IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 8108 OF 2021
IN
COMM ADMIRALTY SUIT NO. 21 OF 2021

SAPURA DANA SPV PTE. LTD. ...Applicant

In the matter between

KREUZ SUBSEA PTE LTD. ...Plaintiff

Versus

BARGE SAPURA 2000 (MMSI NO.533130084) ...Defendant

Mr. Prathamesh Kamat, a/w Shailesh Poria, Mr. Hrishikesh Shukla, i/b Economic Laws Practive, for the Applicant/ Defendant.

Mr. Prashant Pratap, Senior Advocate, a/w Ms. Bulbul Singh Rajpurohit, for the Plaintiff.

CORAM: N. J. JAMADAR, J.

DATED : 24th JANUARY, 2023

ORDER:-

1. Sapura Dana SPV PTE. Ltd. ("Sapura Dana"), the registered owner of Barge Sapura 2000 (MMSI No.533130084), the defendant – vessel, has preferred this application seeking a declaration that the order of arrest of the defendant – vessel dated 29th April, 2020, was wrongfully obtained and for refund of the security of Rs.1,48,35,823.75 deposited by the applicant on 30th April, 2020 for the release of the defendant – vessel, alongwith the interest accrued thereon.

2. Background facts leading to this application can be stated in brief as under:

(a) Kreuz Subsea PTE Ltd. ("Kreuz"), the plaintiff, is a company incorporated under the Laws of Singapore. The plaintiff is engaged in the business, *inter alia,* of providing integrated subsea services to the offshore oil and gas industry. The defendant – vessel is a Derrick Pipelay Barge flying the flag of Malaysia. Sapura Dana is the registered owner of the defendant – vessel.

(b) The plaintiff claims defendant – vessel is beneficially owned by Sapura Energy Berhad. The latter is also the Commercial Operator and Technical Manager of the defendant – vessel. Sapura Energy group owns and controls many subsidiaries around the world including Sapura Offshore SDN BHD ("Sapura Offshore"), a 100% subsidiary of Sapura Energy.

(c) On 18th December, 2018 Sapura Offshore had placed an order for supply of Reel Drive Unit ("RDU") with chute on rental basis alongwith deployment of personnel and technicians for operating the same. It was followed by a revised service order dated 22nd May, 2019. Pursuant to the service order, the plaintiff supplied the equipment and personnel to the defendant – vessel, which utilized the same for its operations. On 24th

June, 2019, post a notice to invoice, a payment certificate was issued by Sapura Offshore approving payment of US$ 410, 370.50. On the strength of the Payment Certificate the plaintiff raised invoice dated 24th June, 2019 in the said sum of US$ 410,370.50. Sapura Offshore failed to make the payment.

(d) In view of the default in the discharge of the liability, the plaintiff instituted the suit for recovery of US$ 174,825 for the charges for the use of the equipment and utilization of the services of the personnel by the defendant – vessel, alongwith the interest and cost. But for the equipments and the services rendered by the personnel deployed by the plaintiff, the defendant – vessel could not have been able to undertake her operations for the project as it would not have been able to lay cables in subsea waters. The plaintiff further avers Sapura Offshore was an agent of Sapura Dana and it had expressly warranted that it had authority from the defendant – vessel and its owner to pledge the defendant – vessel's credit.

(e) With the aforesaid averments, the plaintiff moved for the arrest of the defendant – vessel whilst it was at an anchorage of the Port of Mumbai. By an order dated 29th April, 2020, this Court, finding a *prima facie* case, directed the arrest of the defendant – vessel.

(f) On the following day, the defendant moved for release of the vessel by depositing security amount in terms of the Judge's Order, without prejudice to its rights and contentions and admitting any liability. Thereupon the defendant – vessel came to be released from arrest.

(g) Sapura Dana, the applicant, has preferred this application contending that the arrest of the defendant – vessel was wholly unjustified and patently wrongful. According to the applicant, the plaintiff approached the Court with a case that the defendant – vessel is beneficially owned by Sapura Engery and Sapura Offshore is a 100% subsidiary of Sapura Engery, and that Sapura Offshore had expressly warranted that it had authority from defendant – vessel, its owner, to pledge the defendant's credit.

(h) The applicant contends none of the aforesaid assertions justified the arrest of the defendant – vessel as it is indubitable that the Sapura Dana is the registered owner of the defendant – vessel and the equipments and personnel were not supplied pursuant to the contract between the plaintiff and Sapura Dana. Thus the applicant has sought the refund of security on two broad grounds. First, the plaintiff has no maritime claim against the defendant – vessel and/or the

applicant. Second, in the absence of such maritime claim, the defendant – vessel could not have been arrested for an *in personam* action against Sapura Offshore.

