



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

**IN THE COMMERCIAL DIVISION**

**COMMERCIAL ADMIRALTY SUIT NO. 7 OF 2014**

ICICI Bank Limited, a company incorporated under the Companies Act, 1956 and is a banking company within the meaning of the Banking Regulation Act, 1949 and having its registered office at Landmark, Race Course Circle, Vadodara – 390007 and Corporate Office at ICICI Bank Towers, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.

...Plaintiff

Versus

1. M V Kamal XXIX and/or sale proceeds of M.V. Kamal XXIX, a Trailing Suction Hopper Dredger, flying the flag of India and registered at the Port of Chennai, together with her hull, tackle, machinery, engines, equipments and all her paraphernalia and appurtenances presently lying and being at the port and harbour of Mumbai, i.e. within Indian territorial waters; and all persons interested in her;
2. M.V. Kamal XXXIII and/or sale proceeds of M.V. Kamal XXXIII, a Trailing Suction Hopper Dredger, flying the flag of India and registered at the Port of Chennai, together with her hull, tackle, machinery, engines, equipments and all her paraphernalia and appurtenances presently lying and being at the port and harbour of Mumbai, i.e. within Indian territorial waters; and all persons interested in her;
3. M/s. Jaisu Shipping Company Private Limited, a Company incorporated under the provisions of the Companies Act, 1956, and having its

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registered office at 8, Sindhu Society, Adipur, Kachchh, and also having its offices Mumbai at B-1, Common Wealth, 181, Madame Cama Road, Opp. Air India Building, Mumbai – 100 020 and also Office No.1, Ground Floor, Opposite Hotel Landmark Annexe, Walchand Hirachand Marg, Ballard Estate, Mumbai – 400 038, the registered owner of the Defendant Nos.1 & 2.

4. M/s. 3i Infotech Trusteeship Services Ltd., a company incorporated under the Companies Act, 1956, having its registered office at Tower No.5, 3<sup>rd</sup> to 6<sup>th</sup> Floors, International Infotech Park, Vashi, Navi Mumbai – 400 703, and having branch office at Akruti Trade Centre, 3<sup>rd</sup> Floor, Road No.7, MIDC, Marol, Bhimnagar, Andheri (East), Mumbai – 400 093.
5. Bhambhani Shipping Ltd., a company registered under the Companies Act, 1956 and having its office at Meera Hari Niwas, Plot No.206, Opp. Dhanalaxmi Building, SVP Nagar, MHADA, Andheri (West), Mumbai – 400 053.

...Defendants

Ms. Apurva Sanglikar i/b Vidhii Partners, Advocate for the Plaintiff  
None for Defendants.

**CORAM : ABHAY AHUJA, J.**

**DATE : 17<sup>th</sup> OCTOBER 2025**

**ORAL JUDGMENT :-**

1. The Plaintiff is statedly a body corporate incorporated under the provisions of Companies Act, 1956 and is a banking company within the meaning of the Banking Regulation Act, 1949.

2. The Defendant No. 1 and 2 vessels it has been submitted in the Plaintiff are Trailing Suction Hopper Dredgers namely M.V. Kamal XXIX and M.V. Kamal XXXIII, which were Indian flag dredgers used in and capable of navigation in the sea by means of self propulsion. That Defendant No. 3 is a body corporate incorporated under the provisions of the Companies act, 1956 and is the registered owner of the Defendants No. 1 and 2 vessels. Defendant no. 4 is a Company incorporated under the Companies Act, 1956 and is the security trustee appointed for the Plaintiff's benefit. Pursuant to Order dated 13<sup>th</sup> February, 2015 passed in Chamber Summons No. 2 of 2015 the Applicant Bhambhani Shipping Ltd claiming an interest against the sale proceeds of Defendants No. 1 and 2 was allowed to intervene in the present Suit and added as party Defendant No.5.

3. The Writ of Summons has been served on Defendant No.1 and 2 on 2<sup>nd</sup> April 2014 and Defendant No.3 is the 30<sup>th</sup> March 2015. The Defendants No. 1 to 4 did not appear despite service of Writ of Summons nor have the Defendants No. 1 to 4 filed written statements and the suit is an undefended suit against Defendants No. 1 to 4.

4. The Plaintiff by way of this suit is seeking a decree against the Defendant 1 to 3 for recovery of its outstanding dues of Rs.69,71,64,144.18 as on 26<sup>th</sup> August 2013 with further interest at the Plaintiff's prevailing Bank Rate plus 10% per annum and for due enforcement and realization of a first charge by way of duly registered hypothecation of the Defendant No.1 and Defendant No.2 vessels in favour of the Plaintiff.

