

Glander International Bunkering Dmcc. vs Altus Exertus (Imo. 7909463) on 18 February, 2019

Author: C.L. Soni

Bench: C.L. Soni

C/AS/49/2018

IA ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019

In R/ADMIRALITY SUIT NO. 49 of 2018

With

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019

In R/ADMIRALITY SUIT NO. 50 of 2018

With

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019

In R/ADMIRALITY SUIT NO. 52 of 2018

With

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019

In R/ADMIRALITY SUIT NO. 51 of 2018

With

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019

In R/ADMIRALITY SUIT NO. 54 of 2018

With

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019

In R/ADMIRALITY SUIT NO. 2 of 2019

With

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019

In R/ADMIRALITY SUIT NO. 53 of 2018

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M V ALTUS EXERTUS (IMO 7909463) THROUGH CASH BUYER OPES
SHIPPING LIMITED

Versus

GLANDER INTERNATIONAL BUNKERING DMCC.

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Appearance:

MR YN RAVANI for the APPLICANTS(s) No.

MR MANAV A MEHTA for the RESPONDENT(s) No.

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CORAM: HONOURABLE MR.JUSTICE C.L. SONI

Date : 18/02/2019

ORAL ORDER

1. In Civil Application No.1 of 2019 in Admiralty Suit No.2 of 2019, the prayer made is to treat the suit as not maintainable in admiralty jurisdiction of this Court and to dismiss the suit as not maintainable. In all other Civil Applications, the prayers made are to set aside / recall the order of arrest of vessel M V Altus Exertus (to C/AS/49/2018 IA ORDER be referred as defendant vessel), to recall the order dated 21.12.2018, whereby the Court allowed release of the defendant vessel against deposit of foreign remittance, and to dismiss the suits as not maintainable in admiralty jurisdiction or in the alternative, to recall the order of deposit of foreign remittance directing to refund the amount to OPES Shipping Ltd.

2. The first order for arrest of the defendant vessel was made by the Court in Admiralty Suit No.49 of 2018 on 07.12.2018.

3. In all the applications, the defendant vessel is shown as applicant through OPES Shipping Ltd. Subsequently, the owner of the defendant vessel was allowed to be joined / transposed as applicant no.2 in all the applications. The OPES Shipping Ltd (to be referred as 'the OPES') claims to be the cash buyer of the defendant vessel. It is averred in the applications that the defendant vessel is owned by Altus sub-Sea II AS which executed Bareboat charter party on 30.11.2014 with Marine Engineering Diving Services FZC (referred as 'MEDS'); that the defendant vessel is diving support vessel and its utility is to provide a platform to the divers for carrying on activities of repairing, inspection and maintenance of sub-Sea structures; that since defaults were made by the MEDS, the charter agreement was terminated on 12.12.2018, however, before terminating the charter agreement, the owner of the defendant vessel entered in to Memorandum of Agreement (MOU) with the OPES on 20.11.2018 for sale of the defendant vessel, pursuant to which the OPES deposited 20% amount of the price of the vessel with the owner and on 28.11.2018, it registered a mortgage on the defendant vessel for deposit of 20% amount and is thus interested party in the defendant vessel.

4. There are eight admiralty suits filed against the defendant Vessel. Admiralty Suit No.49 of 2018, Admiralty Suit No.50 of 2018 C/AS/49/2018 IA ORDER and Admiralty Suit No.52 of 2018 involve the claims for supply of bunkers to the defendant Vessel. Admiralty Suit No.51 of 2018 involves claim for wages of saturation diving supervisors. Admiralty Suit No.54 of 2018 involves claim for wages of saturation divers and Air diver. Admiralty Suit No.2 of 2019 involves claim for wages of saturation divers. Admiralty Suit No.5 of 2019 involves similarly claim for wages. Admiralty Suit No.53 of 2018 involves the claim for supply of provisions and equipments to the defendant Vessel.

5. It is stated before the Court that the OPES has deposited different amounts as security against the claims made in the suits and against two caveats filed in Admiralty Suit No.54 of 2018 for release of the defendant vessel. Since, learned advocates appearing for the plaintiffs and the caveators stated before the Court that by deposit of different amounts, full security against all the claims in the suits as also against the claims of the caveators has been provided, the Court made order dated 23.01.2019 for release of the defendant Vessel.

6. For the sake of convenience, the first six applications shall stand divided in two groups. The first group shall comprise of Civil Application No.1 of 2019 in Admiralty Suit No.49 of 2018, Civil Application No.1 of 2019 in Admiralty Suit No.50 of 2018 and Civil Application No.1 of 2019 in

Admiralty Suit No.52 of 2018 and shall be referred as 'bunker group', as the claims in the above suits are for supply of bunker to the defendant vessel. The second group shall comprise of Civil Application No.1 of 2019 in Admiralty Suit No.51 of 2018, Civil Application No.1 of 2019 in Admiralty Suit No.54 of 2018 and Civil Application No.1 of 2019 in Admiralty Suit No.2 of 2019 and shall be referred as 'divers group', as the claims in the above suits are for wages by saturation diving supervisors, the saturation divers and the air divers. The last application being Civil Application No.1 of 2019 in Admiralty Suit No.53 of 2018 shall be separately C/AS/49/2018 IA ORDER referred.

7. In 'bunker group', the following questions are raised in the applications for consideration by the Court. The first two questions raised are common in all such applications and third is additional question raised in the application filed in Admiralty Suit No.49 of 2018.

a). Whether maritime claim for supply of bunker to Bareboat charterer can be enforced after termination of charter party agreement against vessel owned by third party in admiralty jurisdiction?

b). Whether the suit of the plaintiff is contrary to law settled by various decisions of Hon`ble Supreme Court and lastly in the case of Sunil B. Naik Vs. Geowave Commander, reported in (2018) 5 SSC 505?

c). Whether claim of bunker filed by the plaintiff by suppressing material fact regarding receipt of such amount in proceeding at Dubai Court from Bareboat charterer disentitled the plaintiff to get any relief ?

8. In 'divers group', the following questions are raised in the applications for consideration by the Court.

a). Whether the divers employed by Bareboat charterer for its commercial activities of providing divers services by utilizing vessel as diving platform can be considered as crew members of ship? Whether such divers employed by charterer provide any services to ship entitling them create maritime lien?

C/AS/49/2018

IA ORDER

b). Whether, in view of agreement between divers and

Bareboat charterer to submit to the exclusive jurisdiction of UAE Court in personam, whether the present suit is barred due to exclusion of jurisdiction by agreement of parties?

c). Whether the suits filed by divers having their claim against Bareboat charterer are barred by law of limitation under section 9(2) of The Admiralty (Jurisdiction and

Settlement of Maritime Claims) Act, 2017?

d). Whether the suit of the plaintiff is contrary to law settled by various decisions of Hon`ble Supreme Court and lastly in the case of Sunil B. Naik Vs. Geowave Commander, reported in (2018) 5 SSC 505?

9. In the last application filed in Admiralty suit No.53 of 2018, the following questions are raised for consideration of the Court.

a). Whether the ship M V Altus Uber and M V Altus Exertus can be treated as sister ships in spite of the fact that both the ships were always belonging to different owners?

b). Whether the ship m V Altus Exertus can be arrested for receipt of provisions on vessel M V Altus Uber in spite of different ownership merely on the ground that both were under operation once with a common Bareboat charterer?

c). Whether the suit of the plaintiff is contrary to law settled by various decisions of Hon`ble Supreme Court and lastly in the case of Sunil B. Naik Vs. Geowave Commander, reported in (2018) 5 SSC 505?

C/AS/49/2018

IA ORDER

SUBMISSIONS:

10. Learned advocate Mr. M C Bhatt appearing with learned advocate Mr. Y N Ravani for the applicants submitted that there is a difference between Bareboat charterer and demise charterer and for the liability incurred by the Bareboat charterer, since the owner of the Vessel is not responsible, the defendant Vessel could not be subjected to order of arrest in admiralty jurisdiction. Mr. Bhatt submitted that for the claim against the Bareboat charterer, the plaintiffs got the defendant Vessel wrongfully arrested and the OPES, who is the buyer of the defendant Vessel, was forced to deposit huge amount of about Rs.8 crore as security for release of the defendant Vessel. Mr. Bhatt submitted that the phrase "demise charterer" is not defined in the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (` the Act`). Mr. Bhatt submitted that none of the plaintiffs has made averments in the plaint of the suit that charter agreement with the MEDS is a demise charter. Drawing the analogy from the definitions of 'Bareboat charter' and 'Bareboat charter-cum-demise' in Section 115 V of the Income Tax Act, 1961, Mr. Bhatt submitted that the legislature has long before distinctly defined the Bareboat charter in the Income Tax Act and being well aware about the difference and distinction

between the Bareboat charter and the demise charter has consciously provided for arrest of vessel only on liability of demise charterer and not of Bareboat charterer in Section 5(1) (b) of the Act. Mr. Bhatt submitted that the defendant vessel was handed over to the MEDS by the owner under Bareboat charter for fix period of three years with no right as beneficial owner and since such charter party is terminated, the owner of the defendant vessel cannot be fasten with the liability of the Bareboat charterer and for such liability, the suits could not be maintained against the defendant Vessel.