3. On the first count, the applicant contends, there was no contractual or other jural relationship between the plaintiff and the defendant – vessel and/or its registered owner. In the absence of a claim against the Sapura Dana *in personam* the plaintiff could not have proceeded against the defendant – vessel in *rem.* Nor there is any material to show that Sapura Offshore acted on behalf of or with the authority of the defendant – vessel. The liability, if any, to the plaintiff is that of Sapura Offshore and not the registered owner of the defendant – vessel. In any event, the services purportedly rendered by the plaintiff were for the benefit of the project and not for the defendant – vessel. Consequently, the purported dues do not fall within the ambit of the definition of maritime claim.

4. On the second count, the applicant asserts under the Admiralty (Jurisdiction and Statement of Maritime Claims) Act, 2017 ("the Admiralty Act, 2017"), beneficial ownership arrest is not contemplated. Thus the order of arrest obtained by the plaintiff on the basis of the purported beneficial ownership is plainly wrongful. Even otherwise, the plaintiff's claim of

beneficial ownership is based on an incorrect understanding of the Indian law whereunder every corporate entity is a separate legal entity distinct from its shareholders, directors and other companies.

5. In the alternative, whilst denying that Sapura Energy is the beneficial owner of the defendant – vessel, the applicant contends, arrest of the defendant – vessel even on the premise that Sapura Energy is its beneficial owner is not sustainable as the plaintiff does not have any claim much less a maritime claim against Sapura Energy. Looked at from any perspective, according to the applicant, the arrest of the defendant – vessel was wrongfully obtained and, therefore, the security furnished by the applicant is liable to be returned.

6. An affidavit-in-reply is filed on behalf of the plaintiff. It primarily proceeds on denial of the contentions raised by the applicant. The plaintiff avers the edifice of the applicant's case is rested on a complete misconstruction of the plaintiff's case. Refund of the security is sought by projecting a case which the plaintiff had not pleaded. Moreover, there is no denial of the fact that the equipments were supplied and services were rendered by the plaintiff for the defendant – vessel.

7. The plaintiff asserts the equipments supplied by the plaintiff were necessary to equip the defendant – vessel to lay wires/cables on subsea waters under the project. This gives rise to and constitutes a maritime claim. Therefore, the plaintiff's claim falls under the scope and ambit of Section 4(1)(l) of the Admiralty Act, 2017.

8. It is further asserted that the plaintiff's case is not based on beneficial ownership alone. In any event, according to the plaintiff, group companies or holding/subsidiary companies are treated as a single economic unit if the facts and circumstances so warrant, as they do in the instant case.

9. Lastly, the plaintiff asserts since the application is in the nature of an application for the rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("the Code") and the averments in the pliant make out a *prima facie* case, the application does not deserve to be entertained.

10. In the wake of the aforesaid pleadings, I have heard Mr. Kamat, the learned Counsel for the applicant and Mr. Pratap, the learned Senior Advocate for the plaintiff, at considerable length. The learned Counsel took the Court through the pleadings and the documents placed on record. Reliance was

also placed on a number of precedents to substantiate their respective contentions.

11. Mr. Kamat took a slew of exceptions to the order of arrest. First and foremost, according to Mr. Kamat, with the enforcement of the Admiralty Act, 2017, the defendant – vessel could not have been arrested sans a maritime claim against Sapura Dana, its registered owner. According to Mr. Kamat, what accentuates the situation is the fact that the plaintiff knew all along that Sapura Dana was the registered owner of the defendant – vessel and there was no privity of contract between the plaintiff and Sapura Dana. Thus, in the absence of a maritime claim against the owner of the defendant – vessel *in personam*, the plaintiff could not have moved to arrest the defendant – vessel in *rem.*

12. Attention of the Court was invited to the service orders and the invoice raised by the plaintiff. In none of these documents, there is a reference to Sapura Dana. Thus, the absence of privity of contract between the plaintiff and applicant is writ large. Mr. Kamat would further urge that absence of maritime claim against a person who is the owner of the defendant – vessel renders the arrest in violation of the twin test envisaged by Section 5(1)(a) of the Admiralty Act, 2017.

