

IN THE HIGH COURT OF SINDH AT KARACHI

Adm. Suit No. 10 of 2017

Plaintiff: M/s Sing Fuels Pte Ltd. Through Mr. Omair Nisar, Advocate.

Defendant: M.V. "Yasa Aysen" & others Through Mr. Agha Zafar Ahmed, Advocate.

Nos. 1 to 4.

Defendant No.5 Global Bulk International FZE. None appeared

Dates of hearing: 04.12.2018, 16.04.2019, 07.05.2019, 21.05.2019 & 19.08.2019

Date of Order: 29.08.2019

1. For hearing of CMA No.96/2017
2. For Ex-Parte Orders against Defendant No.5

O R D E R

Muhammad Junaid Ghaffar J. - This is a Suit under Section 3(2) of the Admiralty Jurisdiction of High Courts Ordinance, 1980 ("Ordinance") seeking recovery of US\$ 667,599.35 in respect of the principal outstanding amount, interest, damages and legal costs etc. Through listed application the Plaintiff has sought issuance of warrants of arrest for the Vessel i.e. Defendant No.1 and detain the same until sufficient guarantees are furnished for the outstanding claim of the Plaintiff.

2. The precise case as set up in the plaint on behalf of the Plaintiff is that they are engaged in the business of Bunker supplies to Vessels calling at various Ports globally, either by itself or through its nominated physical bunker suppliers. It is further stated that such supply of bunkers is subject to the "General Terms and Conditions of Sale" mentioned on the Bunker Delivery Advice as well as the general rules of such supplies recognized globally. According to the Plaintiffs the Defendant No.5 ("**Charterers**") which is a company incorporated in UAE is engaged in Chartering of Vessel and in May, 2016 the Plaintiff was contacted for supply of 290 MT (Metric Tons) of IFO 380 CST

(Intermediate Fuel Oil) as well as 40 MT of MGO (Marine Gas Oil) to the Vessel in question owned and operated by Defendant No.2 to 4 (“**Owners**”). It is the case of the Plaintiff that requisite bunkers were supplied, whereas, Charterer has defaulted in making payments and therefore, owners as well as Charterers are liable to pay jointly and severally; hence, instant Suit.

3. Learned Counsel for the Plaintiff has contended that the supply in question is not in dispute, whereas, the bunkers were supplied to the Vessel of the owners and such supplies were with the consent and knowledge of the said owners; hence, the claim of the Plaintiff against the Vessel is maintainable under the Admiralty Jurisdiction of this Court. According to him, owners of the Vessel remained actively involved in the entire process of supply of bunkers to the Vessel, whereas, they even inquired about complete schedule of bunkering cost and expenses. He has further contended that physical supplier of the bunkers also kept on informing the owners in respect of the supplies and therefore, notwithstanding the fact that the order was placed by the Charterers, the owners and their Vessel is equally responsible for payment for such supplies. Per learned Counsel, a notice was also issued to the Charterer and various correspondence was entered into through which the Charterer undertook to make payment; but ultimately they failed to honor their commitment and therefore, the listed application must be allowed and evidence be led by the parties in respect of the claim of the Plaintiff. According to him, the claim of the Plaintiff is maintainable under the Admiralty Jurisdiction in terms of Section 3 & 4 of the Ordinance and therefore, the objection of the owners in respect of lack of jurisdiction of this Court is misconceived. Per learned Counsel, once the bunkers are supplied and payments are not made, then there is a lien of the unpaid seller against the Vessel and the owners are equally responsible and should have been vigilant to see that the Charterer honors the commitment in respect of supply of bunkers to their Vessel. He has lastly contended that the Time Charter was terminated before the expiry of the agreed period, whereas, the bunkers supplied by the Plaintiff have been utilized by the owners and in fact it has intermingled and such determination of the consumption as well as balance of the bunkers supply can only be adjudicated at the trial of the Suit, therefore, the application be allowed by confirming the