C/AS/49/2018 IA ORDER

11. Learned advocate Mr. Bhatt submitted that all dealings for supply of bunkers were done with the Bareboat charterer - the MEDS. Mr. Bhatt submitted that the MEDS placed the purchase orders and received the bunkers and the plaintiffs raised the invoices against the MEDS and therefore there is no liability of the owner of the defendant Vessel towards the claims of the plaintiffs.

Mr. Bhatt submitted that the MEDS has deliberately not appeared in the suits just to help out the plaintiffs to shift the burden on the applicants to pay for supply of the bunkers. Mr. Bhatt submitted that for the purpose of exercising of admiralty jurisdiction, the Act recognizes only statutory maritime lien and the supply of bunkers cannot be considered as maritime lien as it does not fall within the definition of maritime lien. Mr. Bhatt submitted that since the claims in the suits for the supply of the bunkers do not satisfy the requirement of Clause (a) to (d) of Section 5(1) of the Act and cannot be considered as maritime lien, the arrest of the vessel at the instance of the plaintiffs was wrongful and consequently, the suits involving claim for supply of bunker are required to be dismissed as not maintainable in admiralty jurisdiction.

12. Learned advocate Mr. Bhatt submitted that the saturation diving supervisor and the divers, since accepted all conditions of employment with Bareboat charterer, are presumed to know about the liability of the Bareboat charterer and therefore they could not raise maritime claim against the defendant Vessel for their wages not paid by the Bareboat charterer. Mr. Bhatt submitted that there is no averment in the suits of the divers group that the MEDS is demise charterer; and therefore for their claims under the terms of the agreement with the MEDS when the owner of the defendant vessel is not liable, their suits in the admiralty jurisdiction are not maintainable. Mr. Bhatt submitted that the defendant vessel is diving support vessel which provides only platform to the divers to C/AS/49/2018 IA ORDER serve the other structures in the sea and saturation diving supervisors, divers and air divers were engaged by the MEDS for specific job to provide services to other structures in sub-sea by using the platform of the defendant diving Vessel and therefore, they could not be considered as crew or as the members of the vessels' complements so as to maintain their claims as maritime lien against the defendant vessel under Section 4(1)(o) read with Section 9(1)(a) of the Act. Mr. Bhatt submitted that the agreements of the divers with the MEDS clearly provide for exclusion of jurisdiction of all other Courts except UAE Court in relation to breach of the agreements and therefore this Court has no jurisdiction to decide on the claims made in the suits. Mr. Bhatt submitted that the Act makes Civil Procedure Code applicable to all the admiralty

proceedings before this Court and after arrest of the vessel, the suits shall stand governed by the provisions of CPC. Mr. Bhatt submitted that since the averments in the complaints of the suits do not disclose cause of action to proceed against the defendant vessel in admiralty jurisdiction, the complaints of the suits are liable to be rejected as per the provisions of Order VII Rule 11 of the Civil Procedure Code, 1908 ('CPC'). Mr. Bhatt submitted that in any case, the suits must fail for mis-joinder of parties and for mis-joinder of causes of actions under O.I R.10 and O.II R.3 respectively as more than one plaintiff have joined in the suits though they have individual/separate contracts with MEDS for their different transactions.

13. In connection with Admiralty Suit No.49 of 2018, learned advocate Mr. Bhatt additionally submitted that the suit is required to be outrightly dismissed on falsehood and on material suppression of the facts made by the plaintiff. Mr. Bhatt submitted that the plaintiff suppressed vital fact of initiation of proceedings on dishonored cheques given by MEDS for recovery of the amounts claimed in the suit. Mr. Bhatt submitted that it is only after the C/AS/49/2018 IA ORDER present applications are filed alleging suppressing of material facts by the plaintiff, the plaintiff for the first time disclosed in its reply that it filed proceeding in Dubai Court for recovery of the amounts claimed in the suit and admitted that it received USD\$ 233443.28 from the said proceeding. Mr. Bhatt submitted that by suppressing such vital fact and on falsehood, the plaintiff filed suit with frivolous claims of legal cost of the proceeding taken in Dubai Court, of compensation and interest, which are not available in admiralty jurisdiction and got the defendant vessel wrongfully arrested. Mr. Bhatt submitted that the compensation claimed in the suit is nothing better than the claim for breach of ordinary contract for supply of goods, in respect of which the suit in the admiralty jurisdiction is not maintainable. Mr. Bhatt submitted that the entire suit of the plaintiff is speculative as it lacks in basic particulars/details for making different claims in the suit. Mr. Bhatt submitted that even otherwise, the plaintiff has already received more amount than the amount claimed in the suit for supply of the bunkers through the proceedings initiated before the Dubai Court, and therefore the suit of the plaintiff is now required to be dismissed and the excess amount deposited by the applicants against the claim in the suit is required to be refunded to the applicants. Mr. Bhatt submitted that since the plaintiff accepted the cheques from the MEDS for supply of the bunkers and initiated proceeding to recover the amounts of cheques, there occurred novatio of contract and cause on the original contract did not survive and since the plaintiff pursued remedy on dishonored cheques before Dubai Court, it also waived its rights to proceed against the owner of the defendant Vessel and therefore also the suit is required to be dismissed.

14. In connection with the Civil Application filed in Admiralty Suit no.53 of 2018, learned advocate Mr. Bhatt submitted that going with the averments in the complaint of the above suit, the plaintiff has no C/AS/49/2018 IA ORDER maritime claim against the defendant vessel but the suit is filed for the claim against another vessel named M V Altus Uber by treating the defendant vessel as its sister vessel/ Ship. Mr. Bhatt submitted that the defendant is not the sister vessel of the vessel M V Altus Uber and cannot be considered as such, as the registered owners of both the vessels are different. Mr. Bhatt submitted that the applicants have placed on record documents showing ownership of both the vessels, whereas the plaintiff has relied only on xerox copy of the photographs of the defendant vessel, which cannot be considered as legal document for the ownership of vessel. Mr. Bhatt submitted that when the defendant vessel is not the sister vessel of M V Altus Uber, the

plaintiff cannot maintain the suit against the defendant vessel, for its claim against the M V Altus Uber, in admiralty jurisdiction of this Court and therefore, the suit is required to be dismissed as not maintainable against the defendant Vessel. Mr. Bhatt submitted that even as per the case of the plaintiff, the Vessel M V Altus Uber is already under arrest by virtue of the order made by the Bombay High Court and therefore also, the plaintiff is not entitled to maintain its suit against the defendant Vessel.

15. Learned advocates Mr. Manav Mehta and Ms. Paurami Sheth appearing for the plaintiffs respectively in `bunkers group` applications submitted that demise charter is popularly known as Bareboat charter and there is no difference between the two. They submitted that the terms of charter agreement placed with the application satisfy all characteristics of demise charter and named as Bareboat charter to the knowledge of the owner of the defendant vessel and now to shirk from the liability to pay for supply of the bunker, it is sought to be contented that both are different, though there is no difference between them. They submitted that for the purpose of deciding any question on maritime claim against any vessel, reference to any definition in any other Act including the definitions of Bareboat charter and the Bareboat charter-cum-

C/AS/49/2018 IA ORDER demise given in Section 115V of the Income Tax Act is not permissible. They submitted that the plaintiffs supplied bunkers to the defendant vessel which were duly received by the Chief Engineer of the defendant vessel and in their suits, the plaintiffs have made clear averments about the liability of the owner of the defendant vessel as also of the Bareboat charterer for their claim against the defendant vessel for supply of bunker to it. They submitted that under the Act, the claim for supply of the bunker to the vessel is recognized as a maritime claim and, therefore, the suits of the plaintiffs for their maritime claims against the defendant vessel are maintainable in admiralty jurisdiction of this Court. They submitted that as the bunker were supplied to the defendant vessel, the owner of the vessel will remain bound by the terms and conditions attached with the contract for supply of bunker and as provided in the terms and conditions for supply of the bunkers, contractual maritime lien was created on the vessel to satisfy the claim of the plaintiffs for supply of the bunkers to the vessel. They submitted that even if their claims are not considered to be maritime lien and considered as maritime claims, the owner of the vessel and the charterer both are liable for their maritime claims and therefore the arrest of the vessel was permissible under Section 5(1) of the Act and it could not be said that the plaintiffs got the defendant vessel wrongfully arrested. They submitted that once the bunkers were accepted by the Chief Engineer of the vessel, the owner of the vessel could not be absolved from liability for the claim for supply of the bunker to the defendant vessel on the ground that the Bareboat charter was only for three years up to December, 2017 and terminated on 12.12.2018. They submitted that written statements are not filed in the suits and therefore, it is not open to the applicants to deny the liability for the maritime claims made in the suits. They submitted that when the plaintiffs have made clear averments as regards supply and receipt of the bunkers on the vessel and as regards the liability of the charterer and the owner of C/AS/49/2018 IA ORDER the vessel to satisfy the claim for supply of the bunkers to the vessel, the suits cannot be held as not maintainable in admiralty jurisdiction of this Court and plaints of the suits could not be rejected under O. VII R. 11 of the CPC.