13. To bolster up the submission that personal liability of the owner of the vessel under Section 5(1)(a) is a *sine quo non,* Mr. Kamat placed reliance on the judgments of the Gujarat High Court in the cases of ***Zatrix Limited Vs. MV Nikiforos***[1]***, MV Silvia Glory (IMO 9622942) vs. Bulk Marine Pvt. Ltd.***[2]***,*** the judgment of the Hyderabad High Court in the case of ***Monjasa DMCC & ors. vs. MV Kiveli***[3]***,*** the judgment of the Supreme Court in the case of ***Chrisomar Corporation vs. MJR Steels Pvt. Ltd.***[4] and the judgment of a learned Single Judge of this Court in the case of ***M. V. Flag Mersinidi vs. Georim Oil Corporation***[5]***.***

14. Mr. Kamat nextly urged that, in the case at hand, the test for granting and now sustaining the order of arrest has not been made out. It was urged that the plaintiff in an admiralty action is required to make out a *prima facie* case for arrest of the vessel. Over a period of time, the distinction between "reasonably arguable best case", "and", "*prima facie* case" has disappeared and it has been progressively held that the "reasonably arguable best case" amounts to no more than a *prima faie* case. To buttress this submission Mr. Kamat placed

---

1 Appeal No.18/2018 in Admiralty Suit No.37/2017, dt.6/3/2020.
2 CA1/2019 in Admiralty Suit No.11/2019 dt.26/6/2019.
3 IA Nos.2&3/2018 in Comm Suit No.3/2017.
4 (2018) 16 SCC 117.
5 2014 SCC Online Bom 479.

a strong reliance on the Division Bench judgment of this Court in the case of ***M/s. Kimberly – Clark Lever Private Ltd. vs. MV Eagle Excellence***[6].

15. On the touchstone of the aforesaid legal premise, according to Mr. Kamat, the plaintiff has miserably failed to demonstrate a *prima facie* case, which would justify the arrest of the defendant – vessel.

16. Thirdly, Mr. Kamat submitted that even if the case of the plaintiff is taken at par, it would not fall within the ambit of a maritime claim. Banking upon the service order Mr. Kamat submitted that the services were to be provided for Sapura Offshore. Thus the plaintiff cannot be said to have supplied the material or rendered the services to the defendant – vessel. Resultantly, the claim would not fall within the ambit of Clause (l) of Sub-section (1) of Section 4, which the plaintiff wants the Court to believe.

17. Fourth, the claim of the plaintiff that the services were rendered on the basis of the representation of Sapura Offshore that it was acting for and on behalf of the defendant – vessel and its registered owner is *ex facie* bald and not borne out by the documents pressed into service by the plaintiff. Mr. Kamat

---

6 Appeal No.240/2007 in NMS/2346/2006 in Admiralty Suit No.12/2006.

made an endeavour to draw home the point that though the instant application cannot be said to be for rejection of the plaint under Order VII Rule 11 of the Code yet it is trite that while evaluating whether the plaint discloses a cause of action the Court is enjoined to consider the documents annexed with the plaint and not mere avements in the plaint. In order to lend support to this submission Mr. Kamat placed a strong reliance on the judgment of the Supreme Court in the case of ***Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and others***[7]

18. Lastly, the case of beneficial ownership of the defendant – vessel and the disparate attempt to justify the arrest on the said premise, is legally unsustainable. In law, with the enactment of the Admiralty Act, 2017 no beneficial arrest is permissible. There was thus no warrant for arresting the defendant - vessel on the premise that the person who owes the liability was the beneficial owner of the vessel, where the registered owner owes no obligation. On facts, according to Mr. Kamat, there is no shred of material to demonstrate that either Sapura Offshore, or for that matter, Sapura Energy beneficially owned the defendant – vessel. A strenuous submission was advanced by Mr. Kamat that no case was made out for lifting the corporate veil. A

7 (2020) 7 Supreme Court Cases 366.

number of judgments were sought to be relied upon to draw home this point.

19. Per contra, Mr. Pratap, the learned Senior Advocate would urge that reference to any of the judgments cited by the parties, is, in the facts of the case, unwarranted. A two-fold submission was canvased by Mr. Pratap. First, the entire exercise on the part of the applicant was to construct a case, for the plaintiff, which has not been, in fact, pleaded and then demolish the same. Second, there is no denial of the case which the plaintiff has, in fact, pleaded. If the application is to proceed on a demurer, which the application must, at this stage, and in this proceeding, it cannot be said that no *prima facie* case is made out. Therefore, according to Mr. Pratap, the intricate issues sought to be urged by Mr. Kamat do not warrant determination in this case and deserve a better cause.

