

ORDER SHEET

**IA No. GA-COM 1 of 2024
AS-COM 4 of 2024
IN THE HIGH COURT AT CALCUTTA
ADMIRALTY JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)**

**EMAMI PAPER MILLS LTD
VS
THE OWNERS AND PARTIES INTERESTED IN THE VESSEL M.V. PH GIANG
MINH (IMO NO 9481623) AND ANR.**

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 4th August, 2024.

Appearance :

Mr. Tilak Kumar Bose, Sr. Adv.
Mr. Kuldip Mullick, Adv.
Mr. Rohit Mukerji, Adv.
Mr. Subhojit Roy, Adv.
Mr. Satyaki Mitra, Adv.
Ms. Swastika Sengupta, Adv.
for the plaintiff.

Re : AS-COM 4 of 2024

The Court : Plaintiff seeks leave to present the plaint filed without court fees and by seeking dispensation of the formalities to be complied with under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as 'the 2015 Act') as and by way of abundant caution as the plaintiff contemplates urgent interim relief as also leave under Order II Rule 2 of the Code of Civil Procedure, 1908 (in short CPC). The leave dispensing with the formalities under the provision of Section 12A of the 2015 Act as submitted by

the plaintiff is not required in case of an Admiralty Suit but has been sought for by way of abundant caution to avoid future complication. It is the plaintiff's contention that no leave is actually necessary because an Admiralty Suit is not a commercial suit filed in the Commercial Division of this Court although issues relating to admiralty and maritime law has been described as the commercial dispute under Section 2(1)(c)(iii) of the 2015 Act. The admiralty jurisdiction is altogether separate which is vested in the High Court only and no other Commercial Court constituted under the 2015 Act have the jurisdiction to receive, try and entertain the suit even if part cause of action may have accrued within the jurisdiction of such a Court.

After hearing the plaintiff and considering the averments made in the plaint at the time of the same being presented, the plaint is admitted by dispensing with the formalities required to be complied with under Section 12A of the 2015 Act and also by granting leave under Order II Rule 2 of the Code of Civil Procedure, 1908 subject to scrutiny by the department.

Considering the urgency of the matter, the plaint is presented and admitted without Court fees by appointing Mr. Subhojit Roy, learned Advocate as the Receiver to put in the Court fees within 7th August, 2024, failing which the suit shall stand dismissed without any further order.

Re: GA-COM/1/ 2024

In this application the plaintiff has by an interim measure sought for arrest and detention of the vessel M.V. PH GIANG MINH (IMO No.9481623) (hereinafter referred to as the “said vessel”) along with her hull, tackle, engines, gears, bunkers, apparel, equipment and all paraphernalia lying on board the vessel. The said vessel, carrying the flag of Republic of Panama, is presently berthed at Haldia Dock Complex in Syama Prasad Mookerji Port, Kolkata. The plaintiff has sought for arrest and detention of the said vessel for the reasons as stated hereunder:

The plaintiff purchased 8000 MT of Bleached Hardwood, Kraft, Pulp, Acacia (hereinafter said goods) of particular specification which was loaded at Futong Port, Indonesia in the said vessel to be discharged at the Haldia Dock Complex. The aggregate value of the said goods is USD 5422356.68. The plaintiff says that the goods were loaded in the vessel in apparently good condition as will appear from the Mate’s receipts issued at the time of loading as also from the statement of facts and final stowage which has been signed by the owners of the vessel (defendant No.1), Disponent Owners (defendant No.2) as also the charterer (plaintiff). The goods were loaded in Hold 2, 3 and 4 of the said vessel. The goods reached at Haldia Dock Complex on 25th July, 2024 when it was found that the cargo in one of the Hold was found damaged. According to the plaintiff, the damaged quantity still now assessed is 1312 MT, the value of which is USD 88560 equivalent to INR7,48,77,480 calculated at

the rate of 1 USD = INR 84.55. The plaintiff says that the part cargo reached in damaged condition at Haldia Dock Complex is not in dispute as will appear from minutes of the meeting dated 25th July, 2024 annexed at pages 43 to 51 of the affidavit of arrest and duly signed by the defendant no.1 and the Surveyors. The plaintiff's surveyor has also surveyed the goods and assessed the damage at USD 885600 = INR 74877480 as on 2nd August, 2024 on the basis of the cargo off-loaded till then the document in respect whereof is annexed at page 73 of the affidavit of arrest. The plaintiff has also claimed legal costs of INR 15,00,000 and as such, the total claim is INR 76377480 being the amount claimed in the suit along with other consequential relief(s).

The plaintiff says that loss or damage to or in connection with any goods is a maritime claim under Section 4(1)(f) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. That apart and in any event, the maritime claim as defined under Sections 4(1)(d) and 4(1)(g) are also attracted in the plaintiff's claim. The plaintiff says that the vessel is to sail out of Haldia Dock Complex by 07.18 hours on 5th August, 2024. Unless the said vessel is arrested and detained, the plaintiff will be remediless and the suit will become infructuous.