orders of arrest passed by this Court. In support of his contention he has relied upon ***Henry V. Geoprosco International Ltd. Lloyd's Law Reports (1974 Vol. 2), Re: Dulles' Settlement Trusts Dulles V. Vidler (All England Law Reports (June 14, 1951) Vol. 2), Francis Jackson Developments, Ltd. V. hall and another (All England Law Reports (June 14, 1952 (Page 2265) Vol. 2), PST Energy 7 Shipping LLC and another V. O W Bunker Malta Ltd and another (Lloyd's Law Reports (2016 Vol 1 (5), Forsythe International (UK) Ltd. V. Silver Shipping co. Ltd. and Petroglobe International Ltd. (The "Saetta") (Lloyd's Law Reports (1993 Vol. 2 (268), Bangladesh Shipping Corporation V. M. V. 'Nedon' and another (P L D 1981 Karachi 246) and Yukong Ltd. South Korean Company, Seoul, South Korea V. M. T. Eastern Navigator and 2 others (P L D 2001 SC 57).***

4. On the other hand, learned Counsel for the owners has contended that the Vessel in question was on a Time Charter and all negotiations in respect of supply of bunkers was done with Defendant No. 5 and at no point of Time the owners had undertaken any liability as to the claim of the Plaintiff. Per learned Counsel, the Charter Party Agreement clearly provides that the bunkers are to be purchased and paid for by the Charterer, whereas, the Plaintiff pursuant to its arrangement had also obtained security in the shape of postdated cheques and therefore, no case is made out against the owners for such default on the part of the Charterer. Insofar as the communication of the owners with the bunker suppliers as alleged is concerned, he has contended that it was only in respect of berthing of Vessel which is a normal practice in a Time Charter as navigation is monitored by the owners, and therefore, the same cannot be made a basis to satisfy the Plaintiff's claim. According to him, even the legal notice for recovery of the amount was also issued to the Charterer and not to the owners of the Vessel as it was in the knowledge of the Plaintiff that such dealings in respect of supply of bunkers were independent in nature and had nothing to do with the owners of the Vessel. Per learned Counsel, to maintain a claim under the Admiralty Jurisdiction of this Court, first it is to be established that the claim can be maintained in *personam* against a defaulting party and only then a claim *in rem* can be maintained against a Vessel and therefore, since admittedly there is no claim in *personam* against the owners;

hence, the Vessel in question cannot be arrested and detained for such a claim. Per learned Counsel, under the Admiralty Law in Pakistan the claim in respect of a bunker supply does not have a maritime lien, and is therefore, to be governed by the provisions of Section 3 & 4 of the Ordinance only. He has further argued that in a Time Charter, per settled law, no claim in respect of a bunker supply is maintainable. He has also referred to the bunker supply receipts and has contended that the master of the Vessel has clearly affixed a stamp to the effect that such supplies are on account of the Charterer and therefore, notwithstanding the fact that the master represents the owner of the Vessel, no such claim can be maintained against the Vessel. In support of his contention he has relied upon ***Atlantic Steamer's Supply Company V. m. v. Titisee and others (P L D 1993 SC 88)***, ***Messrs V. N. Lakhani & Company V. m. v. Lakatoi Express and 2 others (P L D 1994 SC 894)*** and ***Messrs Naseem Oils through Proprietor V. M. T. Miramis through Master / Chief Officer and 3 others (2012 C L D 1413)***.

5. While exercising his right of rebuttal, learned Counsel for the Plaintiff has contended that mere affixation of a stamp on the delivery receipt has no relevance, whereas, once it is admitted that bunkers were supplied, the Vessel and its owners are equally responsible for making payment for such supplies. He has further argued that since the Time Charter was cut short by the owners and at that point of Time the bunkers supplied by the Plaintiff were still on board and therefore, the owners are responsible for making payment of the bunker supplies available on board at the relevant Time.