20. Mr. Pratap submitted with tenacity that the contention of the applicant that the services rendered by the plaintiff do not fall within the meaning of maritime claim as defined under Clause (l) of Section 4(1) of the Admiralty Act, 2017 is based on a incorrect understanding of the import of the said clause. Mr. Pratap would urge that Clause (l) is not restricted to the provisions which are necessary for rendering the vessel

seaworthy but subsumes in its fold the supplies and services rendered to the vessel for its operation and management. To this end, Mr. Pratap placed reliance on the judgment of the Supreme Court in the case of ***Liverpool & London S.P. & I. Association Ltd. vs. M. V. Sea Success I and Another***[8]***.***

21. Mr. Pratap made an earnest endeavour to meet the challenge of absence of contractual relationship, between the plaintiff and the applicant, by canvassing a twin submission. One, there are more than adequate averments in the plaint to the effect that Sapura Offshore acted for and on behalf of the defendant – vessel and its owner and defendant – vessel did receive benefit from the supplies and services rendered by the plaintiff in discharge of its role as a Pipelay Barge. Two, there are documents of unimpeachable character which show that both Sapura Offshore and Sapura Dana, the applicant, are the wholly owned subsidiaries of Sapura Energy. In the face of such material, the applicant cannot take mileage from absence of document to establish direct contractual relationship. Reliance was sought to be placed on the judgments of this Court in the cases of ***M/s. Crescent Petroleum Ltd. vs. M. V. Monchegorsk***[9]***,***

---

8 (2004) 9 Supreme Court Cases 512.

9 1999 SCC Online Bom 610.

Chemoil Adani Pvt. Ltd. vs. M. V. Hansa Sonderburg[10] *and Socar Turkey Petrol Enerji Dagitim San. Ve Tic. A.S. vs. M.V. Amoy Fortune (IMO 9583639)*[11].

22. Mr. Kamat joined the issue by advancing a submission, with a degree of vehemence, that all these judgments were rendered on the basis of the legal regime which prevailed prior to the enactment of the Admiralty Act, 2017. Therefore, the enunciation therein is of no assistance to the plaintiff.

23. The aforesaid submissions now fall for consideration.

24. To begin with, it may be apposite to keep in view the test which is to be applied in the matter of ordering the arrest of a vessel in exercise of admiralty jurisdiction and also vacating the order of arrest and/or return of security, when the defendant seeks such relief. The Division Bench judgment of this Court in the case of ***M/s. Kimberly – Clark Lever Pvt. Ltd.*** (supra) has elaborately considered the test which should govern the exercise of jurisdiction.

25. After adverting to the pronouncements of the Supreme Court including the judgments in the cases of ***Videsh Sanchar Nigam Ltd. vs. M. V. Kapitan Kud and others***[12] ***and M.V.***

---

10 2010 (7) Mh.L.J. 660.

11 2018 SCC Online Bom 1999.

12 (1996) 7 SCC 127.

Elisabeth and another vs. M/s. Harwan Investment & Trading Co. and another[13], and comparing and contrasting the norms of, "reasonably arguable best case" and "a *prima facie* case", the Division Bench enunciated that to make out a reasonably arguable best case, as held by the Supreme Court, the plaintiff must establish a *prima facie* case and the distinction between two tests, namely, "the reasonably arguable best case" and "the *prima facie* case" has almost been obliterated and both the expressions substantially convey the same meaning.

26. The observations of the Court in paragraph Nos.50 to 52 are instructive and hence extracted below:

> "**50**. ..... In other words, after stressing need for the plaintiff to make out a reasonably arguable best case in an admiralty action for a fruitful order in his favour, the Apex Court proceeded to hold that to make out a reasonably arguable best case, what is required is that the plaintiffs must establish a prima facie case regarding the right and the claim of the plaintiff in such action. In other words, with the decision of the Apex Court in Videsh Sanchar Nigam Ltd.'s case (supra), the distinction between the two tests, namely "the reasonably arguable best case" and "the prima facie case", has almost been disappeared, and both the expressions substantially convey the same meaning, though grammatically the expressions may not be synonymous to each other.
>
> **51**. It is true that in Moschanthy's case (supra), it was held that the defendant can plead and establish by motion that the plaintiff's case is not reasonably arguable best case and that it is hopeless and bound to fail and on that ground, the defendant can obtain release of the security. However, the said test in Moschanthy's case (supra) cannot be understood to be