16. In connection with the Civil Applications filed in Admiralty Suit No.49 of 2018, learned advocate Mr. Manav Mehta additionally submitted that till the plaintiff filed the suit in admiralty jurisdiction of this Court, the plaintiffs did not receive any amount towards its claim for supply of bunkers and the plaintiff could know about the deposit of amount of cheques in Dubai Court, when it actually received the amount, it immediately disclosed in the present proceeding the fact about the receipt of the amount in connection with the criminal proceedings pending before the Dubai Court and sought permission of this Court to reduce the claim to the extent it received the amount from the Dubai Court and, therefore, there was no question of suppressing any material fact from this Court. Mr. Mehta submitted that the issues raised as to the entitlement for compensation, interest and the legal cost are the matters of trial in the suit and the suit could be dismissed as not maintainable on such issues. Against the contention of learned advocate Mr. Bhatt on novatio, learned advocate Mr. Mehta submitted that the principles of novatio will apply only when the parties by their agreement bring new contract but in connection with the original contract, if some action is taken, the original contract does not cease to operate. Mr. Mehta submitted that it was in connection with the original contract, the plaintiffs were given cheques and when such cheques were dishonored, it was open to the plaintiff to avail of permissible remedy as available in law which could neither be construed as novatio nor waiver of the rights by the plaintiff to raise claim against defendant vessel in admiralty jurisdiction.

17. In connection with 'divers group', applications, learned senior C/AS/49/2018 IA ORDER advocate Mr. Vinod Kumar appearing with learned advocate Mr. Dhaval Vyas for plaintiffs in Admiralty Suit No.54 of 2018 submitted that the claim in the suit is for wages in respect of employment of the plaintiffs on defendant vessel which is maritime lien. Mr. Kumar submitted that the defendant vessel is special purpose vessel fitted with diving equipments and its use could be made only with the help of saturation divers' supervisor and divers and they cannot be considered independent and separate from crew but they are part of crew on the vessel. Mr. Kumar explained in detail the nature of the work being done by the saturation supervisor and diver while in employment on the vessel.

18. Referring to the seafarers agreement for employment with the plaintiffs, learned senior advocate Mr. Kumar submitted that in the agreement, the plaintiffs are referred as `crew` and as provided therein they were to serve as divers on board of the defendant vessel in compliance with the standards laid down in STCW Code / IMCA guidelines. Mr. Kumar submitted that as per the standards prescribed in STCW Code, the diving supervisors as also the divers are not only required to have minimum qualification as prescribed but they have to undergo required training to perform their duties on the special purpose vessel meant to be used for diving services. Mr. Kumar submitted that since the presence of diving supervisor and the divers is indispensable for the diving support vessel to perform its function as such, their services on board of vessel is in complement with other members of the crew to accomplish the purpose for which the diving support vessel is put to use, and they are thus the members of the vessel`s complement. Mr. Kumar referred dictionary meaning of the word 'complement' to press for his submissions. Mr. Kumar submitted that there is no difference between the Bareboat charter and the demise charter and once the claim is in connection with the employment on the vessel, the owner is liable with the charterer to satisfy the claim for wages. Mr. Kumar C/AS/49/2018 IA ORDER submitted that when the claim of each plaintiff for

wages is maritime claim against the defendant vessel, there is no question of applying the principles of mis joinder of causes of action, as it would run contrary to the scheme of the Act.

19. Mr.Kumar submitted that since the claim for wages in connection with employment on vessel is maritime lien against the vessel, the limitation of two years would be available for lien to continue and therefore, the claim of the plaintiffs is within limitation prescribed in section 9(2) of the Act. Mr. Kumar submitted that the averments in the plaint of the suit as regards the employment of the plaintiffs on defendant vessel and about the liability of the owner and the charterer are not denied by filing written statement and once the plaintiffs have made out prima facie and arguable case of maritime lien against the defendant vessel, even though it may appear to be difficult, the trial must go on and the suit could not be dismissed as not maintainable in admiralty jurisdiction of this Court. As regards the contention of exclusion of jurisdiction by agreement, Mr. Kumar submitted that now since maritime law is statutorily recognized statutory recognition and maritime claim is subject to admiralty jurisdiction being exercised in rem by arrest of the vessel, the agreement between the parties will not exclude or take the admiralty jurisdiction for maritime claim against the vessel. Mr. Kumar submitted that since the maritime lien remains attached to the vessel where ever it goes, the agreement between the parties does not affect the admiralty jurisdiction for deciding the maritime claim against the vessel.

20. Learned advocate Mr.Dhaval Vyas appearing for the plaintiffs in Admiralty Suit No.51 of 2019 stated that he would adopt the arguments made by learned Senior Counsel Mr. Kumar and further submitted that the charter party is between the MEDS and the owner of the defendant vessel and it will not defeat the claim of the C/AS/49/2018 IA ORDER plaintiffs as it is maritime lien against the vessel recognized under the Act. He submitted that the charterer has deliberately avoided appearing before the Court as the charterer is hand in glove with the owner of the vessel. He submitted that the issues of mis-joinder of parties or mis-joinder of causes of actions are not material issues on the jurisdiction of the Court. He submitted that all the plaintiffs have common cause for their maritime claims against the defendant vessel and the suit is filed in admiralty jurisdiction of this Court and therefore, it cannot be dismissed in reference to either O.II R.3 or O.I R.10 of CPC.

21. In connection with the applications filed in Admiralty Suit No.2 of 2019, learned advocate Ms. Nair submitted that though time duration of three years is stated in the charter party, however, in notice for termination of such agreement, it is clearly mentioned that the charter party has come to be amended from time to time and thus, the charter party continued till the arrest of the vessel was made. She submitted that the prayers made in the applications are in the nature of the prayers for rejection of the plaint under Order VII Rule 11 of the CPC and, therefore, only the averments in the plaint as also the documents produced with the plaint could be considered and if so considered, it could well be said that the plaintiffs have maritime lien against the defendant vessel and this Court has admiralty jurisdiction for the suit claim and, therefore, the suit could not be held as not maintainable in admiralty jurisdiction. She submitted that by agreement of the parties i.e., between the MEDS and the plaintiffs to submit to the jurisdiction of UAE Court, the statutory jurisdiction for the maritime claim of the plaintiff before this Court under the Act could not be excluded. She submitted that in any case, owner is not the party to the agreement and the plaintiffs' claim is in respect of employment on the vessel and, therefore also by agreement between the MEDS and the

plaintiffs, the admiralty jurisdiction of this Court to decide on the C/AS/49/2018 IA ORDER claim involved in the suit could not be excluded. She submitted that the right of the plaintiffs to recover the wages for the employment on the vessel is right in rem against the defendant vessel and such right could not be defeated by any private agreement. He submitted that the averments made in the complaints of suits are not controverted by filing written statement and since the plaintiffs have made out triable issues, the suit of the plaintiffs is required to be put to trial and cannot be dismissed as not maintainable. Learned advocate Ms. Nair states that she adopts all other arguments made by learned Senior Counsel Mr. Kumar and Mr. Vyas.

22. Learned advocate Mr. Nitin Mehta who also appears for the plaintiffs in Admiralty Suit No.2 of 2019 submitted that in Income Tax Act, the phrase 'demise charter' is not defined and it does not appear that the legislature has considered Bareboat charter differently from demise charter. He submitted that the admiralty jurisdiction has its own peculiarity and the statement of reasons and the preamble of the Act are clear guide to understand the scheme of the Act, and the definitions of bareboat charter and bareboat charter-cum-demise in Income Tax Act are not required to be borrowed to understand the scheme of the Act for admiralty action on maritime claim against the vessel. Mr. Nitin Mehta submitted that sub-section (2) and (3) of section 4 of the Act clearly suggest about the wide powers available to this Court in admiralty jurisdiction and such powers could not be curtailed by referring to the provisions of Order II Rule 3 of the CPC or Order I Rule 10 of the CPC. He submitted that if a claim could be maintained against the vessel as maritime claim under the Act, the suit filed in admiralty jurisdiction for such claim cannot be held as not maintainable or rejected on the principles of mis-joinder of parties or mis-joinder of causes of action.

23. In connection with the Civil Application filed in Admiralty Suit No.53 of 2018, learned advocate Mr. Prashant Kamat appearing with C/AS/49/2018 IA ORDER learned advocate Ms. Sheth for the plaintiff submitted that as averred in the plaint and as per the documents placed with the plaint, the plaintiffs supplied various provisions and the equipments to the vessel MV Altus Uber and the suit is filed against the defendant vessel, as it is sister vessel / ship of the vessel M V Altus Uber. Mr. Kamat submitted that the vessel MV Altus Uber and the defendant vessel both are owned by MEDS and, therefore, the suit against the defendant vessel is maintainable for maritime claim of the plaintiff against vessel MS Altus Uber. It is alternatively submitted that assuming that MEDS is a bareboat / demise charterer of MV Altus Uber, the plaintiff would still remain entitled to arrest of the diving vessel under Section 5(1)(b) of the Act as it is also the demise charterer of the defendant vessel. Mr. Kamat submitted that the Bombay High Court in the Admiralty Suit against the owner of MV Altus Uber has prima facie found that MEDS is the owner of MV Altus Uber as well as of the defendant vessel and on such prima facie finding recorded by the Bombay High Court, the MV Altus Uber was ordered to be arrested. Mr. Kamat submitted that once the plaintiff has made out prima facie case that it has maritime claim against M V Altus Uber and that the defendant vessel is the sister vessel / ship of the vessel MV Altus Uber, the suit could not be dismissed as not maintainable against the defendant vessel. Mr. Kamat also tendered written submissions.