After considering the submissions made by the plaintiff, materials on record and the provisions of law cited by the plaintiff, I find that the plaintiff has made out a strong prima facie case. The balance of convenience and inconvenience is also in favour of the plaintiff. The plaintiff's intent will be

further prejudicial if the said vessel is allowed to leave Haldia Dock Complex. It is also apparent from the 3(three) Bills of Lading disclosed by the plaintiff that April International Enterprises Pte Ltd. is the shipper as also the exporter the plaintiff is the consignee and the goods were loaded in apparent good order and calculation. Other documents disclosed show that the defendant No.2, Dava Pte Ltd. is the disponent owner. It is, therefore, clear that both the defendants prima facie have equal liability for the damage of the goods. It will be a fruitless venture at this stage to enquire into the fact as to who is actually liable. However, on the basis of the bill of lading, the statement of facts and mate's receipts it is found that the goods at the time of being loaded were in apparent good order and condition. At this stage it has to be, therefore, accepted that both the defendants are liable for the claim made by the plaintiff on account of damage of the goods.

In the aforesaid facts and circumstances, there shall be an order directing the arrest of the vessel M.V. PH GIANG MINH (IMO No.9481623) along with her hull, tackle, engines, gears, bunkers, apparel, equipment and all paraphernalia lying on board the vessel.

The Marshall of this Court is directed to forthwith arrest the said vessel M.V. PH GIANG MINH (IMO No.9481623) (hereinafter referred to as the "said vessel") along with her hull, tackle, engines, gears, bunkers, apparel, equipment and all paraphernalia lying on board the vessel.

The Marshall shall forthwith communicate the order to the concerned port authorities at Haldia Dock Complex of Syama Prasad Mookerji Port, Kolkata, the customs authorities, the administration at Purba Medinipur, the Coast Guard Authorities, Central Industrial Security Force (in short CISF) and the Marine Police if any, by fax message or electronic mail or by any other electronic mode of communication.

Upon payment of necessary charges by the plaintiff, the Marshall shall also serve a copy of the arrest order including a copy of the affidavit of arrest on the Master of the vessel M.V. PH GIANG MINH (IMO No.9481623). The Marshall's communication shall be affixed on the MAST of the vessel M.V. PH GIANG MINH (IMO No.9481623).

This order of arrest and/or detention of the said vessel will continue unconditionally till 8th August, 2024. If, in the meantime, the plaintiff files an undertaking in terms of Section 11 the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 to the effect that the plaintiff shall compensate the defendants' vessel and/or the owners and parties interested therein for any loss or damage which may be suffered by the defendants as a result of any wrongful arrest and for which the plaintiff may be found liable, by reason of the arrest having been found to be wrongful or unjustified or excessive security having been demanded by the plaintiff, the order of arrest shall continue until further orders.

In the event of the plaintiff's failure to file such undertaking, this order shall stand vacated automatically on expiry of 8th August, 2024.

It is further clarified that in the event the defendants either jointly or separately depositing an aggregate sum of Rs. 7 Crores to the credit of the suit as security with the Registrar, Original Side of this Court on or before 12th August, 2024, this order of arrest of the vessel M.V. PH GIANG MINH (IMO No.9481623) shall stand automatically vacated.

The plaintiff shall be entitled to pray for enhanced security on the returnable date if further goods are detected to be damaged.

The plaintiff has also prayed for appointment of a Receiver to foresee the discharge of the cargo and its state on having been discharged. The plaintiff also says that the Receiver may appoint a Surveyor for the assessment of the loss and damage to the goods in the presence of the defendants.

However, at this stage the prayer for Receiver cannot be granted. The plaintiff shall, however, be entitled to renew this prayer for appointment of Receiver on the returnable date.

The port authorities at Haldia Dock Complex/System of Syama Prasad Mookerji Port, Kolkata, the customs authorities, the administration at Purba Medinipur, the Coast Guard Authorities, CISF Authorities and the Marine Police are directed to render assistance to the Marshall for entry inside the Haldia Dock Complex/System of Syama Prasad Mookerji Port and to any

other place within the jurisdiction of the Port Authorities for the purpose of implementing this order.

The Marshall and all concerned including the port authorities at Haldia Dock Complex/System of Syama Prasad Mookerji Port, Kolkata, the customs authorities, the administration at Purba Medinipur, the Coast Guard Authorities, CISF Authorities and the Marine Police shall act in terms of a communication of this order to be made by the Marshall to them.

The application for arrest is made returnable on 12th August, 2024 before the regular Bench.

(ARINDAM MUKHERJEE, J.)

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