6. I have heard both the learned Counsel and perused the record. The facts of this case depicts that the Plaintiff has invoked Admiralty jurisdiction of this Court under the Ordinance for recovery of its claim as mentioned in the plaint which is in respect of principal amount of the bunkers (US\$ 109,930.00), interest (US\$ 37669.35 till 13.11.2017), Damages (US\$ 500,000.00) and legal costs (US\$ 20,000.00). Along with the Suit an application under Rule 731 of the Sindh Chief Court Rules (Original Side) of this Court was also filed for the arrest of the Vessel in question and on 15.11.2017 an order for arrest was passed and the Vessel was allowed to sail if the Defendants furnish solvent surety for the principal amount of US\$ 109,930.00 which has been done by the

owners, whereas, the Charterer has chosen not to appear before the Court. It is the case of the Plaintiff that the bunkers were supplied to the Vessel at the request of the Charterer; however, at all Times the owners of the Vessel were privy to such supplies and it was done with their implied consent, whereas, the Charterer had authority to contract on behalf of the owners. It is further case of the Plaintiff that through email dated 18.5.2016 (pg: 167) the owners were in contact with the material suppliers of the Plaintiffs and therefore, the owners now cannot plead any ignorance in respect of the bunkers supplies. According to the Plaintiff, since the bunkers were supplied to the Vessel, the same falls under Section 3(2) (l) of the Ordinance which provides for *claims in respect of necessaries supplied to a ship* read with Section 4 thereof, wherein, the mode of exercise of the Admiralty jurisdiction of this Court has been provided. Their further case is that since the bunkers were received by the master of the Vessel, who is and was, under employment of the owners; hence, the owners cannot plead ignorance once the supplies have been made. Before proceeding further, as to whether the claim of the Plaintiff falls within the Admiralty Jurisdiction of this Court or not, it would be advantageous to refer to the relevant provisions of Section 3(2)(l) and so also Section 4(4) of the Ordinance, which reads as under:-

"3. Admiralty Jurisdiction of the High Court;

(2) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following causes, questions or claims-

(l) **any claim in respect of necessaries supplied to a ship.**

4. Mode of exercise of Admiralty jurisdiction. - ...

(4) In the case of any such claim as in mentioned in clauses (e) to (h) and (j) to (q) of subsection (2) of section (3), being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or Charterer of, or in possession or in control of the ship, the Admiralty jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against--

(a) that ship, if at the Time when the action is brought it is beneficially owned as respects majority shares therein by that person; or

(b) Any other ship which, at the Time when the action is brought, is beneficially owned as aforesaid."

7. Perusal of the aforesaid provisions reflects that Admiralty Jurisdiction has been conferred on this Court in terms of s.3 of the Ordinance which provides for various claims as mentioned from clauses

(a) to (r) and clause (l) which is relevant for the present purposes deals with claims in respect of necessaries supplied to a ship, whereas, the mode of exercise of such jurisdiction has been provided in Section 4(4), which states that in case of any such claim as is mentioned in Clauses (e) to (h) and (j) to (q) of Subsection (2) of Section 3, a claim arising in connection with a Ship where the person who would be liable on the claim in an action in *personam* was, when cause of action arose, the owner or Charterer of, or in possession or in control of the ship, the admiralty jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in *rem* against that ship, if at the Time when the action is brought it is beneficially owned as respects majority shares therein by that person; or any other ship which, at the Time when the action is brought, is beneficially owned as aforesaid. Learned Counsel for the owners in addition to certain other cases has also relied upon the judgment of the Hon'ble Supreme Court in the case of **V.N. Lakhani & Co., (Supra)**. That case originated from the order of a learned Single Judge of this Court reported as **Messrs V.N. Lakhani & Co. v. the Ship Lakatoi Express (1994 CLC 1498)**, wherein, the claim of the Plaintiff against the Defendants including a sister-ship of the offending ship was dismissed on the ground that the Plaintiff had failed to show that when the action was brought, the ship was beneficially owned by shipper as respects majority of shares in the ship in question as the Defendant having entered into slot Charter agreement with the shipper, no beneficial interest was conferred on him in the ship in question. The said judgment of the learned Single Judge went into Appeal and the order was upheld on 09.03.1994 in an Admiralty Appeal No.01/1994. The Appellant being further aggrieved, approached the Hon'ble Supreme Court wherein the Hon'ble Supreme Court (though while refusing leave to appeal) has interpreted the question of invoking the Admiralty Jurisdiction against a sister-ship in a case where the offending ship is under a Charter Party Agreement. The relevant finding of the Hon'ble Supreme Court is contained in Para Nos.4, 5 & 8, which reads as under:-