---

13 AIR 1993 SC 1014.

> different from the test of prima facie case in view of the abovereferred rulings of the Apex Court i.e. m.v.Elisabeth, M.V.Al.Quamar, and M.V.Kapitan Kud's cases (supra) wherein the test of reasonably arguable best case being equated with a prima facie case. While dealing with the motion of the defendant for release of the security, the principles applicable to a case under Order 39 Rule 1 read with Order 38 of the Code of Civil Procedure will have to be borne in mind. Rule 954(IV) leaves no scope to contend that any other procedure can be adopted in such case. It is also to be noted that the Rule 966 of the Original Side provides that the rules and practice of the Court in the matter of suits and the proceedings on the Original Side of the Court shall, if not inconsistent with the rules in this part, apply to suits and proceedings on the Admiralty Side of the Court. Further it is well settled by the practice of this Court that whenever the rules on the Original Side are silent, the principles behind the provisions of the Code of Civil Procedure are to be followed, and this view gets support from the decision of the Apex Court in M.V. Elisabeth's case (supra).
>
> **52**. It is, therefore, clear that while applying the test of reasonably arguable best case, the Court will have to ascertain whether the plaintiff has prima facie case or not, and in that regard the Court will have to analyse the materials on record. Though the provisions of Orders 38 and 39 of the Code of Civil Procedure would not be directly applicable, the principles thereunder could not be forgotten while dealing with the matter at the stage where the defendant having released the ship on furnishing the security applies for release of security on the ground that the plaintiff has no *prima facie* case or reasonably arguable best case."

27. In the light of the aforesaid exposition of law, without delving into the semantics of the expressions, it has to be seen whether the applicant has made out a *prima facie* case for refund of the security on the ground that the arrest of the defendant – vessel was wrongful and unjustifiable. An answer, in turn, and necessarily, would depend on the question as to

whether the plaintiff had then succeeded in making out a *prima facie* case for the arrest of the defendant – vessel.

28. Under Section 5 of the Admiralty Act, 2017 the High Court is vested with the jurisdiction to order the arrest of the vessel for the purpose of providing security against a maritime claim. The relevant part of Section 5 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**) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or
>
> .....
>
> (**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."

29. On a plain reading of Clause (a) Sub-section (1) of Section 5, two conditions need to be satisfied before the jurisdiction to arrest the vessel can be exercised. First, there must be a maritime claim. Second, the maritime claim must be against the person who owns the vessel, both at the time such claim arose and at the time the arrest is effected.

30. The enquiry thus proceeds to consider as to whether the claim of the plaintiff falls within the meaning of any of the Clauses of Sub-section (1) of Section 4, which defines a maritime claim. As noted above, the plaintiff rests his claim on Clause (l) of Sub-section (1) of Section 4, which reads as under:

> **"4.** Maritime claim.
>
> **(1)** The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any—
>
> .....
>
> **(l)** goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable."

31. Clause (l), as is evident, comprises a broad category of supplies and services rendered to the vessel for its operation, management, preservation or maintenance, including any fee payable or leviable. Clause (l) is thus not restricted to "necessities", in the strict sense of the term.

32. In the case of ***Liverpool & London SP & I*** (supra), in the context of the necessity of insurance cover, the Supreme Court had an occasion to consider the import of the term "necessaries" as it was not statutorily defined. After adverting to the definition of the term necessaries in the Black's Law Dictionary and American Jurisprudence 2nd, and the pronouncements which deal with the said term, the Supreme Court exposited the

import of the term, "necessaries". Paragraphs 79, 83, 97 and 98 read as under:

> "**79**. The term 'necessaries' as defined in *Black's Law Dictionary* reads as under:
>
> > "What constitutes "necessaries" for which an admiralty lien will attach depends upon what is reasonably needed in the ship's business, regard being had to the character of the voyage and the employment in which the vessel is being used."
>
> .....
>
> **83**. In 70 American Jurisprudence 2d, at page 478, it is stated:
>
> > "The term "necessary" in this connection does not mean indispensable to the safety of the vessel and crew; necessaries which will create a lien upon the ship are such as are reasonably fit and proper for her under the circumstances, and not merely such as are absolutely indispensable for her safety or the accomplishment of the voyage. Whatever a prudent owner, if present, would be supposed to have authorized, the master may order, and for such expenditures the vessel will be held responsible.
>
> .....
>
> **97**. The term "necessary" is a term of art but the same cannot, in our opinion, be used in a limited context of mandatory claims made for goods or services supplied to a particular ship for her physical necessity as opposed to commercial operation and maintenance. Physical necessity and practicality would be a relevant factor for determination of the said question. Taking insurance cover would not only be a commercial prudence but almost a must in the present day context. The third party insurance may not be compulsory in certain jurisdiction but having regard to the present day scenario such an insurance cover must be held to be intrinsically connected with the operation of a ship.
>
> **98**. One of the relevant factors for arriving at a conclusion as to whether anything would come within the expression "necessary" or not will inter alia depend upon answer to the question as to whether the prudent owner would provide to enable a ship to perform well the functions for which she has been engaged. If getting the vehicle insured with P&I club would be one of the things which would enable a prudent owner to sail his ship for the purposes for which she has been engaged, the same would come within the purview of the said term. The matter must be considered having regard to the changing scenario inasmuch as the field of insurance has undergone a sea change from merely hull

> and machinery, the insurance companies cover various risks including oil spill damage to the Port, damage to the cargo etc. In that sense the term must be construed in a broad and liberal manner. The changing requirement of a ship so as to enable it to trade in commerce must be kept in mind which would lead to the conclusion that P & I Insurance cover would be necessary for operation of a ship."