24. The Court, having heard learned advocates, finds that the maritime law or law concerning maritime claims acquired judicial recognition by various judicial pronouncements in India before it was statutorily recognized by the Act, which has come in to force on and from 1st April 2018.

25. The peculiarity in admiralty jurisdiction is that for maritime claims, the proceeding is allowed to commence against the ship as an action in rem. The guiding principles for admiralty action are laid C/AS/49/2018 IA ORDER down in the case of M.V. Elisabeth and others V. Harwan Investments and others, reported in 1993 Supp(2) SCC 433. Para-45, 46, 54, 55, 56, 58, 82, 92 thereof read as under:

"45. Admiralty Law confers upon the claimant a right in rem to proceed against the ship or cargo as distinguished from a right in personam to proceed against the owner. The arrest of the ship is regarded as a mere procedure to obtain security to satisfy judgment. A successful plaintiff in 1039 an action in rem has a right to recover damages against the property of the defendant. "The liability of the shipowner is not limited to the value of the res primarily proceeded against ... An action though originally commenced in rem, becomes a personal action against a defendant upon appearance, and he becomes liable for the full amount of a judgment unless protected by the statutory provisions for the limitation of liability". (Roscoe's Admiralty Practice, 5th ed. p.29)

46. The foundation of an action in rem, which is a peculiarity of the Anglo-American law, arises from a maritime lien or claim imposing a personal liability upon the owner of the vessel. A defendant in an admiralty action in personam is liable for the full amount of the plaintiff's established claim. Likewise, a defendant acknowledging service in an action in rem is liable to be saddled with full liability even when the amount of the judgment exceeds the value of the res or of the bail provided. An action in rem lies in the English High Court in respect of matters regulated by the Supreme Court Act, 1981, and in relation to a number of claims the jurisdiction can be invoked not only against the offending ship in question but also against a `sistership' i.e., a ship in the same beneficial ownership as the ship in regard C/AS/49/2018 IA ORDER to which the claim arose.

"The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner...." (Per Justice Story, The United States v. The Big Malek Adhel)

54. A personal action may be brought against the defendant if he is either present in the country or submits to jurisdiction. If the foreign owner of an arrested ship appears before the court and deposits security as bail for the release of his ship against which proceedings in rem have been instituted, he submits himself to jurisdiction.

55. An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The ship is for this purpose treated as a person. Such an action may constitute an inducement to the owner to submit to the jurisdiction of the court, thereby making himself liable to be proceeded against by the plaintiff in personam. It

is, however, imperative in an action in rem that the ship should be within jurisdiction at the time the proceedings are started. A decree of the court in such an action binds not merely the parties to the writ but everybody in the world who might dispute the plaintiff's claim.

56. It is by means of an action in rem that the arrest of a particular ship is secured by the plaintiff. He does not sue the owner directly and by name; but the owner or anyone interested in the proceedings may appear and defend. The writ is issued to "owners and parties interested in the property proceeded against." The proceedings can be started in England or in the United States in respect of a C/AS/49/2018 IA ORDER maritime lien, and in England in respect of a statutory right in rem. A maritime lien is a privileged claim against the ship or a right to a part of the property in the ship, and it "travels" with the ship. Because the ship has to "pay for the wrong it has done", it can be compelled to do so by a forced sale. [See *Bold Buccleugh, (The)*]. In addition to maritime liens, a ship is liable to be arrested in England in enforcement of statutory rights in rem Supreme Court Act, 1981. If the owner does not submit to the jurisdiction and appear before the court to put in bail and release the ship, it is liable to be condemned and sold to satisfy the claims against her. If, however, the owner submits to jurisdiction and obtains the release of the ship by depositing security, he becomes personally liable to be proceeded against in personam in execution of the judgment if the amount decreed exceeds the amount of the bail. The arrest of the foreign ship by means of an action in rem is thus a means of assuming jurisdiction by the competent court.

58. The real purpose of arrest in both the English and the Civil Law systems is to obtain security as a guarantee for satisfaction of the decree, although arrest in England is the basis of assumption of jurisdiction, unless the owner has submitted to jurisdiction. In any event, once the arrest is made and the owner has entered appearance, the proceedings continue in personam. All actions in the civil law - whether maritime or not - are in personam, and arrest of a vessel is permitted even in respect of non-maritime claims, and the vessel is treated as any other property of the owner, and its very presence within jurisdiction is sufficient to clothe the competent tribunal with jurisdiction over the owner in C/AS/49/2018 IA ORDER respect of any claim. [See *D.C.Jackson, Enforcement of Maritime Claims, (1985) Appendix 5*]. Admiralty actions in England, on the other hand, whether in rem or in personam, are confined to well defined maritime liens or claims and directed against the res (ship, cargo and freight) which is the subject-matter of the dispute or any other ship in the same beneficial ownership as the res in question.

82. The admiralty jurisdiction of the High Court is dependent on the presence of the foreign ship in Indian waters and founded on the arrest of that ship. This jurisdiction can be assumed by the concerned High Court, whether or not the defendant resides or carries on business, or the cause of action arose wholly or in part, within the local limits of its jurisdiction. Once a foreign ship is arrested within the local limits of the

jurisdiction of the High Court, and the owner of the ship has entered appearance and furnished security to the satisfaction of the High Court for the release of the ship, the proceedings continue as a personal action.

92. Once a foreign ship is arrested in Indian waters by an order of the High Court, in exercise of the admiralty jurisdiction vested in it by statute, or inherent in it as a court of record, in respect of any maritime claim against its owner, wherever the cause of action may have arisen, and whether or not the ship is subsequently released by the owner furnishing security, proceeding must continue against the owner as in any other suit. The arrest of the vessel while in Indian waters by an order of the concerned High Court, as defined under the C/AS/49/2018 IA ORDER Merchant shipping act, 1958 [Section 3(15)] attracts the jurisdiction of the competent court to proceed with the trial, as in the case of any other suit, as an action against the owner, and any decree obtained by the plaintiff is executable against any property of the owner available within jurisdiction, including the security furnished by him for release of the vessel."

26. Now the maritime claims are identified and the exercise of admiralty jurisdiction on maritime claims against the vessel is statutorily permitted by the Act. Section 2(f) of the Act defines 'maritime claim', which means a claim referred to in section 4. Section 2(g) defines 'maritime lien', which means a maritime claim against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of Section 9, which shall continue to exist under sub-section (2) of Section 9. Section 3 provides for exercise of admiralty jurisdiction by the High Court subject to provisions of Section 4 and 5 over the territorial waters in the jurisdiction of the respective High Courts.

27. Section 4 has the heading 'Maritime claim'. Sub-section 1 thereof provides that High Court may exercise jurisdiction to hear and determine any question on maritime claim, against any vessel arising out of any of the disputes or claims as referred therein. Clauses (l), (o) and (w) of sub-section (1) of section 4, which are relevant to decide on the claims of the plaintiffs, read as under:

Clause (l):

goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable.

C/AS/49/2018

IA ORDER

Clause (o):

claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable

as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958 (44 of 1958).

Clause (w):

maritime lien.

Sub-section 2, 3 and 4 of section 4 provides that the High Court may, while exercising jurisdiction under sub-section (1), settle any account outstanding and unsettled between the parties in relation to a vessel and to direct that the vessel be sold or any share thereof be sold or to make any further order as it thinks fit and after making order for sale of the vessel, to hear and determine any question arising as to the title to the proceeds of the sale and also to order for holding the vessel arrested as security or any proceeds of the vessel of sale thereof to hold as security against any claim pending final outcome of the admiralty proceeding.

28. Section 5 provides for powers of the High Court to order arrest of any vessel in rem. It reads as under:

"5.(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of C/AS/49/2018 IA ORDER providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that-

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or

(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1):

Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause

(a) of sub-section (1) of section 4."

29. Sub-section 2 of Section 5 provides for jurisdiction of the High Court to order arrest of any other vessel for the purpose of providing security against the maritime claim, in lieu of vessel against which the maritime claim has been made under the Act, subject to the C/AS/49/2018 IA ORDER provisions of sub-section 1.

30. Section 9 provides for inter-se priority on maritime lien and Section 12 provides that the provisions of CPC shall apply in all proceedings before the High Court so far as they are not inconsistent with or contrary to the provisions of the Act.

31. In the context of prayers made in the applications, the first and foremost argument of learned advocate Mr. Bhatt is that there is a difference between Bareboat charter and demise charter and arrest of vessel is not permissible for liability of Bareboat charterer.

32. The words 'Bareboat charter' and 'demise charter' are not defined in the Act. Sub-section 2 of Section 2 says that the words and expressions used in the Act and not defined therein but defined in Merchant Shipping Act, 1958 shall have the meanings respectively assigned to them in that Act. However, the words 'Bareboat charter' and the 'demise charter' are also not found defined in the Merchant Shipping Act. Mr. Bhatt, therefore, referred to the definitions of words 'bareboat charter' and 'bareboat charter- cum-demise' given in Section 115 V of the Income Tax Act to submit that Bareboat charter and demise charter are not the same and the legislature, being aware of above definitions in Income Tax Act for many years, has consciously used only 'demise charterer' in Section 5 sub-section (1) (b) for the purpose of arrest of the vessel in exercise of admiralty jurisdiction and the legislature does not appear to have intended to hold owner of the vessel responsible for the liability of the Bareboat charterer. The definitions of above two words in section 115 V of income tax are as under:

"bareboat charter" means hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew.