"4. The relevant facts for attracting the jurisdiction of the Court **in the present case are that the ship which originally carried the goods was owned by Merzario who were the Time Charterer of respondent No.1. The petitioner had filed suit for arrest of respondent No.1 and not the original Vessel, claiming it to be a sister-ship of the Vessel "Commandante Revello"** as both were owned by Merzario. If this would have been the situation, there would have been no difficulty to entertain the suit under the Ordinance and to pass order for arrest but from the evidence, it transpired that Merzario were the owners of "Commandante Revello", **but**

so far respondent No.I is concerned, they were only Time Charters. In these circumstances, the question arose whether under subsection (4) quoted above, the Court could exercise jurisdiction in rem against respondent No.I. In applying section 4(4) one has to take into consideration the existing facts at the Time when cause of action arose in connection with the offending ship. In order to invoke the jurisdiction, the plaintiff has to establish that:

- (1) The claim falls in any of the clauses as mentioned in clauses (e) to (h) and (j) to (q) of subsection (2) of section 3 and arises in connection with a ship.
- (2) when the cause of action for action in personam arose.
- (3) The person liable in an action in personam at the Time when such; cause of action arose, was the owner or Charterer of or in possession or in control of the offending ship.
- (4) The offending ship or any other ship which is sought to be arrested, at the Time action is brought is beneficially owned as respects majority shares by the person liable on the claim in an action in personam.

5. The key words in the provision are 'beneficially owned as respects majority shares'. The person liable for the claim in an action in personam should beneficially own majority shares. It is on compliance with this condition that action in rem for arrest of a sister Vessel can be filed. Lord Denning in *I Congreso del Partido* (1981) 1 All England Law Reports 1092 at 1099, while considering the effect of section 3(4)(b) of Administration of Justice Act, 1956 of Britain, which is similar to section 4(4) of the Ordinance, with a difference so far the beneficial ownership as respect of the shares is concerned, as would be pointed out later, observed as follows:--

"In applying section 3(4)(b) you have first to consider the position at the Time when the cause of action arose in connection with the offending ship. You have then to discover a person who would be 'liable on the claim in an action in personam'. Having discovered him, you have to consider the position at the Time when the action is brought. You have then to inquire whether that person at that Time beneficially owned any other ship (a sister-ship) besides the offending ship. If there is such a person, you can invoke the Admiralty jurisdiction of the High Court against that sister-ship."

8. In our view the learned Judges have taken correct view by excluding the Charterer, be it Time Charterer or Charterer by demise, from the category of persons who beneficially own majority shares in the ship sought to be arrested. The pre-condition for invoking jurisdiction under section 4(4)(a)(b) is that the person who would be liable on the claim in an action in personam was, when the cause of action arose, should beneficially own majority shares in the ship only then sister-ship can be arrested. If we take the view that the words "beneficially owned" may include even a demise Charterer then words "as respects majority shares" will be completely redundant. The ownership of majority shares may be beneficial or legal is a condition precedent for invoking the jurisdiction. It is a well-settled principle of interpretation of statute that each and every word of a statute has to be given its meaning and no part of a statute can be treated as redundant or surplus. It, therefore, seems clear that the legislature intended to give an effective meaning to the words "as respects majority shares" which can only be attributed to the owners. The petition is dismissed."

8. From perusal of the aforesaid observations it reflects that the Hon'ble Supreme Court has come to a definite conclusion that a Charter, be it a *Time Charter* or *Charter by Demise*, is excluded from the category of persons who beneficially own majority shares in *the ship* sought to be arrested and the precondition in invoking jurisdiction under Section 4(4)(a)(b) *ibid* is that the person, who would be liable for a claim in an action in *personam* or when the cause of action arose, should beneficially own majority shares in *the ship*, only then a sister-ship can be arrested. The gist of the above finding is that first and foremost, the person