5. The background facts are as under.

6. Around August 2007, the Defendant No.3 approached the Plaintiff with a proposal of seeking a working capital credit facility (Credit Facility) in terms of Bank Guarantee Facility. The Plaintiff agreed to grant the same on terms and conditions as stipulated by the Plaintiff and agreed by Defendant No.3. That, on 22<sup>nd</sup> August, 2007 vide Credit Arrangement Letter ("CAL"), Plaintiff sanctioned Bank Guarantee Facility to the proposed limit of Rs.400.00 Mn (Rs. 40 Crores). Terms and clauses is agreed were contained in Annexure I to the CAL (Exhibit P1/3).The Defendant No. 3 provided board resolution for availing the facility sanctioned to it by the Plaintiff. (Exhibit P1/4).

7. On 22<sup>nd</sup> August 2007, the Master Facility Agreement (“MFA”) was executed by Plaintiff and Defendant No.3, containing detailed terms and conditions for availing of the loan facility (Exhibit P1/5). The relevant clauses of the MFA are reproduced as under:

*“Article II*

*2.1 (ii) The Bank may on such terms and conditions as the Bank may deem fit, agree to the Borrower’s request for enhancement or decrease in the overall limits.*

*2.4 (i) Subject to the terms and conditions of this Agreement, the Facilities may be drawn out of the Account from time to time/disbursed in instalments. The Bank may at the request of the Borrower make/allow disbursements/drawals under the Facilities by cheques/pay orders/authorizations and/or by issuance of BGs and or LCs and/or co-acceptance/acceptance of Bills by the Bank.*

*(ii) The aforesaid drawals shall be utilised by the Borrower exclusively for the Purpose.*

*(iii) In the event any monies are remaining due and payable by the Borrower to the Bank, whether under this Agreement and/or the other Transaction Documents or otherwise, the*

*Bank may, at its sole discretion, reduce the availability.*

*Article II*

*2.1 (ii) The Bank may on such terms and conditions as the Bank may deem fit, agree to the Borrower's request for enhancement or decrease in the overall limits.*

*2.4 (i) Subject to the terms and conditions of this Agreement, the Facilities may be drawn out of the Account from time to time/disbursed in instalments. The Bank may at the request of the Borrower make/allow disbursements/drawals under the Facilities by cheques/pay orders/authorizations and/or by issuance of BGs and or LCs and/or co-acceptance/acceptance of Bills by the Bank.*

*(ii) The aforesaid drawals shall be utilised by the Borrower exclusively for the Purpose.*

*(iii) In the event any monies are remaining due and payable by the Borrower to the Bank, whether under tof the amounts of the Overall limits and/or adjust such monies against the respective available Limits and all such adjustments shall be treated as drawals by the Borrower.*

*(iv) The borrower shall at all times confine the drawals out of the relevant Facilities within the respective Drawing Power for*

*such droid as may be permitted by the Bank. Provided further the grant of such excess drawings to the Borrower shall be liable to be suspended/discontinued/revoked by the Bank without notice to the Borrower.*

#### *Rate of Interest*

*2.5 (i) The Borrower shall pay to the Bank interest, commission, discount and all other charges on the amounts outstanding from Time to time under the Facilities at the rate on the date and in the manner specified in Schedule I, hereof or at such other rate as may be specified by the Bank from time to time at its sole discretion. (ii) All interest on the Facilities and on all other monies accruing due under this Agreement and/or the other Transaction Documents shall in case the same be not paid on the respective Due Dates, carry default interest at the Maximum Lending Rate or at the highest of the Applicable Rates of interest on the Facilities under this Agreement, whichever is higher plus applicable interest tax or other statutory levy.*

*Upon the occurrence of certain events/in certain circumstances mentioned in Schedule I hereof, the Facilities and all monies in respect thereof shall carry default interest at the rate specified in*

*Schedule I hereof.*

*2.9 The Borrower declares and confirms that notwithstanding any of the provisions of the Indian Contract Act, 1872 or any other applicable law, or any terms and conditions to the contrary contained in this Agreement, the Bank may at its absolute discretion appropriate any payments made by the Borrower under this Agreement/ any amounts realized by the Bank by enforcement of security or otherwise towards the dues payable by the Borrower to the Bank under the Agreement and/or any other Agreements entered into between the Borrower and the Bank and in any manner whatsoever.*

*Article V*

*Events of Default*

*(i) Default has occurred in the payment of any monies in respect of the facilities on the Due Dates for payment thereof or otherwise*

*(ii) Default has occurred in the performance of any covenant, condition or agreement on the part of the borrower under this Agreement or any other person under the Transaction Documents and such default has continued for 30 days after notice in writing*

*thereof has been given to the Borrower as the case may be, to such other person by the Bank.”*

8. On 22<sup>nd</sup> August 2007, Defendant No. 3 vide a letter (Exhibit P1/6) appointed Defendant No. 4 as the security trustee in respect of security interest created for securing the credit facility of Rs. 400.00 million and a Deed of Hypothecation (Exhibit P1/7) of even date was executed in favour of the Defendant No. 4. By the said Deed of Hypothecation, the Credit Facility was duly secured by the valid and subsisting charge over the Defendant No.1 vessel. The Schedule of vessels – current assets at Gandhidham, Kutch and vessel Kamal XXIX were given as security interest. Deed of Hypothecation was duly registered by the Filing Form 8 with the Registrar of Companies.