33. "Necessities", is therefore a relative term. Its scope cannot be restricted to the essentials which are absolutely required to keep the vessel merely floating or prevent black out on board. Supplies and services rendered to a vessel which are necessary for equipping the vessel to discharge the purpose for which the vessel sails, would also fall within the ambit of the said term. If viewed through this prism, the equipments supplied or services rendered for its operation and management squarely fall within the scope of Clause (l).

34. Reverting to the facts of the case, the plaintiff's claim that it had supplied the equipments Reel Drive Unit with ancillary material and the personnel to operate the said unit is substantiated by the service orders, payment confirmation and the invoice raised by the plaintiff. The service order makes a specific reference to fact that the Reel Drive Unit with chute was to be utilized for sub-sea well and Pipeline replacement project.

35. The character of the defendant – vessel namely a Pipelay Barge cannot be lost sight of. The equipment supplied and

services rendered were thus necessary for the operation of the defendant – vessel for the purpose for which it was deployed. I, therefore, find it rather difficult to accede to the submission that the services were rendered for the project undertaken by the Sapura Offshore and they had no connection with the operation and management of the defendant – vessel. In my view, the plaintiff succeed in making out a *prima facie* case that a maritime claim within the meaning of Clause (l) of Sub-section (1) of Section 4 arose.

36. This leads me to the principal challenge on behalf of the applicant that the applicant was not liable for the maritime claim and in the absence of a right to proceed *in personam* against the applicant, the defendant – vessel, of which the applicant has indubitably been the registered owner, could not have been proceeded against in *rem.* Mr. Kamat would urge that in the case at hand, indisputably, there is no contractual relationship between the plaintiff and the applicant. Moreover, it is not the case of the plaintiff that it had ever raised the invoice against the applicant or called upon the applicant to make the payment for the services rendered to the defendant – vessel. At all times, the plaintiff had looked to Sapura Offshore as the person who was liable for the charges. In these facts,

according to Mr. Kamat, a bald assertion that the defendant – vessel had utilized the services and, thus, its registered owner is liable for the same cannot be countenanced.

37. Mr. Kamat placed a strong reliance on the judgment of a learned Single Judge in the case of ***M. V. Flag Mersinidi vs. Georim Oil Corporation.***[14] In the said case, repelling the contention that under maritime law a ship has an independent juridical personality and since the ship had received the bunkers it was not open for the registered owner of the ship to contend that there is no privity of contract, the learned Single Judge enunciated the position in law in the following words:

> "**23**. I totally disagree with Mr. Dhond. A vessel cannot enter into any contract with anybody. Only an owner or person authorised by the owner can enter into a contract and bind the vessel. In law a vessel may be looked at as an independent juridical personality. But to say that there is privity of contract with the vessel but not with the owners is stretching it too far and is incorrect. *An action in rem against a vessel can be maintained only if there is an underlying obligation of the owner and an action in personam is maintainable against the owner.* The contract is between the plaintiff and defendant no.2. Copy of the contract has not, admittedly, been even sent to the owner. There is not even an averment that the owner, defendant no.3, has held out that they will be bound by the terms and conditions of the contract that has been entered into between the plaintiff and defendant no. 2. Therefore, it can never be accepted that U.S. Law is applicable vis-a-vis, the plaintiff and defendant no. 3.
>
> (emphasis supplied)

---

14 2014 SCC Online Bom 479.

38. In the case of ***Zatrix Limited*** (supra), the Division Bench of Gujarat High Court, after adverting to the pronouncement of the Supreme Court in the case of ***Chrisomer Corporation vs. MJR Steels Pvt. Ltd.***[15] ruled that there cannot be any disagreement with the proposition of law that the High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against the maritime claim in the admiralty proceedings, where the High Court has reason to believe that the person who owned the vessel at the time when the maritime claim arose, is liable for the claim and is the owner of the vessel when the arrest is effected, or where the Court has reason to believe that the claim is based on a mortgage or a charge of similar nature on the vessel.

