

A M/S NKD MARITIME LIMITED

v.

THE BOARD OF TRUSTEES OF THE PORT
OF MUMBAI & ORS.

B (Civil Appeal No. 6858 of 2022)
SEPTEMBER 22, 2022

[INDIRA BANERJEE AND J.K. MAHESHWARI, JJ.]

- Major Port Trusts Act, 1963 – ss.48-50 – Notification – Anchorage fees – Calculation of – Appellant purchased a Vessel in an auction conducted in a Commercial Admiralty Suit – Bill of Sale stated that the Vessel was sold free from all encumbrances however, the successful bidder would be liable to pay the costs, charges, fees and expenses involved in removing the Vessel – When the appellant was going to remove the Vessel, disputes arose inter alia w.r.t anchorage charges claimed by respondent no.1 – Application filed by appellant seeking directions to raise revised bills – Allowed by Single Bench – Order set aside by Division Bench – On appeal, held: As per notification issued by Tariff Authority for Major Port, the anchorage fees is calculated as per the formula depending on the period of stay of the Vessel at the harbour – Rates vary depending on the duration for which the Vessel remains at the anchorage – In the present case, more than 30 days had elapsed since the Vessel had been brought to the anchorage – At the time of sale, the Vessel was paying anchorage fees at the rate applicable when a vessel is docked for more than 30 days – Appellant purchased the Vessel on ‘as is, where is’ basis free from encumbrances, anchorage charges have been levied from the date of the sale – Rates were payable on the basis of the number of days for which the Vessel was docked – Division Bench rightly set aside the order of Single Bench – Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 – s.8.*
- G *Major Port Trusts Act, 1963 – s.50-B – Appellant purchased a Vessel in an auction – Bill of Sale inter alia stated that the Vessel was sold free from all encumbrances – Disputes arose w.r.t anchorage charges claimed by Respondent No.1-Port Trust – It charged approx. Rs.15,00,000/- per day on the basis that the Vessel had been docked at the anchorage for more than 30 days which would be approx.*
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Rs.5,00,000/- per day if the vessel were to be docked for less than 30 days – Plea of appellant that that anchorage charges fall within the ‘port dues’ u/s.50-B, port dues not having been defined in the Act, all charges payable within the premises of the Port fall within the broad expression ‘port dues’ – Held : Whether port dues within the meaning of s.50-B of the Major Port Trust Act include other charges leviable within the port premises i.e., charges other than Port Entry charges, is not in issue in this case – The issue was whether the rate would be approximately Rs.5,00,000/- per day or Rs.15,00,000/- per day. A

Dismissing the appeal, the Court C

HELD: In exercise of powers under Sections 48, 49 and 50 of the Major Port Trusts Act, 1963, the Tariff Authority for Major Port (TAMP) issued a notification notifying the scales of rate for major ports. Clause 2.15 of this notification provides a schedule of anchorage fees. As per the said Clause, the anchorage fees is calculated as per the formula depending on the period of stay of the Vessel at the harbour. The rates vary depending on the duration for which the Vessel remains at the anchorage, herein anchorage points V-1 and Y. The rate of anchorage for a foreign going vessel is USD \$ 0.0047 GRT (Gross Registered Tonnage) per hour or any part thereof from the first day on wards till the 30th day. If the Vessel is docked at the anchorage for over 30 days, the applicable rate beyond the 30th day is USD \$ 0.0118. In this case, the vessel was at V-1 anchorage with effect from 13th June 2020. It is not in dispute that more than 30 days had elapsed since the Vessel had been brought to the anchorage. At the time of sale, the Vessel was paying anchorage fees at the rate applicable when a vessel is docked for more than 30 days. As held by the Division Bench, it is far-fetched to suggest that prior anchorage was of the Vessel under sale and the rate that it attracts as a result of such prior anchorage are in the nature of encumbrances for the purposes of anchorage fees to be applied after the date of Bill of Sale and till the Vessel sells at the instance of the purchaser. As held by the Division Bench, NKD purchased the Vessel on ‘as is, where is’ basis free from encumbrances in the instant case, anchorage charges have been levied from the date of the sale. The rates were payable on the basis of the number of days for G

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- A which the Vessel was docked. Under Section 50-B, when a Vessel enters a port but does not discharge or take in any cargo or passengers, she is charged with port dues at a rate to be determined by the Authority, which, in any event, should not exceed half the rate with which she otherwise would be chargeable. Whether port dues within the meaning of Section 50-B of the Major Port Trust Act include other charges leviable within the port premises, i.e., charges other than Port Entry charges is not in issue in this case as held by the Division Bench. The issue was whether the rate would be approximately Rs.5,00,000/- per day or Rs.15,00,000/- per day. The Division Bench rightly allowed the appeal and set aside the order of the Single Bench. [Paras 13, 14, 23-25][290-E-H; 291-A; 294-C-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6858 of 2022.