9. On 24<sup>th</sup> August 2007, Defendant No. 4 addressed a letter (Exhibit P1/8) to the Plaintiff and confirmed with them that the Defendant No.3 has completed the creation of the Hypothecation of the Defendant No. 1 vessel by the way of the first charge and current assets of the Defendant No.3 by way of *pari passu* charge with the other lenders was provided as security for financial assistance of Rs. 400 Million (40 Crores) given by the Plaintiff.

10. On 04<sup>th</sup> September, 2008, Plaintiff issued a Credit Arrangement Letter (Exhibit P1/9) sanctioning renewal-cum-enhancement of the Credit Facility to the Defendant No. 3 payable on demand and the credit facility limit was enhanced up to Rs.1400 Million (Rs. 140 Crores).

11. On 09<sup>th</sup> September, 2008 the Defendant No.3, issued board resolutions (Exhibit P1/10) for availing the enhance limit of Rs. 140 crores and Board Resolution for creation of charge(Exhibit P1/11).

12. On 18<sup>th</sup> October 2008, in view of the enhancement of the Credit Facility Limit from Rs.400 Million (Rs.40 Crores) to Rs. 1400 Milion (Rs.140 Crores), Defendant No.3 and Plaintiff entered into a Supplemental and Amendatory Agreement to the Facility Agreement. (Exhibit P1/12) The key changes included in the Supplemental and Amendatory Agreement were as follows:

*“1) “Security” as mentioned in Section 9(I) (II) of Schedule I to the Agreement stood changed.*

*2) “Guarantee” as mentioned in Section 10(B) of the said Schedule stands changed.*

3) *“Special Conditions” mentioned in Section 15 (e) (10) of the said Schedule stand changed.”*

13. On 18<sup>th</sup> October 2008, Deed of Hypothecation (Exhibit P1/13) was entered between Defendant No.3 and Defendant No. 4 for Hypothecation the current and specific assets of Defendant No. 3 including Defendant No.1 Vessel to secure the Credit Facility that was sanctioned by the Plaintiff and Form 8 was filed for registering the charge with Registrar of Companies on 17<sup>th</sup> December 2008.

14. On 16<sup>th</sup> April 2009, Deed of Modification (Exhibit P1/15) was executed between Defendant No. 3 and Defendant No. 4 amending the Deed of Hypothecation dated 18<sup>th</sup> October 2008, by which the Credit Facility was also secured by valid and subsisting charge on Defendant No. 2 Vessel. By this modification, one more specific asset viz, Trailing Suction Hopper Dredger, Kamal XXXIII was secured. Deed of Modification(Exhibit P1/16) was duly registered by the filing Form 8 with Registrar of Companies.

15. On 30<sup>th</sup> November 2009, before the expiry of the validity of the Credit Arrangement Letter dated 04<sup>th</sup> September 2008, Defendant No.3

once again approached Plaintiff herein and sought the renewal of Credit Facility. Plaintiff issued Credit Arrangement Letter (Exhibit P1/17) to sanction the renewal-cum-enhancement of the Credit Facility to Defendant No.3 to the limit of Rs.1400 Million (Rs.140 Crores) and the facility stood renewed for 1 year.

16. On 15<sup>th</sup> December 2009, the Defendant issued board resolution (Exhibit P1/18) for availing the enhanced limit of Rs. 140 crores.

17. On 28<sup>th</sup> June 2012 Plaintiff issued Credit Arrangement Letter (Exhibit P1/19) reducing Credit limit of Rs. 820 Million (Rs. 82 Crores) Annexure I – secured by Defendant No.1 valued at Rs. 38 Crores and first charge on Defendant No.2 valued at 51 crores. That Defendant No.3 also issued board resolution (Exhibit P1/20) for the proposed reduced limit.

18. On 21<sup>st</sup> April 2009, Plaintiff vide its letter (Exhibit P1/21) forwarded the Bank Guarantee bearing No. 0259BG0000309 dated 21<sup>st</sup> April 2009 to the Board of trustee of the Port of Mumbai to the extent of liability up to Rs. 38,03,68,000/-. The said Bank Guarantee was amended on 17<sup>th</sup> April 2010, 12<sup>th</sup> May 2010, 12<sup>th</sup> August 2011, 15<sup>th</sup>

November 2011, 15<sup>th</sup> February 2012, 15<sup>th</sup> May 2012, 10<sup>th</sup> November 2012, 13<sup>th</sup> May 2013, 14<sup>th</sup> June 2013 (Exhibit P1/22 – Exhibit P1/40).

