

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/ADMIRALTY SUIT NO. 5 of 2021**

SEVEN ISLAND SHIPPING LTD
Versus
BHARAT PETROLEUM CORPORATION LTD

Appearance:
for the Defendant(s) No. 1, 2
MR HARSHN PAREKH (6951) for the Plaintiff(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV**Date: 10/02/2021****ORAL ORDER**

1. The Plaintiff has filed the instant Limitation Suit under Part XA of the Merchant Shipping Act, 1958 ("**MS Act**") inter alia seeking a decree that the aggregate principal liability of the Plaintiffs for purported claims (including claims by way of recourse or for indemnity) made against the Plaintiff in relation to an explosion which occurred on board MT Genessa on 17th January 2018 at the Kandla Port for loss or damage to property occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential losses resulting therefrom and/or in respect of measures taken in order to avert or

minimise loss or damage to cargo laden on board the ship shall be the sum of SDR 4,702,887 i.e, Rs.49,57,88,595 (Rupees Forth-Nine Core Fifty Seven Lakhs Eighty Eight Thousand Fiver Hundred and Ninety Five) and aa decree ordering the Registrar, High Court of Gujarat to allow the Plaintiff to set up a limitation fund for this amount.

2. Mr. Majumdar, Learned Counsel for the Plaintiff submits that pursuant to section 352 A (1) and (2) of the Merchant Shipping Act, 1956 a shipowner may limit liability for purported claims (including claims by way of recourse or for indemnity) for loss or damage to property occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential losses resulting therefrom and/or in respect of measures taken in order to avert or minimise loss or damage to cargo laden on board the ship. It is submitted that pursuant to and section 352- C of the MS Act a shipowner can constitute a limitation fund with a High Court up to the amount stipulated in section 352- B of the MS Act read with the relevant rules framed there under for claims made against the shipowner falling within section 352 A of the MS Act. It is submitted that after having

constituting a limitation fund a shipowner is entitled to avail the protection afforded under section 352-C (3) of the MS Act.

3. Mr. Majumdar, Learned Counsel for the Plaintiff further submits that the occurrence of the explosion on board the ship MT Genessa had taken place on 17th January 2018 when the ship was within the Kandla Port and the cargo had been discharged from the ship at the Kandla Port, the limitation fund has to be constituted with this Court pursuant to section 352 D (6) (a) and (b) of the MS Act. In this regard Mr. Majumdar has further drawn my attention to the Apex Court Judgment of World Tanker Carrier Corporation v. SNP Shipping Serviced Pvt. Ltd. (1998) 5 SCC 310 where at para 32 the Apex Court has held that “A limitation action as in the present case, falls under the High Court’s admiralty jurisdiction”. Mr. Majumdar accordingly submits that in light of his submission the instant Limitation Suit has been filed before this Court.

Having heard learned counsel Mr. Majumdar, Registry is directed to issue notice to the Defendants returnable on

4.03.2021. The Plaintiff is also permitted Direct Service on the Defendant No. 1.

DIVYA

(BIRENVAISHNAV,J)