C/AS/49/2018 IA ORDER "bareboat charter-cum-demise" means a bareboat charter where the ownership of the ship is intended to be transferred after a specified period to the company to whom it has been chartered.

33. The above definitions are in chapter XII-G of Income Tax Act, where under special provisions are made relating to income of shipping companies to determine their tax liability and cannot be referred or relied to give meaning to the words and phrases used in the Act in different context.

34 The dictionary meaning of word 'charter' is to hire or rent for temporary use. For chartering of ship for its use, the agreement/contract made is known as charter party. One of the meanings of 'demise charter' given in Advanced Law Lexicon is that 'it is a contract for the hire of ship under which the charterer has the exclusive possession of the vessel and consequently, the charterer will have the right to man and equip the vessel and such contract is also known as bareboat contract'. The meaning of 'Bareboat charter-party' given in Advanced Law Lexicon is that it is a document containing the contract between the owner of a ship and the demise charterer, and signed by both, containing all the terms and conditions such as the period of the charter, the rate of hire, the trading limits and all the rights and responsibilities of the two parties. Therefore, once the owner surrenders possession and control of the vessel under the charter with further right to man the ship, to appoint master and crew, it is demise charter and is no way different than the Bareboat charter.

35. In the case of Sunil B. Naik (supra), the Hon'ble Supreme Court has considered and explained the nature of charter in kinds of charter in paragraph No.13 and 14 as under:

C/AS/49/2018

IA ORDER

"Bareboat Charter:

13. The charter party is defined as a contract by which an entire ship, or some principal part thereof, is let by the owner to another person for a specified time or use. The Charter can be of two kinds (i) Charter of demise; and (ii) Contract of affreightment. In the present case, we are concerned with the charter of demise by which the whole vessel is let to the charterer with the transfer to him of its entire command and possession and consequent control over its navigation. Such a charter is called a bareboat charter. It would be apposite at this stage to refer to the Mark Davis' Commentary on "Bareboat Charters", 2nd Edition where the nature and character of demised charters has been explained as follows:

"A fundamental distinction is drawn under English law between charter parties which amount to a demise or lease of a ship, and those which do not. The former category, known as charters by demise, operate as a lease of the ship pursuant to which possession and control passes from the owners to the charterers whilst the latter, primarily comprising time and voyage charters, are in essence contracts for the provision of services, including the use of the chartered ship. Under a lease, it is usual for the owners to supply their vessel "bare" of officers and "crew", in which case the arrangement may correctly be termed a "bareboat"

charter. The charterers become for the duration of the charter the de facto "owners" of the vessel, the master and crew act under their orders, and through them they have possession of the ship."

A statement of the hallmarks of a demise charter can be found in the judgment of Evans LJ in *Giuseppe di Vittorio*, The:

C/AS/49/2018 IA ORDER 'What then is the demise charter? Its hallmarks, as it seems to me, are that the legal owner gives the charterer sufficient of the rights of possession and control which enable the transaction to be regarded as a letting a lease, or demise, in real property terms of the ship. Closely allied to this is the fact that the charterer becomes the employer of the master and crew. Both aspects are combined in the common description of a 'bareboat' lease or hire arrangement.' As indicated, charter parties which do not amount to a demise or lease of a ship (including time charters and voyage charters) are classified in English law as contracts of affreightment, pursuant to which the owners agree to carry goods by sea in return for a sum of money. Although the charterers have a right as against the owners to have their goods carried on the vessel, the ownership and the possession of the ship remains with the owners through the master and crew who remain their servants.

Whether or not a charter party amounts to a demise charter depends in every case upon the precise terms of the charter, taking the instrument as a whole. The test has been summarized as follows:

"The question depends, where other things are not in the way, upon this: whether the owner has by the charter, where there is a charter, parted with the whole possession and control of the ship, and to this extent, that he has given to the charterer a power and right independent of him, and without reference to him to do what he pleases with regard to the captain, the crew, and the management and employment of the ship. That has been called a letter or demise of the ship. The right expression is that it is a parting with the whole possession and control of the ship."

C/AS/49/2018 IA ORDER Thus, although time charters almost always contain words such as "let", "hire", "delivery" and "redelivery", the use of such words are inapt in such a context, and are not in any sense to be regarded as conclusive, when determining the nature of the charter.

In *Sea and Land Securities v. William Dickinson and Co. Ltd.* MacKinnon, LJ traced the origin of these words to demise charters, and at page 163 emphasised the difference between demise and time charters thus:

there is all the difference between hiring a boat in which to row yourself about, in which case the boat is handed over to you, and contracting with a man on the beach that he shall take you for a row, in which case he merely renders services in rowing you about.

14. A demised charterer, like Reflect Geophysical, who is the owner for services stipulated, assumes in large measures the customary rights and liabilities of vessel owners in relation to third persons, who have dealt with him or with the ship, illustratively, repairs and supplies ordered for the vessel, wages of seamen, etc."

36. The applicants have placed with their applications the copy of the Bareboat charter. The charter period mentioned therein is of 3 years from 30.11.2014. It is a document for hire of the defendant vessel with possession and full control given to the charterer-the MEDS. Clause 10 of the charter reads as under:

"10. Maintenance and Operation

(a)(i) Maintenance and Repairs - During the Charter Period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect. The Charterers shall maintain the Vessel, her machinery, boilers, appurtenances equipment and C/AS/49/2018 IA ORDER spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and at their own expense they shall at all times keep the Vessel's Class fully up to date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times.

(ii) New Class and Other Safety Requirements - In the event of any improvement, structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation the cost of compliance shall be solely on charterers' account.

Such upgrades/adjustments to be depreciated over a period equal to the remaining Charter Period.

(iii) Financial Security - The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof. The Charterers shall make and maintain all arrangements by bond or other security (provided by any protection and indemnity or war risks association or otherwise) or otherwise as may be necessary to satisfy such requirements at the Charterer's sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.

C/AS/49/2018 IA ORDER

(b) Operation of the Vessel - The Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair the Vessel during the Charter Period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter, including annual flag State fees and any foreign general municipality and/or state taxes. The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners. Charterers shall comply with the regulations regarding officers and crew in force in the country of the Vessel's flag or any other applicable law.

(c) The Charterers shall keep the Owners and the mortgagee(s) advised of the intended employment, planned dry-docking and major repairs of the Vessel, as reasonably required.

(d) Flag and Name of Vessel - During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. The Charterers shall also have the liberty, with the Owners' prior written consent, which shall not be unreasonably withheld, to change the flag and/or the name of the Vessel during the Charter Period. Painting and re-painting, instalment and re-instalment, registration and re-registration (including maintenance of such registration), costs for Class maintenance, if required by the Owners, shall be at the Charterer's expense and time and to the extent paid by the Owner shall be reimbursed by the Charterer upon demand. All costs and expenses related to any change of flag and Class required by the Charterer shall be covered by the 'Charterer'.

C/AS/49/2018 IA ORDER

(e) Changes to the Vessel - Subject to Clause 10(a)(ii), the Charterers shall make no structural changes in the Vessel or changes in the machinery, boilers, appurtenances or spare parts thereof without in each instance first securing the Owners' approval thereof. If the Owners so agree, the Charterers shall, if the Owners so require, restore the Vessel to its former condition before the termination of this Charter. The Charterers with Owners' prior written approval, shall have the right to fit additional equipment at their expense and risk, provided such equipment does not diminish/reduce the market value of the Vessel and can be removed without causing any damage to the Vessel.

(f) Use of the Vessel's Outfit, Equipment and Appliances - The Charterers shall have the use of all outfit, equipment, and appliances on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery in the same good order and condition as when received, ordinary wear and tear excepted. The Charterers shall from time to time during the Charter Period replace such items of equipment as shall be so damaged or worn as to be unfit for use. The Charterers are to procure that all repairs to or replacement of any damaged, worn or lost parts or equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the Vessel. The Charterers have the right to fit additional equipment at their expense and risk but the Charterers shall remove such equipment at the end of the period if requested by the Owners. Any such equipment not so removed shall upon redelivery, become the property of the Owners absolutely. And equipment including radio

equipment on hire on the Vessel at time of delivery C/AS/49/2018 IA ORDER shall be kept and maintained by the Charterers and the Charterers shall assume the obligations and liabilities of the Owners under any lease contracts in connection therewith, also for any new equipment required in order to comply with radio regulations.

(g) Periodical Dry-Docking - The Charterers shall dry- dock the Vessel and clean and paint her underwater parts whenever the same may be necessary, but not less than once during the period stated in Box 19 or, if Box 19 has been left blank, every sixty (60) calendar months after delivery or such other period as may be required by the Classification Society or the applicable flag State."

37. The terms contained in above clause fully satisfy the characteristics of the demise charter. However, it is described as Bareboat charter, as it is another name of demise charter. Therefore, the contention that there is a difference between Bareboat charter and demise charter cannot be accepted. Since, there is no difference between Bareboat charter and demise charter, the contention that arrest of the vessel under section 5(1)

(b) is not permissible for the liability of the Bareboat charterer can also not be accepted.

