate only in relation to institution of Suit or continuation of pending suit or proceedings against the respondent including execution of any judgment, decree or order in any Court of law, Tribunal, Arbitration panel etc., This application is neither in the nature of any institution of fresh proceedings



against the respondent/ plaintiff nor in the nature of execution of the award passed by the arbitral Tribunal. This application simplicitor is only to permit the applicant/ defendant to withdraw the amount deposited as security since the application has a larger claim against the respondent pursuant to the award passed on 05.03.2025. Therefore, *stricto sensu*, the moratorium under Section 14(1) will not have any bearing while deciding this application.

17. Insofar as the objection raised by the learned counsel for the respondent/ defendant to the effect that only a partial final order has been passed and the arbitration proceedings has not concluded and therefore the applicant/ defendant cannot be permitted to withdraw the amount, this Court has already held that the respondent/ plaintiff has not participated in the arbitral proceedings and even after the passing of the partial final award, the respondent/ plaintiff has not raised any further issues to be tried by the arbitral Tribunal. Therefore, there will be no substantial issues which will become the subject matter before the arbitral tribunal for passing the final order except for the costs. That apart the partial final order dated 05.03.2025 has not been put to challenge by the respondent/ defendant till date and it has become final.

18. Even otherwise, the order passed in Application No.5196 of 2024 dated 03.03.2025 only imposed a condition for continuing to maintain the security amount and this condition can at any point of time be modified



depending upon the later developments that takes place in the case. Therefore, apart from the fact that there are merits in this application to permit the applicant to withdraw the amount, it also tantamounts to modifying the condition imposed by this Court while disposing of the application on 03.03.2025.

19. In the light of the above discussion, the objections raised on the side of the respondent/ plaintiff is rejected. The application is allowed as prayed for. Considering the facts, there shall be no order as to costs.

29-01-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MKA

To:

M/s.Nila Logistics LLP

Rep.by its Managing Director Mr.Shanmugaraj

5/582/26B, Netaji Nagar, Tuticorin 682 002.



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