19. On 05<sup>th</sup> July 2013, the Mumbai Port Trust issued letter (Exhibit P1/52) calling upon Plaintiff to process the payment of 2 Bank Guarantees being B.G. No. 0259BG00003009 dated 21<sup>st</sup> April 2009 for Rs.38,03,68,000/- and Bank Guarantee No. 0259BG00001712 dated 23<sup>rd</sup> August 2011 for Rs. 9,51,00,000 to be credited to the revenue Account No. 10996685430 of the Board of Trustees of the Port of Mumbai.

20. On 12<sup>th</sup> July 2013, the Plaintiff credited the amounts claimed vide letter dated 05<sup>th</sup> July 2013 (Exhibit P1/53) in the Revenue Account No. 10996685430 of the Board of Trustees and communicated the same to the Mumbai Port Trust.

21. On 18<sup>th</sup> July 2013, the Mumbai Port Trust (Exhibit P1/85) informed the Plaintiff that the amount under the Bank Guarantee No. 0259BG00003009 dated 21<sup>st</sup> April 2009 for Rs. 38,03,68,000/- and Bank Guarantee No. 2059BG00001712 dated 23<sup>rd</sup> August 2011 for Rs.9,51,00,000/- have been credited to the MBPT Revenue Account.

22. On 23<sup>rd</sup> August 2011, Plaintiff vide its letter forwarded the Bank Guarantee bearing No.0259BG00001712 (Exhibit P1/41) dated 23<sup>rd</sup> August 2011 to the Board of trustee of the Port of Mumbai to the extent of liability up to Rs. 9,51,00,000/-. The said Bank Guarantee was valid upto 22<sup>nd</sup> February 2012 and the same was amended on 21<sup>st</sup> February 2012, 21<sup>st</sup> November 2012, 15<sup>th</sup> May 2013 and 24<sup>th</sup> June 2013. (Exhibit P1/42-50).

23. On 02<sup>nd</sup> July 2013, the Mumbai Port Trust called upon the Plaintiff (Exhibit P1/51) to pay Rs.9,51,00,000 for Bank Guarantee No. 0259BG00001712 dated 02<sup>nd</sup> July 2013 to be credited to the bank account no. 10996685430 of the Board of Trustees of the Port of Mumbai.

24. On 28<sup>th</sup> April, 2012, Plaintiff vide its letters (Exhibit P1/54 and Exhibit P1/55) forwarded the Bank Guarantee bearing No. 0259BG00000613 to the board of trustee of the Vishakhapatnam Port Trust to the extent of liability up to Rs.2,43,13,000/- The validity of the Bank Guarantee was till 05<sup>th</sup> December 2012 and the same was amended vide Original Letter dated 05<sup>th</sup> December 2012 (Exhibit P1/56 and Exhibit P1/57).

25. That on 31<sup>st</sup> January 2013 and 18<sup>th</sup> February 2013 the beneficiaries of the Bank Guarantee addressed letter (Exhibit P-1/58 and Exhibit P-1/59) to the Plaintiff intimating the Bank that the Defendant No.3 failed to perform its terms and conditions, further transactions with the Port on the work stood terminated, thereby, requesting the Bank to remit the amount of Rs.2,43,13,000/-

26. That on 01<sup>st</sup> March 2013, Plaintiff addressed letter (Exhibit P1/63) to Vishakhapatnam Port Trust thereby, intimating them that the Bank has agreed to make the payment as demanded, hence, original bank guarantee bearing no. 0259BG00000613 be returned to them so that the Plaintiff could handover the Demand Draft for equivalent amount.

27. On the same day, the Plaintiff addressed a letter (Exhibit P1/62) to Defendant No. 3 intimating them of the invocation request of Vishakhapatnam Port Trust and that payment through Demand Draft dated 01<sup>st</sup> March 2013 was issued in their favour.

28. On 07<sup>th</sup> March 2013, the Plaintiff replied to Vishakhapatnam Port Trust enclosing Demand Draft dated 01<sup>st</sup> March 2013, thereby, paying

an amount of Rs.2,43,13,000/-. (Exhibit P/60).

29. On 30<sup>th</sup> December 2010 Bank Guarantee bearing No.0259BG00004610 (Exhibit P1/64) for an amount of Rs.21,25,00,000/- to the board of trustee of the Port of Kandla was executed by Plaintiff, which was to be valid till 30<sup>th</sup> December 2011 Bank Guarantee was amended on 3<sup>rd</sup> January 2012 and on 29<sup>th</sup> December 2012 (Exhibit P1/65 and Exhibit P1/66).