38. For any maritime claim, referred in Section 4 of the Act, against the vessel and subject to admiralty proceeding, the order for arrest of vessel in rem could be made as permissible under section 5(1) of the Act.

39. The claim for supply of the bunker to the vessel is the maritime claim against the vessel. Mr. Bhatt however submitted that the charterer should be found liable when the arrest of the vessel is effected, which was not there when the defendant vessel was C/AS/49/2018 IA ORDER arrested and in any case the maritime claim for supply of bunker to the Bareboat charterer could not be enforced against the vessel after termination of the charter. The Court finds that the termination notice placed with the application is dated 12th December 2018, which refers the Bareboat charter party as amended and supplemented from time to time. Therefore, it prima facie appears that the charter party continued to be in force till 12th December, 2018. The first order of arrest was made on 07 th December, 2018. Therefore, the termination of charter party on 12th December, 2018 will not make the maritime claims unenforceable against defendant vessel. After arrest of the vessel and release of the vessel on providing security against the maritime claims, the admiralty actions against the vessel have to continue. The supply of bunker to the vessel either through the charterer or directly is and remains the maritime claim against the vessel. What is provided in section 5 (1) (a) and (b) of the Act is for the purpose of the arrest of the vessel in rem and once the vessel is arrested, the admiralty proceeding for maritime claims against the vessel shall continue till the claims are adjudicated. In the suits where the claims are for supply of bunker to the defendant vessel, the plaintiffs have made averments that they have supplied bunkers to the defendant vessel and the defendant vessel has used, consumed and benefited from the bunkers and the plaintiffs are entitled to receive the amounts as summarized in the suit for supply of the bunkers to the defendant vessel which have not been paid to them. The plaintiffs have also made averments that on behalf of the defendant vessel, its master, owner, manager, operator, the MEDS approached the plaintiffs for supply of the bunkers and pursuant to the orders placed by MEDS, the bunkers were supplied to the

vessel which were received without any objection by the master / Chief Engineer of the defendant vessel and the plaintiffs issued invoices for the price of the bunkers on account of the defendant vessel, master, owner, charterer and the operator. No written statement is filed to deny C/AS/49/2018 IA ORDER such averments. In such view of the matter, it prima facie appears to the Court that even if it is accepted that the charter party expired by efflux of time, the maritime claims against the vessel will not disappear and the suits have to be tried for adjudicating the claims made therein and cannot be dismissed as not maintainable. The Court finds that the suits are also not required to be dismissed on the basis of decision in the case of Sunil B. Naik (supra) as the facts therein were different that the facts in the present cases. The Court also finds from the decisions relied on by Mr. Bhatt in the case of Epoch Enterrepots Vs. M.V. Won Fu, reported in AIR 2003 SC 24, in the case of Raj shipping Agencies Vs. M. V. Bunga Mas Tiga, reported in AIR 2001 BOM 451, in the case of S. Samiyullah Vs. Owners and Parties interested in the Vessel M. V. Makar, reported in AIR 2002 MAD 150 and in the case of Sierra International Shipping Corpn Vs. M. V. Umka and Others, reported in AIR 2003 BOM 265 that they would have no application in the facts of the case especially when the provisions of the Act now govern the field of admiralty jurisdiction.

40. As regards the contention that the Admiralty Suit No.49 of 2018 is required to be out rightly dismissed on the ground of material suppression of the fact, it is required to note that what is stated about the suppression of fact described as material fact is about the initiation and pursuing proceedings by the plaintiff before the Dubai Court on dishonored cheques. The Court finds that when it was permissible to the plaintiff to take proceedings in Dubai Court on dishonored cheques, which was different cause of action and of criminal nature, non-disclosure of initiation and pursuing such proceedings could not be said to be material suppression of fact as the disclosure of such fact will have no bearing on admiralty proceeding until the plaintiff receives the amounts claimed by it. It would have been a different matter, if the plaintiff had already recovered the amounts claimed in the suit through other mode or C/AS/49/2018 IA ORDER proceedings and without disclosing such recovery, the suit was filed. But as could be seen from the affidavit filed by the plaintiff, after the plaintiff received the amounts of cheques through the proceedings at Dubai Court, it immediately disclosed such fact of the receipt of the amount in the proceedings of the suit before this Court and, in fact, sought leave of this Court to reduce the claim in the suit to the extent it received the amount from the Dubai Court, which the Court allowed and the claim in the suit is also reduced and, therefore, there is no question of dismissing the suit on the ground of material suppression of the fact.

41. The other contention raised in connection with Admiralty Suit No.49 of 2018 is of novatio. Since such contention is an issue on fact, it is to be pleaded and proved. But, in a given case, it may be possible to discern the issue on subsequent facts brought on record by documents but not safe to decide without following law of evidence. The contention of novatio is based on the fact of acceptance of cheques from MEDS and initiation of proceeding in Dubai Court after the cheques were dishonored. To decide to take independent proceeding on dishonored cheques would not by itself a ground to say that the plaintiff accepted new contract and waived its right on earlier contract, but rather, it could be said that the proceeding taken before the Dubai Court was in connection with original contract. Therefore, on such contention, the suit cannot be dismissed as not maintainable in admiralty jurisdiction.

42. Then as regards further contention, in connection with above suit, that the relief for compensation, interest and legal costs incurred for other proceeding cannot be asked in the admiralty jurisdiction, the Court is of the view that the issues concerning the same are to be decided at the time when the suit is finally decided and the suit cannot be dismissed on such contention.

C/AS/49/2018 IA ORDER

43. In 'divers group', the question raised is whether the plaintiffs employed by the charterer to serve on the board of the defendant vessel could be considered as crew of the vessel and whether their services to the defendant vessel through the charterer created maritime lien on defendant vessel.

44. The plaintiffs have placed on record the contracts of their employments (titled as 'seafarers employment agreement') to serve as saturation diving supervisor, divers respectively on defendant Vessel. The plaintiffs have averred in their plaints that pursuant to the contract of employment, they served on the board of defendant Vessel for different periods and they have not been paid their wages. No written statement is filed in any suit to deny such averments.

45. The Court finds that in section 4(o) of the Act not only the claim by a master or member of the crew of a vessel or their heirs and dependants for wages or concerning the wages is considered as maritime claim but it also includes any claim arising under a manning and crew agreement relating to a vessel and such inclusion is notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant shipping Act, 1958. Section 150 and 151 of Merchant Shipping Act provide for powers of the Central Government to refer disputes between seamen and their employers to Tribunals and for conditions of service etc. to remain unchanged during pendency of proceeding before the Tribunal respectively. Therefore, legislature appears to have intended that even when there is a claim arising under a manning and crew agreement relating to a vessel, such claim could be raised as maritime claim against the vessel in admiralty jurisdiction under the Act irrespective of availability of above remedy under the Merchant Shipping Act.

C/AS/49/2018 IA ORDER

46. In 'seafarers employment agreement' each plaintiff is called as 'crew'. The agreement cast duty on him to serve as saturation diving supervisor or divers, as the case may be, on board of the defendant vessel and to perform their duties as per the standards laid down in STCW code/IMCA guidelines. The Court therefore finds that since the plaintiffs' claims for wages are under the employment agreements for serving on the board of defendant vessel, such are the maritime claims against the defendant vessel.

47. Learned advocates for the plaintiffs referred the meaning of 'crew' from the Law lexicon, as per which 'crew' means the whole ship's company except the master which would include even the ordinary seamen and the term seamen is referred even to divers. Though, the word "crew" or "seaman" are not specifically used in clause (a) of sub-section 1 of Section 9, but the claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel are included therein and such claims are thus the maritime lien as

per the definition of the 'maritime lien' given in section 2(g) of the Act. Therefore, if a person is in employment on the vessel or is made to serve on the board of the vessel under any agreement to accomplish the purpose for which the vessel is used or to function, he could be said to be the member of vessel's complement as he with the other members of the crew would work together for the operation and use of the vessel for the same purpose. One of the meanings given in the definition of 'complement' in 'Merriam Webster', relied on by learned senior advocate Mr. Kumar, is "the whole force or personnel of a ship". The meanings of word 'complement' given in Universal Dictionary relied on by learned advocates for the plaintiffs are "that makes up a whole or perfect"

"the quantity or number needed to make up a whole", "the full crew of officers and men required to man a ship" etc. If one goes with such meanings, presence of saturation diving supervisor and divers C/AS/49/2018 IA ORDER on special purpose vessel like defendant vessel which is 'diving support vessel' is must to make its whole task complete. Mr. Bhatt however submitted that the meaning "the full crew of officers and men required to man a ship" of word 'complement', would not include diving supervisor or the divers. It is not possible to agree with the submission of Mr. Bhatt, as the dictionary meaning of word 'man' is to work at a place or to be in charge of a place or a machine and the men required for a vessel like diving support vessel - defendant vessel would not exclude the saturation diving supervisor or the divers to make it fully function for the purpose for which it is made.

48. The Court, therefore, finds that the contention raised by learned advocate Mr. Bhatt that considering the type of the vessel and the nature of the agreement entered with the plaintiffs by MEDS, the plaintiffs could not be considered as the members of the crew or the other members of the vessel's complement cannot be accepted and on such contention, the suits of divers group cannot be dismissed as not maintainable. Under section 10 of the Act, the claim on the vessel where there is a maritime lien is on top in order of priority. Whether, the claims of the plaintiffs for their wages would continue to be the maritime lien existing on the defendant vessel would be considered when the suits are decided.

