

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

SHERIFF'S REPORT NO. 64 OF 2022

**COMM ADMIRALTY SUIT NO. 41 OF 2022
WITH
JUDGE'S ORDER NO. 51 OF 2022**

Kroll Trustee Services Limited ...Plaintiff
Versus
M. V. AEON (IMO No.9576818) ...Defendant

Mr. Shyam Kapadia, a/w Raghvendra Desai, i/b Bose and
Mitra, for the Plaintiff.

Mr. Namay Dave, a/w Mr. Kshitij Shah, i/b Dhaval Vassonji &
Asso. For the Successful Bidder.

Ms. Prashanti Patel, i/b Mulla & Mulla CBC, for the
Defendant.

Mr. Abhishek Khare, a/w R. P. Shirole, i/b Khare Legal
Chambers, for the Crew Members/Plaintiff in COMASL/
30942/2022.

Mr. D. S. Chaudhary, Dy. Sheriff, present.

CORAM: N. J. JAMADAR, J.

DATED : 11th OCTOBER, 2022

Order:-

1. The Sheriff has taken out this report seeking directions, *inter alia*, to refund the amount which was deposited by the plaintiff pursuant to the directions of this Court and pay the agencies, who had provided services and necessities to the defendant – Vessel MT AEON, treat the expenses incurred towards the wages of the crew members directly paid by the plaintiff to the International Transport Workers Federation,

pursuant to the order passed by this Court on 30th August, 2022 and after deducting the Sheriff's expenses out of the sale proceeds deposit the balance amount of Rs.2,35,09,765.59 with the Prothonotary and Senior Master of this Court, retaining a sum of Rs.45,00,000/-, which has been returned to the Sheriff by the Bank, on account of in complete documentation on the part of the crew members towards whose wages the said amount was transmitted.

2. Perused the report.

3. Heard Mr. Kapadia, the learned Counsel for the plaintiff, Ms. Patel, the learned Counsel for the erstwhile registered owner of the MV AVON – defendant – Vessel, Mr. Dave, the learned Counsel for the purchaser of MV AVON and Mr. Khare, the learned Counsel for the crew members, who have instituted Suit No. COMASL/30942/2022 for the claim of wages.

4. In the wake of the resistance on the part of the crew members to disembark from the vessel and hand over the vessel to the auction purchaser, this Court had passed an elaborate order on 15th September, 2022, By the said order, this Court had directed the crew members to forthwith vacate the vessel and the Sheriff was directed to release one months wages to the 15 crew members from the funds placed at his disposal by the

plaintiff and also make necessary provisions for the repatriation of the crew members.

5. The prayer Clauses (a) to (g) are in the nature of directions to refund the amount to the plaintiff (prayer Clause (a)) and pay to the agencies, who had provided services/necessities to either the defendant – vessel or the crew members. Hence there is no impediment in allowing prayer Clauses (a) to (g).

6. As regards prayer Clause (h) since the amount of Rs.45,00,000/- is returned by the Bank for want of compliance on the part of the crew members, for whom the said amount was remitted towards wages, it may be expedient to allow the Sheriff to retain the said amount and file an appropriate report in the event the crew members make requisite compliance. Prayer Clause (h) thus stands allowed in the aforesaid terms.

7. Prayer Clause (i) reads as under:

“(i) The Hon’ble Court may pass necessary directions pursuant to the request of the Plaintiff for treating the payment of all wages of six crew members directed to be repatriate by order dated 23rd August, 2022 to the tune of USD 60,511.34 made by them directly to the International Transport Workers Federation.”

8. Mr. Kapadia, the learned Counsel for the plaintiff, submits that though this Court by order dated 30th August, 2022 had directed the plaintiff to put the Sheriff in funds to meet the

payments of wages of crew members for two months, the plaintiff had directly paid a sum of US\$ 60,511.34 to the International Transport Workers Federation so as to ensure that there is no resistance to disembarkment from the vessel and repatriation of the crew members. It was further submitted that there is no dispute about the fact that the said payment has, in turn, been credited to the six crew members.

9. Paragraphs 22 to 24 of the order dated 30th August, 2022 read as under:

22. The Sheriff's Report also indicates that the Sheriff has received communication from the Master of the defendant – vessel making grievance about the non-payment of the wages of the crew members, who are permitted to be repatriated.

23. The learned Counsel for the plaintiff submits that the plaintiff, without prejudice to its rights and contentions, is willing to pay two months wages for the entire crew (21), on board the defendant – vessel.

24. In view of the aforesaid statement and willingness shown by the plaintiff, the plaintiff shall put the Sheriff with the funds to meet the payment of wages of the crew, for two months, as per the requisition of Sheriff.”

10. Evidently, the plaintiff has instead of putting the Sheriff in funds directly made the payment to the International Transport Workers Federation. The said payment has been duly acknowledged and certified by the Master in the memo of ‘Total Outstanding Wages to be paid till 31st August, 2022.’ Even in the order dated 15th September, 2022, this Court had recorded that those six crew members have been paid the said amount of US\$

60,000. Since there does not seem any dispute about the factum of payment to crew members, the deviation on the part of the plaintiff in complying with the order dated 30th August, 2022, in as much as direct payment was made to the International Transport Workers Federation, may not detract materially from the claim of the plaintiff for treating the said expenses as Sheriff's expenses. Hence, prayer Clause (i) stands allowed.

11. In view of the above, the Sheriff shall give credit of the said amount of US\$ 60,511.34 to the plaintiff, and after payment of the amount equivalent to US\$ 60,511.34 to the plaintiff, deposit the balance amount (out of Rs.2,35,09,765.59) with the Prothonotary and Senior Master.

12. Sheriff's report stands disposed.

[N. J. JAMADAR, J.]