against whom the claim is being lodged must be an owner of the offending ship, and once such a condition is fulfilled, only then an order for arrest of *the ship* (*offending ship*) or a *sister-ship* can be made. However, when the facts of the reported case are examined, they are somewhat different from the facts germane in the instant matter. In that case the shipment was effected on a Vessel called "*Commandante Revello*" owned by *Merzario* (in short) for which a bill of lading was issued which restricted transshipment of goods. However, notwithstanding this restriction, goods were transshipped on Vessel "*Lakatoi Express*" belonging to M/s Artemis Lines S.A. This Vessel i.e. "*Lakatoi Express*" was on a Time Charter with "*Merzario*". The Admiralty Suit was filed against "*Lakatoi Express*" and its owners as well as local shipping agent and the same was resisted by the Defendants on the ground that the Suit *in rem* was not maintainable against "*Lakatoi Express*" as it was under a Time Charter to "*Merzario*" when it arrived at Karachi Port, and was not owned beneficially by it; hence, the claim against its actual owners for satisfying the claim in personam against "*Merzario*", or for that matter against the offending Vessel, "*Commandante Revello*" cannot be maintained. The Hon'ble Supreme Court while upholding the view of the learned Single Judge and the learned Division Bench then came to the aforesaid conclusion.

9. In the instant matter the situation is somewhat different inasmuch as the Vessel in question is in fact *the ship* or the *offending ship*; and can be arrested if the other conditions for exercise of the Admiralty jurisdiction are fulfilled; however, admittedly, it is not owned by the Charterer and at least when this Suit was filed and the action in question has been brought before this Court, the Charter Party Agreement had expired or for that matter terminated as contended. In short the relationship between the Vessel and its owner with the Charterer had come to an end. Here, though the legal principle enunciated by the Hon'ble Supreme Court would apply, but for that the facts must also be kept in mind. The Plaintiffs claim is against the Charterer for supply of bunkers and according to it since the Vessel in question had received the supply and even consumed, therefore, the Vessel and as a consequence thereof, the owners as well are liable in *personam*; hence the Vessel can be ordered to arrested.

10. Learned Counsel for the owners has also relied upon two other judgments from our jurisdiction. The first one is **Atlantic Steamers Supply Company (Supra)**. This one has also been relied upon in support of the proposition that a *claim in respect of supply of necessaries to a ship* as mentioned in s. 3(2) (l) of the Ordinance does not fall within a maritime lien. It has also been relied for the proposition that an action under ss. 3 and 4 of the Ordinance can only be brought before this Court when the Vessel when the cause has been initiated was beneficially owned as respects the majority shares. This in fact has been referred to in addition to the case of **Lakatoi Express (Supra)** as already discussed in detail hereinabove.

11. The third case relied upon is the case of **Naseem Oils (Supra)**. In this case the facts were identical to the facts of the present case in that the Plaintiff had supplied bunkers to the Vessel and payment was not made. The Suit was filed and Vessel was arrested; however, the owners came before the Court and argued that the Vessel, when bunkers were supplied, was on a Time Charter with the Charterers, whereas the supplies were made pursuant to an order placed by the Charterer and not the owner; hence, the claim against the Vessel or owners *in rem* was not maintainable. A learned Single Judge of this Court while agreeing with the arguments of the owners and the Vessel was pleased to hold as under;

7. From the perusal of plaint it appears that plaintiff has shown the Vessel as defendant No.1, owner of the Vessel as defendant No.2, "Time Charter" as defendant No.3 and fuel agent as defendant No.4. No doubt it is an admitted position that Bunkers were supplied to defendant No.1 Vessel at the request of defendant No.4 and the same were acknowledged by the master of the Vessel and as per plaintiff's claim payment for such Bunkers were not made by the defendants Nos.3 and 4. Along with the counter affidavit the defendants Nos.1 and 2 have filed a certificate of MALTA REGISTRY showing the ownership of defendant No.1 by defendant No.2 as also copy of "Charter Party" dated 9-11-2010 between the owners of the ship and defendant No.3....