30. On 09<sup>th</sup> May 2013, the beneficiary, the Board of Trustees of the Port of Kandla, vide its letter dated 09<sup>th</sup> May 2013 (Exhibit P1/69) requested the Plaintiff for the encashment of the Bank Guarantee No. 0259BG00004610 dated 30<sup>th</sup> December 2010 .

31. On 16<sup>th</sup> May 2013, the Plaintiff replied to the beneficiary and paid an amount of Rs.21,25,00,000 by Demand Draft for an amount of Rs. 21,25,00,000 (Exhibit P1/70 and Exhibit P1/71). The Plaintiff also issued a letter of even date (Exhibit P1/72) to the Defendant No.3 demanding the amount paid to Port of Kandla on account of invocation of guarantee.

32. On 30<sup>th</sup> June 2013 the account of Defendant No.3 which was maintained by the Plaintiff in relation to the Credit Facility was classified as the Non-Performing Asset as per the norms and the policy of the Reserve Bank of India.

33. On 15<sup>th</sup> July 2013 (Exhibit P1/73) in view of the breaches and defaults committed by the Defendant No. 3, the Plaintiff addressed a notice to the owner of Defendant No.3 recalling the financial assistance granted to it.

34. The Plaintiff filed a caveat against the release of Defendant No.1 and Defendant No.2 Vessels in the suits filed by the crew members of the said Vessels for their unpaid wages. In the proceedings filed on behalf of the crew members (Admiralty Suit (L) Nos. 577 of 2013 and 578 of 2013), the Defendants No1 and 2 vessel were sold pursuant to Orders dated 27<sup>th</sup> August 2013. An aggregate amount of Rs.7,00,00,000/- (Rs. Seven Crores Only) has been realized through the sale of Defendant Nos.1 and 2 and the same is presently deposited with the learned Prothonotary and Senior Master.

35. On 27<sup>th</sup> August 2013, the Plaintiff instituted the suit for the recovery of the non-payment of the outstanding indebtedness under the Credit Facility granted to the Defendant No. 3, in view of the breaches and violation of the Facility Agreement and the said Deed of Hypothecation. Defendant No. 5's intervention was allowed pursuant to Order dated 13<sup>th</sup> February 2015, the Defendant No. 5 has filed its Written Statement on 21<sup>st</sup> August 2015.

36. On 17<sup>th</sup> October, 2015, this Court framed the following issues:

1. *Whether the Plaintiff proves that the Suit is filed within the prescribed time of limitation?*
2. *Whether the Plaintiff proves that an amount of Rs. 69,71,64,144/- as on 26<sup>th</sup> August 2013, along with interest as per particulars of claim being Exhibit Q is due and payable by Defendant No.3 to the Plaintiff under the Suit credit facility?*
3. *Whether the Plaintiff proves that the aforesaid amount is secured by a valid and subsisting hypothecation over the sale proceeds of Defendants No.1 and 2 Vessels?*
4. *Whether the Plaintiff proves that there was a default in repayment of dues by Defendant No.3 to the Plaintiff?*

5. *Whether the Plaintiff proves that the Plaintiff has maritime lien and maritime claim over the sale proceeds of Defendants No. 1 and 2 Vessel?*

6. *Whether Defendant No.5 proves that Defendant No. 5 has maritime lien and maritime claim over the Defendant Nos.1 and 2 Vessels?*

7. *What Decree? What Order?*

37. Thereafter, the Plaintiff filed Compilation of documents and filed Affidavit of Evidence of Vijay Kumar the Chief Manager of the Plaintiff (PW-1) and Mr. Sanjay Tanna, Senior Branch Head (PW-2). The Plaintiff's witnesses have been cross-examined by the Defendant No.5. That Plaintiff's evidence was closed by August 2018. That by Order dated 12<sup>th</sup> March 2019, it has been recorded that the Defendant no. 5 are not desirous of leading any evidence in the matter and in view thereof, the Suit was placed for Final Arguments. It appears that there has been intermittent appearance on behalf of Defendant No.5

38. On 23<sup>rd</sup> August, 2022, it was made clear that if nobody appeared for Defendant No.5 on the next date, this Court would proceed to dispose of the suit on the assumption that Defendant No.5 does not intend to canvass submissions.

