



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Volume 05 | Number 06

(February 07, 2022)

**ANGRE PORT PRIVATE LTD. Vs. TAG 15 (IMO. 9705550) & ANR.
COMMERCIAL ADMIRALTY SUIT(L) NO. 4 OF 2020
DATE OF BOMBAY HIGH COURT JUDGMENT: 03rd JANUARY 2022**

Facts of the Case: -

This Appeal was filed to seek a summary judgment against Tag Offshore Ltd. (Defendant) whose vessel had been occupying berth space in the port of Angre Port Private Ltd (Plaintiff), wherein the basic premise states that the Defendants had admitted the dues of the Plaintiff.

The brief facts of the case are that the vessel of the Defendant had entered and occupied berth space in the Plaintiff's Port. The Plaintiff charged the Defendant berthing charges as per its Tariff Booklet. However, Exim Bank, a secured creditor of Tag Offshore Ltd invoked the admiralty jurisdiction of the Court by filing Commercial Admiralty Suit against the Defendant's Vessel and obtained an order of arrest.

Accordingly, the said Vessel continued under arrest and started to incur berthing charges and port dues, in addition to other dues and charges, as the same had been occupying the berth at the Plaintiff's port. Thenceforth, insolvency proceedings were initiated against the Defendant by R.H. Petroleum Ltd. under section 9 of the IBC, 2016, which resulted in severe unrest amongst the crew on board the vessel since neither EXIM Bank nor the IRP took any measures to provide supplies, stores, bunker etc. to the said vessel or its crew resulting in the crew to abandon the said vessel.

Thereafter the NCLT ordered the CoC to secure the assets of Defendant and take possession of the vessel, if necessary, and proceed in terms of Sections 51 and 52 of the Merchant Shipping Act, 1958 and also directed the CoC to explore the liquidation option and move the Vessel to a safer place without creating problems for the Port Trust. Finally, the NCLT ordered the liquidation of the Defendant resulting in the present appeal as the invoices of the Plaintiff remained unpaid.

High Court's Observations: -

The Court, therefore, directed sale of the vessel wherein the Court also opened the bids received from the prospective buyers in presence of Liquidator and the other stakeholders of the said Vessel/ CoC of



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Defendant. After considering the point of view of the advocates for the Defendants and EXIM Bank, the Court confirmed the sale of the vessel in favour of J. T. Marine Services Pvt Ltd, for a consideration of Rs. 10.75 crores whereby Liquidator as well as EXIM Bank stated that they had no objection if the vessel was sold to the highest bidder.

The Court stated that under the provisions of the IBC, 2016, admittedly, Liquidator would have no jurisdiction to adjudicate any claim against the vessel. Apart from this, Liquidator accepted berth hire charges as well as penal berth hire charges. Once having accepted that the amounts are payable to the Plaintiff, Liquidator may not argue that the Plaintiff is not entitled to any penal berth hire charges as it would be a penalty which will be required to be proved.

Hence, a decree in favour of the Plaintiff was awarded. Out of the sale proceeds of the vessel a sum of approx. Rs. 5.51 crores will be paid to the Plaintiff. Further an interest of 18% per annum will be payable on the above sum from 18th December 2020 till payment and/or realization. The claim towards Salvage operations shall not be granted and will have to be proved at the trial of the suit. The Plaintiff, along with their claim for Salvage operations, shall also be entitled to agitate their claim for interest and legal costs, at the trial of the suit.

Order: -

The High Court in view of the above disposed of the Interim Application in the aforesaid terms.

Case Review: - Appeal Disposed Of.