9. In view of above settled legal position it can safely be concluded that in the present case subject Bunkers were supplied by the plaintiff to the Charterer at the request of defendant No.4. It is also apparent that Bunkers were not supplied at the request of the owner of the Vessel the defendant No.2. It is an admitted position that defendants Nos.3 and 4 were not the owners of the Vessel. Under the terms of "Charter Party" the Charterer was under obligation to make payment of the subject Bunkers to the Plaintiff and not defendants Nos.1 and 2. As pointed out above that defendant No.1 Vessel was owned by defendant No.2 as is evident from the perusal of certificate of MALTA REGISTRY which shows that defendant No.1 is solely owned by Defendant No. 2. It is also an admitted position that plaintiff had the knowledge that the ship was on "Time Charter" with defendant No.3. The Plaintiff has also failed to make out any case in personam against the owner of Vessel i.e. defendant No.2, the claim in rem against

defendant No.1 Vessel could not be maintained in the circumstances of the case. Accordingly no case against defendants Nos.1 and 2 is made out. The application under disposal is liable to be dismissed. Consequently the application in hand is hereby dismissed and the order dated 19-11-2011 is hereby recalled.

12. Insofar as the present case is concerned, firstly, it needs to be appreciated that the only correspondence which has been placed on record and heavily relied upon on behalf of the Plaintiff in support of this argument that the owners were in loop and in knowledge of the bunker supplies; is one email dated 18.5.2016 purportedly issued by a representative of the owners to the purported bunker supplier of the Plaintiff (as Plaintiff itself never supplied the same admittedly) wherein, the bunker supplier has been informed that they are acting as managers of the Vessel in question and they need guidance regarding the bunkering Port and the schedule as well as the draft restrictions of the Port in question. However, when this email is examined in some detail, it also reflects that at the same Time the bunker supplier of the Plaintiff was categorically informed that the Vessel in question was under a *Time Charter*. Secondly, this communication does not find mention of the Plaintiff in loop in any manner so as to even suggest that the bunker supplier referred to in this email was making such supplies for and on behalf of the Plaintiff, and therefore, any reliance on such correspondence between owners and the bunker supplier cannot be made basis by treating the same as a liability in respect of any payment for such supplies. It is settled law that any admission must be categorical and should be undertaken in a clear and express manner. Moreover, there is nothing in the said correspondence as to the value, quantity, or any other details in respect of the bunkers being supplied to the Vessel. It is also important to note that the Vessel in question was admittedly on a Time Charter which is distinguishable from a Demise Charter. The Demise Charter has certain unique characteristics as it provides the transfer of full possession and control of the Vessel for the period covered by the contract. In such Charters the Charterer obtains the right to run the Vessel and carry whatever cargo he chooses, whereas, the ship is manned and supplied by the Charterer as well. For most purposes, the Charterer in demise, is treated as an owner and termed *pro hac vice*. On the other hand, a Time Charter is a contract to use a Vessel for a particular period of Time and the Charterer obtains the right to direct the movement of the Vessel during the Chartering period. In

these circumstances, it is always of pivotal importance to first see as to the type and nature of a Charter vis-à-vis. the liability of the owners and Charterers to third parties and to each other. In Time Charter, the captain or the master is although appointed by the owners; but remains under the orders and directions of the Charterer as regards employment and agency. The ship is the owner's ship, and the master and the crew his servants for all details of navigation and care of the Vessel; but for all matters relating to the receipt of and delivery of cargo and those earnings of the Vessel which flow into the pockets of the Charterers, the master and the crew are servants of the Charterer¹.

13. After having considered this distinction in the present facts and circumstances of the case, it needs to be appreciated that the bunker delivery note very clearly and specifically mentions that the supply of bunkers by the bunker supplier is on "*Charterers Account*". This is an admitted document and placed on record by the Plaintiff itself. Admittedly nothing has been placed on record so as to suggest that at any point of Time; the plaintiff ever approached the owners of the Vessel before entering into any contract for supply of the bunkers. Nothing has been placed or even pleaded as to whether any consent of the owners of the Vessel was ever sought for making supplies of bunkers and the liability of any payment on the part of the owners in case of any default. These are crucial elements insofar as the Plaintiffs case as against the owners is concerned. On the other hand, the owners have placed on record the Time Charter Agreement which clearly provides that bunkers supply and its liability is on account of the Charterer and not the owners.