39. On 27<sup>th</sup> June 2025, as none appeared for the only contesting Defendant, this Court had issued notice upon the Defendant No. 5 to appear on the next date. That on 1<sup>st</sup> August 2025, it was recorded that the service report dated 31<sup>st</sup> July 2024 indicated that the envelope addressed to the Defendant No. 5 had returned with the remark, "*said company is not found at given address*". That on 19<sup>th</sup> September 2025, the Counsel for the Plaintiff submitted that service was attempted on Defendant No. 5 but the packet returned with the remark "*unclaimed*", which was good service in law, service on Defendant No. 5 having been effected, none appeared for the Defendant No. 5, and the Advocate for Defendant No.5 had sought discharge as Advocate for Defendant No.5. As the Defendant No.5 had failed to provide instructions in the matter despite sending Notice by way of Chamber Order

No.170 of 2025 which was disposed of vide Order dated 13<sup>th</sup> October 2025 and Advocate for Defendant No. 5 was discharged.

40. On 10<sup>th</sup> October, 2025 also none appeared for the Defendant No.5 despite notice, this Court, accordingly proceeded with the hearing of the Suit. I have heard the Learned Counsel for the Plaintiff on 10<sup>th</sup> October 2025.

41. Ms. Sanglikar, learned Counsel for the Plaintiff has submitted that 4 bank guarantees were provided by the Plaintiff to Defendant No. 3, pursuant to a Master Facility Agreement dated 22<sup>nd</sup> August 2007 (Exhibit P1/5) and subsequently the Agreement was enhanced and amended on 18<sup>th</sup> October 2008 (Exhibit P1/12). Ms. Sanglikar further submits that the Bank Guarantee at Exhibit P-1/21) with extensions from Exhibits P1/22 to P-1/40) with extensions from Exhibit P-1/42 to P-1/50 were given to Mumbai Port Trust, and one Bank Guarantee to Kandla Port Trust at Exhibit P-1/64 with the amendment/extensions at Exhibits P-1/65 and P-1/66 and one Bank Guarantee to Vishakhapatnam Port

Trust at Exhibit P-1/55 with extensions/amendments at Exhibits P-1/56 and P-1/57.

42. Ms. Sanglikar has submitted that to secure the said Bank Guarantees, the Defendant No. 3 had hypothecated Defendants No. 1 to 2 in favour of the Plaintiff and this was done by virtue of a Deed of Hypothecation dated 22<sup>nd</sup> August 2007 in respect of Defendant No.1 (Exhibit P-1/7) which was supplemented in light of the enhancement of the credit facility on 18<sup>th</sup> October 2008 (Exhibit P-1/13). Further security was also created over Defendant No.2 Vessel by virtue of a Deed of Modification dated 16<sup>th</sup> April 2009, thereby modifying the previous Deed of Hypothecation dated 18<sup>th</sup> October 2008 (Exhibit P-1/15).

43. Ms. Sanglikar has submitted that each of the Bank Guarantees have been encashed and the Defendant No.3 has refused to make payment in respect thereof.

44. Learned Counsel submits that the invocation by the Mumbai Port Trust of both the Bank Guarantee issued in its favour was done through letters dated 02<sup>nd</sup> July 2013. That the Mumbai Port Trust has confirmed receipt of Rs. 38,03,68,000/- and Rs.9,51,00,000/- (aggregating to Rs. 47,54,68,000/-) under the respective Bank Guarantees by its letter dated 18<sup>th</sup> July 2013 (Exhibit P-1/85).

45. That, similarly, the Kandla Port Trust invoked the Bank Guarantee in its favour by its letter dated 09<sup>th</sup> May 2013 (Exhibit P-1/69). The Plaintiff paid an amount of Rs.21,25,00,000/- by demand draft on 16<sup>th</sup> May 2013 (Exhibits P-1/70 and P-1/71). Lastly, the Vishakhapatnam Port Trust invoked its Bank Guarantee through its letter dated 31<sup>st</sup> January 2013 (Exhibit P-1/58). The Plaintiff duly remitted an amount of Rs.2,43,13,000/- through a demand draft on 07<sup>th</sup> March 2013 (Exhibit P-1/60).

46. Ms. Sanglikar further submits that on 15<sup>th</sup> July 2013, in view of various breaches and defaults on the part of Defendant No.3

including but not limited to its refusal to repay the Plaintiff the amount of the encashed Bank Guarantees, the Plaintiff recalled the financial assistance granted to Defendant No.3 and called upon Defendant No.3 to immediately repay an amount of Rs.69,71,44,768/- (Exhibit P-1/73). Ms Sanglikar has submitted that as per the terms of the Hypothecation, the Plaintiff is entitled to exercise any power of authority exercisable through the security trustee and initiate any suit or proceedings for enforcement of the security created in favour of the security trustee.

47. The total claim of the Plaintiff as on 27<sup>th</sup> August 2013 was Rs. 69,71,64,144/-.

48. Ms. Sanglikar has submitted that, the Defendant No. 5 who has intervened and filed its Written Statement in the Suit and has contended that the Plaintiff did not exercise due diligence prior to sanctioning of the credit facility and had sought to establish the same through the cross-examination of the Plaintiff's Witnesses. However, apart from bald and baseless statements/allegations,

Defendant No.5 has been unable to substantiate its contention regarding the alleged failure of the Plaintiff in performing its due diligence.