39. It may be appropriate to immediately notice the pronouncements in the cases of ***M/s. Crescent Petroleum Ltd., Chemoil Adani Pvt. Ltd. and Socar Turkey*** (supra) on which reliance was placed on behalf of the plaintiff. All these cases arose out of the supply of bunkers to the respective vessels. In the case of ***M/s. Crescent Petroleum Ltd.*** (supra), a learned Single Judge of this Court, in the facts of the said case, observed that necessary averments were made to raise a triable issue with regard to the bunkers having been supplied to the

15 (2018) 16 SCC 117.

owners. Therefore, it would not be necessary to decide the question of law, raised therein, namely, for an action in *rem* to lay it is essential that the owner of the vessel is liable *in personam*, at that stage. It was held that the Court was satisfied that it was not the kind of case where the Court could come to the conclusion, at an interlocutory stage, that there were no averments showing that the bunkers had been supplied to the ship on the alleged authority of the owner.

40. The aforesaid pronouncement was followed by the Division Bench in the case of ***Chemoil Adani Pvt. Ltd.*** (supra). The observations in paragraphs 48, 49 and 51 are relevant and hence extracted below:

> **48**. To our mind, this case should have been decided on the basis of the averments in the plaint, the documents annexed thereto and the assertions of the parties in the affidavits filed in the notice of motion. So considered, this is not a case for vacating the order of arrest. The appellants have made out a prima facie case and in our opinion, the arrest was justified. The arrest could not have been vacated merely because in the opinion of the learned Judge, there is absence of specific agreement between the appellant and respondent Nos.1 and 2.
>
> **49**. The learned Judge should have appreciated that the case was covered by the Single Judges' judgment in Crescent Petroleum Ltd. (supra) (rendered by His Lordship Shri Justice Nijjar). The reliance placed on this judgment by Shri Nankani is apposite. Having carefully perused this judgment with the assistance of the learned counsel appearing for the parties, we are of the opinion that situation in this case is identical. The learned Judge in para 3 of this judgment has referred to the case of the plaintiff therein which is identical to that of the appellant before us. It may be true that this decision is rendered on an application made under Article 7 Rule 11(d), yet, the learned Judge has applied the settled principle that if the agreement

> shows that the bunkers have been supplied on the faith and credit of the vessel, that lien on the vessel is thereby created and that is how para 4 of the judgment of the Single Judge reads.
>
> .....
>
> 51. We do not know how this judgment could have been distinguished by the learned Single Judge in our case. The stage at which the matter stood before Hon'ble Justice Nijjar and in this case is interlocutory. No conclusive judgment or finding was warranted and necessary to be rendered. In these circumstances, the reliance on this judgment should have clinched the issue. To our mind, this judgment has been erroneously distinguished although it is binding."

41. In the case of ***Socar Turkey*** (supra), it again was contended on behalf of the defendant that there was no privity of contract between the supplier and the owners of the defendant – vessel and in the absence of personal liability on the part of the owner of the vessel, an action in *rem* could not lay against the vessel. The Division Bench adverted to the previous pronouncements, including the aforesaid judgment of the Division Bench in the case of ***Chemoil Adani Pvt. Ltd.*** (supra), and thereafter observed as under:

> **"44**. The learned Senior Counsel Mr. Chinoy, in the facts of the case, rightly submitted that as supply of bunkers to the vessel is not a disputed fact and as plaintiff did not receive the payment agreed against such supply, maritime claim arises in rem and in personam. A case is then made out for maritime lien. A privity of contract shall have to be presumed even if the bunkers were not supplied against clear and specific order placed by the Master or Chief Engineer of the vessel. In other words, even if in the facts the order was placed by Force Shipping or Sentex LDX, a subsidiary of Force shipping, to the vessel, the plaintiff's doors cannot be shut on the principle of lack of privity of contract between plaintiff and the present defendant.
>
> **45**. In the facts of the case and considering the law cited, we find substance in the submissions advanced by the

> learned Senior Counsel Mr. Chinoy that at an interlocutory stage it would not be appropriate to deal with the issue of privity of contract. It can only be dealt with after leading evidence.
>
> **46.** We are of the view that merely based on the bunker invoice and delivery receipt, it would be difficult to form a conclusive opinion at an interlocutory stage that there was no privity of contract between the appellant and the respondent. There is no such overwhelming material to reach to such conclusion. The issue in this case is that whether privity of contract is presumed to be in existence. Such issue relating to the maritime claim in question would thus be required to be addressed at the trial of the suit. It is an admitted position that the Master / Chief Engineer of the vessel had acknowledged the receipt of bunkers supplied to the vessel.
>
> **47.** We further find substance in the submissions advanced by the learned Senior Counsel Mr. Chinoy that even if bunkers were supplied at the instance of Force shipping / Sentex LDX, the liability of the vessel to pay for the bunkers supplied does not get diminished on the plea of lack of privity of contract."