14. Learned Counsel for the Plaintiff has all along made an attempt that since the Vessel was arrested and thereafter released on furnishing a guarantee by the owners; therefore, the listed application must be disposed of by confirming the ad-interim orders of arrest and Plaintiff be allowed to lead evidence at the trial of the Suit. Though ordinarily, such contention may have had its merits; but insofar as the exercise of the Admiralty Jurisdiction is concerned, the Court, first has to, at least see that the Plaintiff has an arguable case as against the owners of the Vessel, and only then order for

¹ Clyde Commercial Ltd. v. United States Company (The Santon), 152 Fed.516(S.D.N.Y.1907)

arrest can be confirmed till final decision of the case. This argument when examined in the light of the material placed on record appears to be misconceived and untenable. The Court, as stated, has to first and foremost examine the case as set up in the plaint by the Plaintiff under the Admiralty law, that whether it falls within such jurisdiction or not. And for that, the Plaintiff has to assist and discharge such burden with its pleadings and the supporting material already placed before the Court with its plaint. This question of jurisdiction, must, in my view, be decided with reference to the nature of plaintiff's claim / action brought in Court. The Court has to, and is in fact duty bounden to examine the issue of its jurisdiction failing which the defendant would be unnecessarily burdened with an oppressive / vexatious claim, merely for the reason that an ad-interim order for arrest has already been passed and necessary security (rightly or wrongly) has been obtained for its release. This is not that simple as contended by the Plaintiff's Counsel. It may also be noted that ordinarily in Admiralty cases, it is not a correct approach to say that every case is to be posted for or sent for trial and parties shall lead evidence. These cases have their own peculiarity as against the ordinary civil cases of recovery of money. The Court in such cases, at the very outset and initial stage, must look into this aspect by examining the documents brought on record by the parties (specially the Plaintiff) and must decide the issue of its very jurisdiction to be assumed under the Admiralty Law and must not leave (barring exceptions) the question of jurisdiction to be decided at the trial of the case, as is ordinarily done by the Court. This jurisdiction being special in nature confers very wide powers of arrest of a Vessel on mere assertions of the Plaintiff, and therefore, must be exercised with caution and restraint, failing which it might burden a party unnecessarily. As noted above, the Plaintiff has to first make out a case in personam against the owners of the Vessel, and if so, then the Vessel or any other sister ship of such party or the owner can be arrested. In this case the Charterers have failed to enter appearance and it is only the owners who are before the Court seeking release of the security furnished by them in lieu of the orders of arrest. Therefore, if apparently no prima facie arguable case is made out so as to sustain the entire lis at the trial against the owners; then the Court must look into the material placed before it and can always

pass an order for dismissal of the arrest application and as a consequence thereof discharge the surety as well.

15. The case of Queen's Bench Division (Admiralty Court) reported as ***THE "YUTA BONDAROVSKAYA"*** [1998] Vol.2 Lloyds Law Reports 357 is a case having identical facts to the present issue before this Court. In that case also a bunker supply was made to the Vessel whilst it was under a Time Charter and default was committed by the Charterer, where-after, an action for the arrest of the Vessel was initiated and after an order of arrest, an application was filed by the owners of the Vessel seeking discharge and or setting aside of the arrest orders. The Court speaking through Justice Clarke after a threadbare examination of various precedents repelled the contention of the Plaintiff that the acceptance of bunkers by the master makes the owners liable for payments and that the correspondence exchanged between the bunker supplier and the owners amounts to an implied consent as to the supply of bunkers and its payment thereof. Briefly the stated facts of this case were that at the material Time the Vessel was demise Chartered by owners to one Scanarctic by virtue of which it was to operate the Vessel and to pay all the costs of doing so which included employing the master and crew and providing any bunkers which it needed in order to run the Vessel. Subsequently, by a Time Charter, Scanarctic Chartered the Vessel to EMEL which provided that EMEL had to provide and pay for the bunkers and there was nothing on record before the Court which could suggest that EMEL had any express authority to buy bunkers on behalf of Scanarctic. When EMEL defaulted in payment for bunkers supplied the plaintiff contended that they were entitled to proceed by way of action *in rem* against the Vessel because Scanarctic was the person who would be liable on the claim in an action *in personam*. The Court in this case considered in detail the aspect of an implied actual authority as well as apparent or ostensible authority and came to the conclusion that in a Time Charter (until otherwise provided and that too with consent of the owner), there cannot be any conferment of authority to buy bunkers on the account of the owners merely for the reason that the ship is being managed by the master and crew of owners. The Court observed that it is the responsibility of the Time Charterer under a Charter to provide and pay for bunkers if the Charterer wishes to use the Vessel for its own