49. Ms. Sanglikar has submitted that there has been no denial of their claim by the owner of the Vessel, that the Deed of Hypothecation dated 22<sup>nd</sup> August 2007, Deed of Modification dated 16<sup>th</sup> April 2009, thereby modifying the previous Deed of Hypothecation dated 18<sup>th</sup> October 2008 are valid and subsisting and the same are not challenged by the Defendant, and therefore the sale proceeds of the said vessel be appropriated towards the outstanding amounts of the Plaintiff.

50. The Plaintiff has led evidence of Mr. Vijay Kumar (PW-1) the chief Manager of Plaintiff who has deposed to the truth and contents of the following documents (i) Original Credit Arrangement Letter along with its Annexure – I from Defendant No.3 (P1/3), (ii) Original Master Facility Agreement (P1/5), (iii) Original Letter appointing Defendant No. 4 as Security Trustee,

(P1/6) (iv) Original Deed of Hypothecation along with its schedules (P1/7), (v) Original Letter from Defendant No.4 to the Plaintiff (P1/8), (vi) Original Credit Arrangement Letter along with its Annexure – I as received from Defendant No.3, (vii) Original Supplemental and Amendatory Agreement (Exhibit P1/12), (viii) Original Deed of Hypothecation along with its Schedules and Standards Terms governing this Deed of Hypothecation (Exhibit P1/13), (ix) Form 8 as provided by Defendant No.3 (Exhibit P1/14), (x) Original Deed of Modification dated 16<sup>th</sup> April 2009 (Exhibit P1/15) (xi) Form 8 As provided by Defendant No.3 (Exhibit P1/16) (xii) Original Credit Arrangement Letter along with its Annexure – I as received from Defendant No. 3. (xiii) Original Credit Arrangement Letter along with its Annexure I as received from Defendant No. 3. (Exhibit P1/19) (xiv) Original Bank Guarantee No. 0259BG000030099 (Exhibit P1/22) (xv) Original Bank Guarantee No. 0259BG00001712 (Exhibit P1/42) (xvi) Original Bank Guarantee No. 0259BG00000613(Exhibit P1/55), (xvii) Original Bank Guarantee No. 0259BG00004610 (Exhibit P1/64).

51. I have perused the evidence of PW1, the Credit Facility availed by the Borrower which was secured by way of hypothecation of current assets, vessels of the Borrower, Defendant No.3, which mentions that the Plaintiff will have a first charge on Trailing Suction Hopper Dredger Kamal XXIX and on Trailing Suction Hopper Dredger Kamal XXXIII. There is no challenge to the Master Facility Agreement dated 22<sup>nd</sup> August 2007, Deed of Hypothecation dated 22<sup>nd</sup> August 2007, Supplemental amnd Amendatory Agreement to Master Facility Agreement dated October 18, 2008 and Deed of Hypothecation dated 18<sup>th</sup> October 2008 and Deed of Modification dated 16<sup>th</sup> April 2009 and the aforesaid documents continue to remain valid and subsisting. I have perused the documents being the Master Facility Agreement dated 22<sup>nd</sup> August 2007, Deed of Hypothecation dated 22<sup>nd</sup> August 2007, Supplemental and Amendatory Agreement to Master Facility Agreement dated October 18, 2008 and Deed of Hypothecation dated 18<sup>th</sup> October 2008 and Deed of Modification dated 16<sup>th</sup> April 2009, and the Credit Arrangement Letter the same have been duly signed by the Plaintiff and the Director/Authorized

Signatory of the Defendant No. 3.

52. It is not in dispute that the Defendant No. 3 availed of the credit facility of the Plaintiff. It is also not in dispute that due to non-completion of work, achieving target etc. the 4 Bank Guarantees provided by the Plaintiff for the performance of the Defendant No. 3 have been encashed. The Plaintiff has also placed on record the acknowledgment by the Defendant No.3 of the Letters/Notices sent to the Defendant No.3 at the time of invocation/encashment. The Defendant No.3 has not disputed the same by any response. The Plaintiff has also written to the Defendant No. 3 regarding the recall of the financial assistance granted to Defendant No. 3 and the repayment of the of sum of Rs.697,144,768.06. The acknowledgment by Defendant No.3 of the said letter is also placed on record.