49. However, referring to clause 11.2 of the seafarers employment agreements, learned advocate Mr. Bhatt submitted that the parties have agreed to submit to the jurisdiction of UAE Courts in the events of any breach of the agreement within UAE or elsewhere during any particular voyage or operation and, therefore, when by agreement of the parties, the jurisdiction of all other Courts including admiralty jurisdiction of this Court is excluded, the suits for maritime claims in connection with above agreements are not maintainable in the admiralty jurisdiction of this Court.

C/AS/49/2018 IA ORDER

50. The Court finds that agreements are between the plaintiffs and the charterer- the MEDS. Clause 11.2 of the agreement reads as under:

"11.2 This agreement shall be subjected to the laws of UAE and both parties hereto agree to submit to the jurisdiction of the UAE courts in the event of any breach of this

agreement within UAE or elsewhere, during any particular voyage or operation."

51. The above agreement may bind the parties to the agreement for the purpose of jurisdiction, if any action in persona for breach of agreement is to be taken. But, by virtue of the agreement for employment on vessel, when maritime lien for the wages has arisen against the vessel, it remains attached to the vessel wherever the vessel goes and irrespective of change of ownership of the vessel. The maritime lien is maritime claim and for maritime claim against the vessel, admiralty jurisdiction in rem by arrest of vessel is exercised, which is now statutorily recognized. Exercise of admiralty jurisdiction in rem against the vessel will not be affected by the agreement between the parties to submit to the jurisdiction of a particular Court in respect of any dispute on breach of the agreement. The invoking of admiralty jurisdiction is independently available against vessel which is responsible to cause damage or loss to the party, which desires to invoke admiralty jurisdiction. The admiralty proceeding is not taken against any person but is basically to decide on maritime claim against the vessel. The suits are filed against the vessel and charterer is also joined as party. In fact with arrest of the vessel, any person having maritime claim against the vessel can come and join the proceedings. As provided in section 5(1), the arrest of vessel is for the purpose of providing security against the maritime claim which is subject to the admiralty proceeding. Considering, such special jurisdiction available in rem by arrest of vessel for maritime claim, the agreement between the C/AS/49/2018 IA ORDER parties to submit to the jurisdiction of particular Court in the event of the breach of the agreement could not take away admiralty jurisdiction of this Court and the suit filed for maritime claims against the vessel cannot be held as not maintainable in admiralty jurisdiction. Reliance placed by learned advocate Mr. Bhatt on two decisions, one in the case of Nirmala Balagopal Vs. Venkatesulu Balagopal, reported in AIR 2004 MADRAS 255 and second in the case A.V.M. Sales Corporation Vs. M/s. Anuradha Chemicals Pvt. Ltd., reported in 2012 AIR SCW 1028 shall have no application as they are in the context of section 20 of CPC and not in connection with maritime claim against the vessel.

52. Learned advocate Mr. Bhatt however submitted that as per section 12 of the Act, provisions of CPC apply in all the proceedings under the Act and after arrest of the vessel and after deposit of the amounts to provide security to the claims made in the suits, the suits shall be decided like regular and ordinary civil suit and, therefore, the suits are to comply with the provisions of the CPC and the consequences provided for non-compliance of any of the provisions of CPC must follow. He submitted that in every suit of divers group, there are more than one plaintiff and their claims are on individual agreements and they have separate causes of action and therefore, their suits are required to be dismissed under O. II R. 3 read O.I R.10 of CPC.

53. The Court finds that admiralty proceeding commences with arrest of the vessel in rem irrespective of location of the owner or the change of the ownership and all maritime claims against the vessel shall be adjudicated in exercise of admiralty jurisdiction. Therefore, whether more than one plaintiff has joined a suit or whether the plaintiffs have made claims on individual contracts and thus have different causes of actions will not make any difference as the vessel after arrest is held as security or the deposit made for C/AS/49/2018 IA ORDER release of vessel is held as security for all claims against the vessel and the Court is to decide on all claims in its admiralty jurisdiction against the vessel. The power to decide and enforce the maritime claims against the vessel which is held as

security has been the essential attribute of the admiralty jurisdiction, which has now been conferred under the Act. While deciding on the maritime claims, the Court can also decide on inter-se priority amongst the maritime claims made against the vessel.

54. In the case of Chandulal Suklal Shet and others Vs. Dagdu Mahadu Chaudhuri and others, reported in 1925 BOMBAY 342, relied on by learned advocate Mr. Bhatt that the suit was filed jointly by different persons, each of whom had contracted to supply a certain number of maunds of cotton to the same defendant, to recover from him the price thereof. In the facts of the case, the Appellate Court found that each of the plaintiff had one single contract and, therefore, it was quiet impossible for the plaintiffs to join in one suit filed for different causes of action on five different contracts. Such judgment shall have no application to the suits for maritime claims to be decided in admiralty jurisdiction, as the peculiarity of the admiralty proceeding under the admiralty jurisdiction of this Court is to enforce all claims against the vessel arrested and held in security. If the contention raised by learned advocate Mr. Bhatt is accepted, the provisions made in section 4 (2), (3) and (4) would stand nugatory. In the case of Prem Lala Nahata and Another Vs. Chandi Prasad Sikaria, reported in (2007) 2 SCC 551 relied on by learned advocate Ms. Nair and learned advocate Mr. Vyas, Hon'ble Supreme Court has held and observed in para-10 to 12, 15 to 18 as under:

"10. Based on this understanding, we can consider the respective positions of Order I and Order II in the scheme of things. Order I deals with parties to a suit and provides who may be joined as C/AS/49/2018 IA ORDER plaintiffs and who may be joined as defendants. It also deals with the power of the Court to direct the plaintiffs either to elect with reference to a particular plaintiff or a particular defendant or to order separate trials in respect of the parties mis-joined as plaintiffs or defendants. It also gives power to the Court to pronounce judgment for or against one of the parties from among the parties who have joined together or who are sued together. The order also specifies that a suit shall not be defeated by reason of the mis-joinder or non-joinder of parties, so long as in the case of non-joinder, the non-joinder is not of a necessary party. The Code also gives power to the Court to substitute the correct person as a plaintiff or add parties or strike out parties as plaintiffs or defendants, at any stage, if it is found necessary.

11. Order 2 deals with frame of suits. It provides that every suit shall be framed as far as practicable so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. It is also insisted that every suit shall include the whole of the claim that a plaintiff is entitled to make in respect of its subject matter. There is a further provision that the plaintiff may unite in the same suit several causes of action against the same defendant and plaintiffs having causes of action in which they are jointly interested against the same defendant, may unite such causes of action in the same suit. It provides that objection on the ground of mis-joinder of causes of action should be taken at the earliest opportunity. It also enables the Court, where it appears to the Court that the joinder of causes of action may embarrass or delay the trial or otherwise cause inconvenience, to order separate trials or to make such other order as may be C/AS/49/2018 IA ORDER expedient in

the interests of justice.

12. Thus, in a case where a plaint suffers from the defect of misjoinder of parties or misjoinder of causes of action either in terms of Order I Rule 1 and Order 1 Rule 3 on the one hand, or Order 2 Rule 3 on the other, the Code itself indicates that the perceived defect does not make the suit one barred by law or liable to rejection. This is clear from Rules 3-A, 4 and 5 of Order I of the Code, and this is emphasised by Rule 9 of Order I of the Code which provides that no suit shall be defeated by reason of non-joinder or mis-joinder of parties and the court may in either case deal with the matter in controversy so far as it regards the rights and interests of the parties actually before it. This is further emphasised by Rule 10 of Order I which enables the court in appropriate circumstances to substitute or add any person as a plaintiff in a suit. Order II deals with the framing of a suit and Rule 3 provides that save as otherwise provided, a plaintiff may unite in the same suit several causes of actions against the same defendant and any plaintiffs having causes of actions in which they are jointly interested against the same defendant may unite such causes of action in the same suit. Rule 6 enables the Court to order separate trials even in a case of mis-joinder of causes of action in a plaint filed.

15. It is well understood that procedure is the handmaid of justice and not its mistress. The Scheme of Order I and Order II clearly shows that the prescriptions therein are in the realm of procedure and not in the realm of substantive law or rights. That the Code considers objections regarding the frame of suit or joinder of parties only as procedural, is further clear from Section 99 C/AS/49/2018 IA ORDER of the Code which specifically provides that no decree shall be reversed in appeal on account of any mis-joinder of parties or causes of action or non-joinder of parties unless a Court finds that the non-joinder is of a necessary party. This is on the same principle as of Section 21 of the Code which shows that even an objection to territorial jurisdiction of the Court in which the suit is instituted, could not be raised successfully for the first time in an appeal against the decree unless the appellant is also able to show consequent failure of justice. The Suits Valuation Act similarly indicates that absence of pecuniary jurisdiction in the Court that tried the cause without objection also stands on the same footing. The amendment to Section 24 of the Code in the year 1976 confers power on the Court even to transfer a suit filed in a Court having no jurisdiction, to a Court having jurisdiction to try it. In the context of these provisions with particular reference to the Rules in Order I and Order II of the Code, it is clear that an objection of misjoinder of plaintiffs or misjoinder of causes of action, is a procedural objection and it is not a bar to the entertaining of the suit or the trial and final disposal of the suit. The Court has the liberty even to treat the plaint in such a case as relating to two suits and try and dispose them off on that basis.