42. The aforesaid judgments,as is evident, have been rendered in the facts where the supply of the bunkers to the respective vessels was incontrovertible and a defence was sought to be raised that the supply was not made at the instance of the registered owner and the latter was not liable and, consequently, in the absence of the personal liability of the owner, an action in *rem* would not lay against the vessel. The Courts have held that in such a fact-situation the issue of absence of privity of contract cannot be satisfactorily adjudicated at an interlocutory stage and must be left to be determined at trial.

43. It is imperative to note that, all these judgments were rendered before the enactment of the Admiralty Act, 2017. In

fact, in ***Socar Turkey*** (supra) the Division Bench expressly notes that no Indian statute defined a maritime claim as has been clarified in the finding of the Apex Court in the case of ***M.V. Elisabeth*** (supra). Mr. Kamat, in my view, was justified in canvassing a submission that the precedential value of these judgments to the extent of drawing an inference of contractual obligation is required to be appreciated keeping in view the provisions contained in the Admiralty Act, 2017.

44. The pivotal question which thus crops up for consideration is whether there are averments in the plaint and material on record to satisfy the requirements under Clause (a) of Sub-section (1) of Section 4 of the Admiralty Act, 2017. I have already held that the existence of a maritime claim is, *prima facie,* made out. The controversy thus boils down to the question as to whether the liability for the said maritime claim can be fastened on the applicant.

45. Indisputably the service orders were placed by Sapura Offshore. Under the standard terms and conditions appended to the said service order the term, “contract” or “buyer” was to mean Sapura Engineering and Construction Pvt. Ltd., Sapura Fabrication BHD and Sapura Offshore SDN BHD and the term

"sub-contractor" was to mean the plaintiff. Invoice was also raised on Sapura Offshore SDN BHD.

46. Banking on these documents it was urged on behalf of the applicant that Sapura Dana, the registered owner was not at all in the frame. On a first blush, the submission appears alluring. However, on a close scrutiny the submission does not carry conviction. There are clear and categorical averments in the plaint that Sapura Offshore had placed the supply orders on behalf of the vessel and her owner, and was an agent of the owner of the defendant – vessel. It is further averred that Sapura Offshore operates and manages the project undertaken by the defendant - vessel and her owner/beneficial owner. Sapura Energy, the holding company of Sapura Dana and Sapura Offshore, is the commercial operator and technical manager of the defendant – vessel.

47. Lloyd's List Intelligence Vessel Report (Exhibit-D) was pressed into service to show that Sapura Energy Berhad was reported to be the beneficial owner and commercial operator of the defendant – vessel. Secondly, the annual report of the Sapura Energy (Exhibit-E) was also relied upon to show that Sapura Dana is a subsidiary of Sapura Energy Berhad. Thirdly, the announcement made by Sapura Energy in respect of an

order passed by the Malaysian Court for the proposed scheme of arrangement and restraining order under Section 366 and 368 of the Companies Act, 2016 for Sapura Energy Berhad (the "Company" and collectively with its subsidiaries, the "Group") and certain of its wholly-owned subsidiaries, was relied upon to show that both Sapura Dana and Sapura Offshore have been shown as wholly owned subsidiaries of Sapura Energy.

48. Mr. Kamant made an attempt to urge that each corporate entity is distinct and no liability can be fastened on the basis of the aforesaid documents, which do not command authenticity. Yet the fact remains that there is no categorical denial that Sapura Dana is a wholly owned subsidiary of Sapura Energy. This becomes evident from the documents placed on record pertaining to not only Sapura Offshore but also Sapura Dana. It is in the context of this relationship between Sapura Energy and Sapura Dana, on the one part, and Sapura Energy and Sapura Offshore, on the other part, and all pervasive control which Sapura Engery seems to exercise over Sapura Dana and Sapura Offshore, the averments in the plaint are required to be appreciated.

49. In my view, the averments in the plaint if considered in conjunction with the aforesaid nexus between the entities and

the purpose for which the services were utilized by the defendant – vessel, *prima facie,* sustain a case that the liability was incurred for and on behalf of the vessel and its registered owner.

50. In the facts of this case, any other view would erode sanctity of the contractual obligation in a commercial transaction having a maritime flavour, where the supplies are made and services are rendered on the faith and credit of the vessel. Such a view may give a long leash to a party who utilizes the supplies and services by allowing an associate entity to solicit the supplies and services and later on takes the defence of absence of contractual obligation. It may not, therefore, be appropriate to decide the contentious issue of *in personam* liability of the applicant, at this stage, and sans evidence.

51. For the foregoing reasons, I am impelled to hold that no case for a declaration that the arrest was wrongful and refund of the security deposit is made out. Resultanly, the application deserves to be rejected.

52. Hence, the following order.

: O R D E R :

(i) The application stands rejected.

(ii) Costs in cause.

[N. J. JAMADAR, J.]