- From the Judgment and Order dated 12.02.2021 of the High Court D of Judicature at Bombay in Cross Objection (L) No. 2057 of 2021 in Commercial Appeal (L) No. 1577 of 2021 in Interim Application No. 6531 of 2020 in Sheriff's Report No. 53 of 2020 in Commercial Admiralty Suit (L) No. 3579 of 2020.

- Siddharth Bhatnagar, Sr. Adv., Prathamesh Kamat, Akash Kakade, E Vikrant Shetty, Gurdeepsingh Sachar, Somanatha padhan, Swetab Kumar, Ms. Pracheta Kar, Ms. Sukhada Kakade, Aditya Sidhra, Nadeem Afroz, Advs. for the Appellant.

Jayant Bhushan, Sr. Adv., A. V. Rangam, Buddy A. Ranganadhan, Ms. Aditi Sharma, Advs. for the Respondents.

- F The Judgment of the Court was delivered by
INDIRA BANERJEE, J.
 - 1. Leave granted.
 - 2. This appeal is against a judgment and order dated 12th February G 2021 passed by the Commercial Appeal Division of the Bombay High Court (Division Bench) allowing Commercial Appeal (L) No. 1557 of 2021 filed by the Respondent No.1, hereinafter referred to as the "Port Trust" and setting aside an interim order dated 6th January 2021 passed by the Commercial Division (Single Bench) of the same High Court

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disposing of Interim Application No. 6531 of 2020 filed by the Appellant A
M/s NKD Maritime Limited, hereinafter referred to as “NKD”.

3. The Vessel M.V. Karnika, hereinafter referred to as the “Vessel” was owned by Jalesh Cruises Mauritius Limited, hereinafter referred to as “Jalesh” and had been sailing under the flag of the Bahamas.

4. At the request of Jalesh, Glander International Bunkering DMCC, hereinafter referred to as “Glander”, had supplied bunkers to the Vessel. The charges for the bunkers supplied by Glander to the Vessel were not paid. B

5. On 24th September, 2020, Glander filed an Admiralty Suit being Commercial Admiralty (L) Suit No. 3579 of 2020 against the owners and parties interested in the Vessel for recovery of USD \$2,213,320, being the charges for the bunkers along with accrued interest before the Commercial Division of the Bombay High Court. C

6. By an order dated 7th October 2020, the Commercial Division of the High Court directed the Sheriff of Mumbai to sell the Vessel through public auction by issuing newspaper advertisements. D

7. Pursuant to auction notices published in newspapers on 28th October 2020, on the directions of the High Court, 13 bidders including NKD submitted their bids. NKD’s bid of Rs.11.65 million was the highest and the same was accordingly accepted. E

8. On or about 7th November 2020, NKD paid the purchase price for the Vessel after which a Bill of Sale was drawn in favour of NKD on 9th November 2020 by the Prothonotary and Senior Master of the High Court. The Bill of Sale clearly states that the Vessel was sold free from all encumbrances. On 11th November 2020, delivery of the Vessel was given to NKD. F

9. The Vessel had initially arrived at the Port of Mumbai on 23rd March 2020. When NKD was going to remove the Vessel, the Respondent No.1 raised bills in respect of Anchorage charges and Respondent No.4 raised bills in respect of Light Dues Charges. G

10. It is the case of NKD that NKD has purchased the Vessel in an auction conducted through Sheriff Report No. 53 of 2020 in Commercial Admiralty Suit (L) No. 3579 of 2020 for the purpose of demolition of the Vessel. The terms and conditions of sale are set out in the order of the High Court, dated 28th October 2020 on Sheriff Report H