16. Order 7 Rule 11 (d) speaks of the suit being "barred by any law". According to the Black's Law Dictionary, bar means, a plea arresting a law suit or legal claim. It means

as a verb, to prevent by legal objection. According to Ramanatha Aiyar's Law Lexicon, "bar" is that which obstructs entry or egress; to exclude from consideration. It is therefore necessary to see whether a suit bad for misjoinder of parties or of causes of action is C/AS/49/2018 IA ORDER excluded from consideration or is barred entry for adjudication. As pointed out already, on the scheme of the Code, there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of action. The court is still competent to try and decide the suit, though the court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action. On the scheme of the Code of Civil Procedure, it cannot therefore be held that a suit barred for misjoinder of parties or of causes of action is barred by a law, here the Code. This may be contrasted with the failure to comply with Section 80 of the Code. In a case not covered by sub-section (2) of Section 80, it is provided in sub-section (1) of Section 80 that "no suit shall be instituted". This is therefore a bar to the institution of the suit and that is why courts have taken the view that in a case where notice under Section 80 of the Code is mandatory, if the averments in the plaint indicate the absence of a notice, the plaint is liable to be rejected. For, in that case, the entertaining of the suit would be barred by Section 80 of the Code. The same would be the position when a suit hit by Section 86 of the Code is filed without pleading the obtaining of consent of the Central Government if the suit is not for rent from a tenant. Not only are there no words of such import in Order 1 or Order II but on the other hand, Rule 9 of Order 1, Rules 1 and 3 of Order 1, and Rules 3 and 6 of Order II clearly suggest that it is open to the court to proceed with the suit notwithstanding the defect of misjoinder of parties or misjoinder of causes of action and if the suit results in a decision, the same could not be set aside in appeal, merely on that ground, in view of Section 99 of the Code, unless the conditions of C/AS/49/2018 IA ORDER Section 99 are satisfied. Therefore, by no stretch of imagination, can a suit bad for misjoinder of parties or misjoinder of causes of action be held to be barred by any law within the meaning of Order 7 Rule 11(d) of the Code.

17. Thus, when one considers Order 7 Rule 11 of the Code with particular reference to Clause (d), it is difficult to say that a suit which is bad for misjoinder of parties or misjoinder of causes of action, is a suit barred by any law. A procedural objection to the impleading of parties or to the joinder of causes of action or the frame of the suit, could be successfully urged only as a procedural objection which may enable the Court either to permit the continuance of the suit as it is or to direct the plaintiff or plaintiffs to elect to proceed with a part of the suit or even to try the causes of action joined in the suit as separate suits.

18. It cannot be disputed that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The

jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits. (See Halsbury's Laws of C/AS/49/2018 IA ORDER England, Vol. 37, para 69). If there is power in the court to consolidate different suits on the basis that it should be desirable to make an order consolidating them or on the basis that some common questions of law or fact arise for decision in them, it cannot certainly be postulated that the trying of a suit defective for misjoinder of parties or causes of action is something that is barred by law. The power to consolidate recognised in the court obviously gives rise to the position that mere misjoinder of parties or causes of action is not something that creates an obstruction even at the threshold for the entertaining of the suit."

55. In light of above and in the scheme of the Act, the suits, where the claims are made for wages, could not be dismissed on the grounds of mis-joinder of parties and mis-joinder of causes of action.

56. One of the questions raised in 'divers group' applications is about the limitation as to whether the suits filed by divers having their claims against the Bareboat charter are barred by law of limitation under section 9(2) of the Act. However, since it appears to the Court from the averments in the plaints of the suits that such question is not possible to be decided as preliminary question, as it is mixed question of fact and law, the suits cannot be dismissed on such question.

57. In view of above, the Court finds that on none of the contentions raised and the grounds urged in the 'bunker group' and in the 'divers group' applications, the suits involving claims for supply of bunker and the suits involving claims for wages are required to be dismissed as not maintainable. Therefore, the first six applications are required to be rejected.

58. Then, remains the last application filed in Admiralty Suit No.53 C/AS/49/2018 IA ORDER of 2018. The Admiralty suit No.53 of 2018 is filed for arrest of the defendant vessel for recovery of the dues of the plaintiff for supply of various provisions to the vessel M V Altus Uber at the instance of MEDS. The plaintiff has averred in para-2 of the plaint of the suit that the defendant vessel and M V Altus Uber are sister vessels which are both owned by MEDS. However, it has come to light from the orders of Bombay High Court that MEDS claims to be a bareboat charterer of the vessel M V Altus Uber. It is further averred that both vessel are sister vessel as it is evident from the website of MEDS that both the vessels are owned by MEDS. The plaintiff has annexed screenshot of the website of MEDS.

59. The prime issue raised in the applications seeking dismissal of the suit as not maintainable is that since the defendant vessel is not the sister vessel of M V Altus Uber, its arrest is not permissible in exercise of powers under Section 5(2) of the Act for the maritime claim against MV Altus Uber. In support of the stand that the defendant vessel is not the sister vessel of MV Altus Uber, the applicants have placed on record the certificates of ownership of both the vessels. The certificates

show the names of registered owners of both the vessels. As per the certificates of registration, the registered owner of defendant vessel is Altus Subsea-II AS, whereas, the registered owner of the vessel M V Altus Uber is Swordfish Shipco Limited. In the certificate for the vessel M V Altus Uber, MEDS is shown to be the bareboat charterer with termination period of charter party on 27th November, 2019. In the certificate issued as on 28th November, 2018 for defendant vessel, it is stated that mortgage of the defendant ship was granted by the owner to OPES Shipping Ltd., which was recorded on 28th November, 2018. The plaintiff has simply relied on screenshot (photographs) of the vessels and has not produced any document to show that the defendant vessel is either in the ownership of the MEDS or in the ownership of the same person who is shown to be owner of M V C/AS/49/2018 IA ORDER Altus Uber of which MEDS claims to be the charterer. As against the documents of registered ownership of the vessels, the plaintiff has failed to produce any reliable documentary evidence to prima facie establish that MEDS is owner of both the vessels.

60. The Court finds that simple photograph of the vessels could not be considered as the documents of title of the vessels. In the copy of photograph, "Marine Engineering Diving Services" (MEDS) is found written above the vessels. In the certificate of registration of M V Altus Uber, MEDS is shown to be the bareboat charterer. This very MEDS is stated to be the charterer for defendant vessel as per the copy of the charter party placed by the applicants with their application. The plaintiffs have not come with any document to show that the MEDS has become the owner of the defendant vessel.

61. The Court, therefore, finds that the defendant vessel could not be treated as sister vessel of M V Altus Uber and the plaintiff has failed to make out prima facie case for arrest of the defendant vessel. The Court finds that since defendant vessel is not the sister vessel of M V Altus Uber, the arrest of defendant vessel is not permissible under section 5(2) of the Act for the claim of the plaintiff against M V Altus Uber and consequently, the suit is not maintainable in admiralty jurisdiction of this Court. The Court finds that none of the judgments referred in the written submission for the plaintiff would apply in the facts of the case where the plaintiff has failed to even prima facie establish that both the vessels are of the same ownership so as to consider them as sister vessels.

62. In above view of the matter, the Civil Application No.1 of 2019 in Admiralty suit No.53 of 2018 is required to be allowed and Admiralty Suit No.53 of 2018 is required to be dismissed as not maintainable in admiralty jurisdiction before this Court and consequently, the applicants are entitled to be refunded with the C/AS/49/2018 IA ORDER amount of Rs.96,73,753/- deposited as security against the claim made in the suit.

63. In view of the above, the Civil Application No.1 of 2019 in Admiralty Suit No.49 of 2018, Civil Application No.1 of 2019 in Admiralty Suit No.50 of 2018, Civil Application No.1 of 2019 in Admiralty Suit No.52 of 2018, Civil Application No.1 of 2019 in Admiralty Suit No.51 of 2019, Civil Application No.1 of 2019 in Admiralty Suit No.54 of 2018 and Civil Application No.1 of 2019 in Admiralty Suit No.2 of 2019 are rejected.

64. The Civil Application No.1 of 2019 in Admiralty Suit No.53 of 2018 is allowed. Consequently, the Admiralty Suit No.53 of 2018 shall stand dismissed. The registry is directed to refund the amount of

Rs.96,73,753/- to OPES Shipping Ltd, which deposited the said amount as security against the claim of the plaintiff.

65. At this stage, learned advocate Ms. Sheth requests to stay the present order passed in Civil Application No.1 of 2019 in Admiralty Suit No.53 of 2018 to enable the plaintiff to approach the higher forum. Such request is opposed by the learned advocate appearing for the applicants. However, the Court finds that the order directing the Registry to refund the amount could be stayed for a period of four weeks. Thus, direction to refund the amount shall remain stayed for a period of four weeks from today.

66. The Court is informed that all amounts deposited as security against the claims of the plaintiffs and of the caveators have been invested in nationalized bank. Therefore, no order for investment of any amount is now required.

(C.L. SONI, J) GUPTA*