53. The cause of action for the outstanding of the Plaintiff arose when the Plaintiff vide its letter dated 15<sup>th</sup> July 2013 recalled the Credit Facility and called upon the Defendant No. 3 to make

payment for the outstanding thereunder for the encashment of the Bank Guarantees only, which the Defendant No. 3 failed to do. The Defendant No.3 having committed breach and default in honoring its repayment obligations toward the Plaintiff, the account of the Defendant No.3 which was maintained by the Plaintiff in relation to the Credit Facility was classified as Non-Performing Assets on June 30, 2013 as per the norms and policy of the Reserve Bank of India and the suit has been instituted on 27<sup>th</sup> August 2013 which is within limitation.

54. The Plaintiff has led evidence to prove that the Defendant has defaulted on its obligations and is liable to pay the Plaintiff. There is nothing placed on record by the Defendants to counter the Plaintiff's case. The Defendant No. 5 is neither a party to the documents executed between the Plaintiff and Defendant No. 3, nor has any privity of contract with the Plaintiff. Defendant No. 5 in its written statement has stated that it is not aware of the documents entered into between the Plaintiff and Defendant No.3, and its only contention is that the Plaintiff has failed to exercise

due diligence while extending the credit facility. However, such contention has not been established in the cross-examination of the Plaintiff's witnesses. Defendant No. 5 has neither led any evidence to demonstrate that the Plaintiff has failed to conduct due diligence, nor has it been able to discredit the Plaintiff's case during cross-examination. Therefore the Plaintiff's claim is uncontroverted and stands proved.

55. That the claim arising under the Deed of Hypothecation, wherein the Defendant No.1 and 2 vessels constitute the security, is a maritime claim within the meaning of Section 4(1) (c) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, which includes as a maritime claim "*any claim in respect of mortgage or a charge of the same nature on a vessel*".

56. After going through the papers and proceedings in the above Suit as well as the evidence of the two witnesses led by the Plaintiff, I am satisfied that there is a maritime claim of the Plaintiff against the Defendant Vessel. The Plaintiff is also entitled

to interest towards the invoked Bank Guarantees as per the terms of the Credit Arrangement Letter dated 28<sup>th</sup> June 2012 (Exhibit P1/19). It has been stated therein that on invocation of Bank Guarantee *“In case payment is not made towards invoked Bank Guarantee within 2 days, default interest would be charged from the date of receipt of claim till the date of payment”* and the default interest rate has been mentioned as I-Base + 10%. However, the interest claimed is only 10% and therefore I am inclined to grant it.

57. The Defendant No. 5 has chosen not to lead any evidence in support of the pleadings set out in the written statement. Mere averments, however detailed do not constitute proof of the facts stated therein. The burden squarely falls upon the Defendant No. 5 to establish, by cogent and reliable evidence, the existence of any maritime lien against the Defendant Vessels. No material whatsoever has been placed on record to demonstrate the basis of such lien. In absence of any evidence, the assertions contained in the written statement remain unproved. Consequently the claim of

the Defendant No. 5 is without any evidentiary foundation and is liable to be rejected.

58. On the basis of the findings recorded above, the issues are answered as under:-

Sr No	Issues	Answer/Findings
1.	Whether the Plaintiff proves that the Suit is filed within the prescribed time of limitation?	Affirmative
2.	Whether the Plaintiff proves that an amount of Rs. 69,71,64,144/- as on 26 <sup>th</sup> August 2013, along with interest as per particulars of claim being Exhibit Q is due and payable by Defendant No.3 to the Plaintiff under the Suit credit facility?	Affirmative
3.	Whether the Plaintiff proves that the aforesaid amount is secured by a valid and subsisting hypothecation over the sale proceeds of Defendants No.1 and 2 Vessels?	Affirmative

4.	Whether the Plaintiff proves that there was a default in repayment of dues by Defendant No.3 to the Plaintiff?	Affirmative
5	Whether the Plaintiff proves that the Plaintiff has maritime lien and maritime claim over the sale proceeds of Defendants No. 1 and 2 Vessel?	Affirmative
6.	Whether Defendant No.5 proves that Defendant No. 5 has maritime lien and maritime claim over the Defendant Nos.1 and 2 Vessels?	Negative
7.	What Decree? What Order	Suit is decreed in terms of prayer clause (a)

59. Accordingly the following order is passed:-

**ORDER**

i. Suit is decreed in terms of prayer clause (a), which reads thus:

*“(a.) for an order and declaration that a sum of Rs.69,71,64,144.18 (Rupees Sixty Nine Crores Seventy One Lakhs Sixty Four Thousand One Hundred Forty Four and Paise Eighteen Only) inclusive of interest*

*amount as as on 26<sup>th</sup> August 2013 with further interest at the Plaintiff's prevailing Bank Rate plus 10% per annum and for due enforcement and realization of a first charge by way of duly registered hypothecation of the Defendant No.1 and Defendant No.2 vessels in favour of the Plaintiff."*

- ii. Considering that the suit is of the year 2014, drawn up decree is dispensed with.

**(ABHAY AHUJA, J)**