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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL JURISDICTION**

LD/VC/IA/21-C/2020

A/W

LD/VC/IA/21-B/2020

IN

LD/VC/GSP/21/2020

COMIPS (L) / ____/2020

Axis Trustee Services Ltd.	...Applicant
In the matter between	
State Bank of India	...Plaintiff.
vs	
MT Prem Mala (IMO 9209927) & Ors.	...Defendants

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Mr Ashwin Shankar a/w Ms. Shweta Sadanandan for the applicant in LD/VC/IA/21-C/2020.

Mr. Zarir Bharucha a/w Ms. Niloufer Lam, Mr. Rishi Thakur and Mr. Umang Thakur i/b ZBA Associates for the plaintiff and applicant in LD/VC/IA/21-B/2020

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CORAM : B. P. COLABAWALLA, J.
(Through Video Conferencing)
14nd SEPTEMBER, 2020.

P.C. :

Not on board. With the consent of parties, taken on board.

2. This Interim Application (LD/VC/IA/21-C/2020) is filed by the applicant / Axis Trustee Services Ltd. seeking a stay to the trial of the above suit filed by the State Bank of India against MT Prem Mala

(IMO 9209927), the 1st defendant and the others. The sole ground on which the stay is sought is set out in paragraph 4 of the Interim Application which reads thus :-

“4. Thereafter, on 09.06.2020, the plaintiff filed the present Commercial Admiralty Suit before this Hon’ble Court again seeking the same reliefs as sought for in its NCLT and DRT proceedings. Further, in paragraph 36, the plaintiff admits and states “*The Plaintiff has filed an application under Section 7 of the Code against Mercator before the National Company Law Tribunal, Mumbai. The said application is at present pending before the National Company Law Tribunal, Mumbai. Additionally, the plaintiff has also initiated recovery proceedings against Mercator under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 before DRT-1, Mumbai for recovery of the outstanding dues owed by Mercator to the plaintiff. As on date, no order has been passed in the said recovery suit*”. The applicant, therefore, submits that the issues in the plaintiff’s present Commercial Admiralty Suit, are directly and substantially the same, in previously instituted suits (the NCLT, Mumbai and DRT, Mumbai), between the same parties and that trial of the subject Commercial Admiralty Suit should be stayed.”

3 It was the contention of Mr. Shankar the learned advocate for the applicant that since the plaintiff has sought the same and/or similar reliefs, not only in the proceedings before the National Company Law Tribunal (for short “NCLT”) but also before the Debt Recovery Tribunal (for short “DRT”), the provisions of Section 10 of the Code of Civil Procedure, 1908 (for short “CPC”) would clearly be attracted, and therefore, the present suit, namely, suit filed by the State Bank of India cannot proceed.

3 I am unable to agree with the aforesaid submission. Section 10 of the CPC deals with stay of the suits and reads as under:-

“10. **Stay of suit** .- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of (India) established or continued by (the Central Government) and having like jurisdiction, or before (the Supreme Court).”

4 What this Section stipulates is that no Court shall proceed with the trial of any suit in which matter any issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed. In the present case, the proceedings initiated before the DRT and the NCLT by the plaintiff herein (State Bank of India), are not amongst the same parties. Here in the present suit, the 1st defendant vessel itself is made a party because in Admiralty Jurisdiction the vessel itself is treated as an entity and can be proceeded against, without reference to its owner. The present suit is in relation to an action in Rem against the vessel to enforce a maritime claim against the vessel and to recover the amount of the claim from the vessel by an admiralty sale of the vessel and for “payment out” of the sale proceeds. It is the vessel that is liable to pay the claim. This is the fundamental basis of an action in Rem. In contrast the proceedings

initiated before the NCLT and the DRT by the State Bank of India (the plaintiff herein), can never be considered as an action in Rem against the defendant- vessel. In fact the defendant vessel is not even a party – defendant in those proceedings and cannot be made a party to those proceedings. In fact, for the purposes of an action in Rem under Admiralty jurisdiction, the ship is treated as a separate judicial personality, an almost corporate capacity, having not only rights but liabilities (*sometimes distinct from those of the owner*). This has in fact been so held by the Supreme Court in the case of **M.V. Elisabeth and Ors. Vs. Harwan Investments and Trading Pvt. Ltd.** [1993 Supp (2) SCC 433]. Apart from this, there is a decision of this Court in the case of **Raj Shipping Agencies Vs. Barge Madhwa and Anr.** [Admiralty Suit No. 6 of 2015 and other connected matters decided on 19th May, 2020] which clearly covers this issue. This being the case, I find that this Interim Application seeking stay of the suit is wholly misconceived and accordingly dismissed. No order as to costs.

5 This order will be digitally signed by the PA/PS of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(B. P. COLABAWALLA ,J.)