- A No. 53 of 2020 in Commercial Admiralty Suit (L) No. 3579 of 2020 are, *inter alia*, set out hereinbelow for convenience :-
- “10. *Needless to clarify that the sale of the defendant vessel having confirmed in favour of M/s. NKD Maritime Limited, it shall be handed over to the said M/s. NKD Maritime Limited, free from all encumbrances. This, of course is subject to the entire sale consideration being received by the office of the Sheriff of Mumbai within the stipulated time as mentioned earlier.*”
- B 11. It is not in dispute that the Bill of Sale also mentions that the bill was being sold free of all encumbrances. However, the successful bidder would be liable to pay the costs, charges, fees and expenses of any kind involved in removing the Vessel. According to NKD, the Respondent No.4, i.e., the Customs Authorities raised a bill on NKD levying Light Dues Charges for the period from 23rd March 2020, i.e., the time when the Vessel arrived at Mumbai Port till the date of its removal.
- C 12. NKD contends that physical delivery of the Vessel was made over to the Appellant on 11th November 2020. General Light Dues charges were payable on and from 11th November 2020. NKD also disputed its liability to pay Anchorage Charges as claimed by the Respondent No.1, hereinafter referred to as the “Port Trust”.
- D 13. In exercise of powers under Sections 48, 49 and 50 of the Major Port Trusts Act, 1963, hereinafter referred to as Port Trusts Act, the Tariff Authority for Major Port, hereinafter referred to as the “TAMP” issued a notification notifying the scales of rate for major ports. Clause 2.15 of this notification provides a schedule of anchorage fees.
- E 14. As per Clause 2.15 of the notification, issued by the TAMP, the anchorage fees is calculated as per the formula depending on the period of stay of the Vessel at the harbour. The rates vary depending on the duration for which the Vessel remains at the anchorage, herein anchorage points V-1 and Y. The rate of anchorage for a foreign going vessel is USD \$ 0.0047 GRT (Gross Registered Tonnage) per hour or any part thereof from the first day on wards till the 30th day. If the Vessel is docked at the anchorage for over 30 days, the applicable rate beyond the 30th day is USD \$ 0.0118. In this case, the vessel was at V-1 anchorage with effect from 13th June 2020. It is not in dispute that more than 30 days had elapsed since the Vessel had been brought to the
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anchorage. At the time of sale, the Vessel was paying anchorage fees at A the rate applicable when a vessel is docked for more than 30 days.

15. Disputes arose between NKD and the Port Trust with regard to the anchorage charges claimed by the Port Trust. The Port Trust charged approximately Rs.15,00,000/- per day on the basis that the Vessel had been docked at the anchorage for more than 30 days. If the vessel were to be docked for less than 30 days, the anchorage charges would be approximately Rs.5,00,000/- per day. B

16. NKD filed an application in Commercial Admiralty Suit (L) No. 3579 of 2020 in the Commercial Division of the High Court seeking directions on the Customs Authorities and the Mumbai Port Trust to raise revised bills, levying Light Dues Charges and/or Anchorage Charges from the date on which physical possession of the vessel was made over to NKD, i.e., 11th November 2020. C

17. The main thrust of the arguments of NKD is based on the terms and conditions of the Sale of the Vessel which is set out hereinbelow for convenience : D

“5. The above Vessel M.V. Kamika (IMG No.8521220) is being sold on as is where is, what is there basis, free and clear of all existing liens encumbrances and claims and no Purchasers) shall be to raise any objection in respect of or on account of any damage thereto or defect therein. All the costs, charges, fees and expenses of any kind of nature involved in removing M.A. Karnika (IMO No.8521220) from her present position will be solely to the account of the successful purchaser. The successful bidder should take over the safety of the Vessel M/V. Karnika (IMO No.8521220) within 24 hours of being declared the highest/successful bidder and payment of the entire sale consideration to be made in this Hon'ble Court.

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10. The sale is subject to the sanction of the Hon'ble High Court of Judicature at Bombay. G

11. The offerer(s) or bidder(s) whose offer or bid will be accepted by the Hon'ble High Court. Bombay (hereinafter referred to as “The purchaser”) shall give an undertaking in the form annexed hereto and complete the purchase according to these conditions and shall also pay the purchase price in H

- A *accordance with Term No.8 hereinabove, otherwise, the said vessel shall be again put up for sale and re-sold and Earnest Money Deposit of Rs.2,00,00,000/- (Rupees Two Crores only) or equivalent US Dollars and any amount paid towards purchase price shall be forfeited and the defaulting purchases, shall be liable for any deficiency upon such resale together with costs, charges and expenses attending the resale, but shall not be entitled to the benefit of any increase in the purchase money on such resale. The Purchaser(s) shall also subscribe his/their address including e-mail & fax to the said Undertaking at the foot of these conditions. All communications shall be deemed to have been served, upon such communication being sent to the Purchaser(s) by e-mail and/or fax and/or post or upon such communication left for the Purchaser(s) at such address, unless such Purchaser(s) is/are to the knowledge of the Sheriff of Mumbai represented by an Advocate or Advocates, in which case service on such Advocate or Advocates shall be deemed to be sufficient.*
- B *12. Upon payment of the full purchase money in the manner aforesaid, and on the sale being sanctioned by the Hon'ble High Court of Judicature at Bombay, the Purchaser(s) shall take immediate steps to take possession of the vessel purchased by him/them. The Purchaser(s) shall at his/their expense take such steps as may be necessary for the purpose of obtaining possession thereof and the Sheriff of Mumbai shall not be responsible in that behalf.*
- C *xxx xxx xxx*
- D *14. The Purchaser(s) shall take delivery of the said vessel forthwith after making payment of the full purchase price of the vessel and with the sanction of the sale by the Hon'ble High Court of Judicature at Bombay. The said vessel shall remain at the risk and expense of such purchaser(s) from the date of sanction of sale by the Hon'ble High Court of Judicature at Bombay in respect of the said vessel.*
- E *xxx xxx xxx*
- F *16. The Purchaser(s) shall submit to the Sheriff of Mumbai for approval a draft of the Certificate of Sale of the vessel immediately from the date of confirmation of the file and the*
- G *xxx xxx xxx*
- H *xxx xxx xxx*