purposes; and that the idea that an owner who Time Chartered his Vessel to a Time Charterer was authorizing the Time Charterer to contract on his behalf, was contrary both to the express terms and to the underlying basis of a Time Charter, as under the standard forms of Time Charter the owner was not expressly agreeing to pay for the bunkers; and the suggestion that there was any implied authority or that it was within the usual authority of a Time Charterer to buy bunkers on behalf of owners was not arguable. The Court even went on to hold that in the given facts not only the order of arrest was to be set-aside, but the entire case was too held to be non-maintainable in terms of Order 14A of the R.S.C. (Rules of Supreme Court). The relevant findings of the Court in this matter are contained at Pg:362, 364 & 365 of the judgment and reads as under;

It is the responsibility of the Time Charterer under a Time Charter to provide and pay for bunkers if the Time Charterer wishes to use the Vessel for his own purposes. If the officious bystander were asked whether the Time Charterer was to buy bunkers at the owner's expense he would say of course not.

Far from being necessary to make the contract work, or to give business efficacy to it, the idea that an owner who Timer Charters his Vessel to a Time Charterer is authorizing the Time Charterer to contract on his behalf, is contrary both to the express terms and to the underlying basis of a Time Charter. Under the standard forms of Time Charter-party the owner is expressly not agreeing to pay for the bunkers. Yet the effect of the plaintiff's argument is to the contrary, namely, that he is authorizing the Time Charterer to contract on his behalf and thus making himself directly liable to pay the supplier for bunkers.

At pg: 364 it has been further observed as follows;

It is plain on the evidence that the bunker suppliers do their utmost to contract on terms which bind the ship. However, it does not seem to me to follow that Time Charterers cannot obtain bunkers except on such terms. To take a simple example, a Time Charterer could give the supplier security or pay in advance.

And while concluding at pg: 365 it was observed that

In these circumstances I have reached the conclusion that it is not arguable that EMEL had Scanarctic's authority to make bunker contracts on its behalf. Whether implied actual authority, apparent or ostensible authority, or any other kind of authority. The plaintiffs claim was bound to fail and the Vessel should be released from arrest.

16. In Indian jurisdiction the same dicta is being followed. In the case reported as ***M.V.Kiveli v Monjasa DMCC and Others*** 2018 (5) ALT 73 (Manu/HY/0089/2018) a learned Judge of the Hyderabad High Court has been pleased to hold that in view of the fact that the bunker delivery note clearly states that the supply is on account of the Charterer and notwithstanding its receiving by the Master of the Vessel would not hold the owners or the Vessel liable for any default in payment of such supply by the Charterer, and prima facie there is no liability of the owner in such a case and if at all there is any liability, it would be that of the Charterer. Similar view has been expressed by a learned Judge of the Bombay High Court in the case reported as ***Gulf Petrochem Energy Private Limited v M.T. Valor*** (Manu/MH/0624/2015) wherein identical facts were involved.

17. The dicta laid down in the aforesaid cases fully applies to the facts of the case before me inasmuch as the Plaintiff here has not been able to show or substantiate that the Time Charterer had any sort of authority to contract on behalf of the owners or the Vessel; and secondly, even otherwise to safeguard its interest, knowingly that its claim against the Vessel and owner would fail, had obtained sufficient security in the shape of postdated cheques, and is at full liberty to seek its encashment, and if not, then any other appropriate remedy as may be available for it in accordance with the applicable laws. The Plaintiff under no circumstances can be permitted to take undue advantage under the Admiralty jurisdiction of this Court by arrest of the Vessel and then compelling and dragging the owners to pay the amount being claimed when no case for a claim in *personam* has been arguably made out.

18. Accordingly in view of hereinabove facts and circumstances of this case and the discussion made the listed application does not merit consideration and is liable to be dismissed and it is so ordered. The Nazir of this Court is directed to release / discharge the surety furnished by Defendants No.1 to 4 pursuant to orders passed on 15.11.2017.

Dated: **29.08.2019**

J U D G E