same will be approved by and on behalf of the Sheriff of Mumbai and will be forwarded to the Admiralty Registrar / Prothonotary and Senior Master High Court, Bombay for issuance of the same. The costs of certificate of sale to be issued by the Hon'ble High Court including stamp duty, registration charges etc. Payable in respect thereof shall be borne and paid by the Purchaser(s). A

17. All charges, dues including Port dues, tariffs, taxes etc. in respect of the vessel shall be borne and paid by the Purchaser(s) from the date of the sanction of the sale by the Hon'ble High Court of Judicature at Bombay." B

18. By an order dated 6th January 2021, the Commercial Division of the High Court (Single Bench) allowed the application filed by the NKD. C

19. While the Port Trust filed Commercial Appeal (L) No. 1577 of 2021 against the order of the Commercial Division, NKD filed a Cross Objection (L) Nos. 2057 of 2021 in the Commercial Appeal. D

20. Mr. Siddharth Bhatnagar, learned senior counsel appearing on behalf of the Appellant referred to the terms and conditions of sale of the Vessel and argued that the Vessel had been sold free from all encumbrances. Mr. Bhatnagar also referred to Section 8 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 which reads E as under :-

“8. Vesting of rights on sale of vessels— On the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel.” F

21. Mr. Bhatnagar argued that the Vessel having been sold on “as is, where is” basis, free from all encumbrances, any liability in respect of Anchorage Charges or Light Dues Charges which accrued prior to the date of sale would have to be met by the erstwhile owners of the Vessel and/or met by the Prothonotary and Senior Master of the High Court from out of the sale proceeds of the Vessel lying with him. Such charges cannot be foisted upon NKD. G

22. Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the Respondents agreed that the Vessel had been sold on “as is, where is” basis, free from all encumbrances. Mr. Bhushan submits H

- A that no pre-sale liabilities in respect of the Vessel have been foisted on NKD. Referring to the terms and conditions of sale and in particular, the condition that all charges dues including Port dues, tariffs, taxes, etc. in respect of the vessel, Mr. Jayant Bhushan submits, that it would be borne and paid by the purchaser from the date of sanction of the sale by the High Court. In this case, Mr. Bhushan argued, NKD had only been charged anchorage charges from the date of sanction of the sale till the date of removal of the vessel from the anchorage.

23. In our view, the Division Bench rightly held that the argument was without merit. As held by the Division Bench, it is far-fetched to suggest that prior anchorage was of the Vessel under sale and the rate

- C that it attracts as a result of such prior anchorage are in the nature of encumbrances for the purposes of anchorage fees to be applied after the date of Bill of Sale and till the Vessel sells at the instance of the purchaser. As held by the Division Bench, NKD purchased the Vessel on ‘as is, where is’ basis free from encumbrances in the instant case, anchorage
- D charges have been levied from the date of the sale. The rates were payable on the basis of the number of days for which the Vessel was docked. NKD, in its cross objection, contended that anchorage charges fall within the expression ‘port dues’ under Section 50-B of the Port Trusts Act. Under Section 50-B, when a Vessel enters a port but does not discharge or take in any cargo or passengers, she is charged with
- E port dues at a rate to be determined by the Authority, which, in any event, should not exceed half the rate with which she otherwise would be chargeable. It is submitted that the Port Trust could not have charged more than half the rate under the Scale of Rates for anchorage charges.

24. Mr. Bhatnagar submits that port dues not having been defined
- F in the Major Port Trust Act, all charges payable within the premises of the Port fall within the broad expression ‘port dues’. Whether port dues within the meaning of Section 50-B of the Major Port Trust Act include other charges leviable within the port premises, i.e., charges other than Port Entry charges is not in issue in this case as held by the Division Bench. The issue was whether the rate would be approximately Rs.5,00,000/- per day or Rs.15,00,000/- per day.

25. In our view, the Division Bench rightly allowed the appeal and set aside the order of the Single Bench. The appeal is, therefore, dismissed.