Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 8 OF 2014
IN
COMMERCIAL SUIT NO. 15 OF 2014
AND
NOTICE OF MOTION NO. 34 OF 2015

Corporation Bank …Plaintiffs
Versus
M V Pratibha Indrayani (Pratibha Shipping Company Ltd) & Ors …Defendants

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Mr Rahul Narichania, Senior Advocate, *i/b Rathina Maravarman, for the Plaintiffs.*
Mr LT Satalkar, *for the Official Liquidator.*
Mr Bharatkumar Mehta, *Senior Manager, Corporation Bank, Assets Recover Branch, Fort, Mumbai, present.*

CORAM: G.S. PATEL, J
DATED: 17th April 2017

PC:-

1. This order will cover the prayers in Notice of Motion No. 8 of 2014, Notice of Motion 34 of 2015 and Notice of Motion 35 of 2015. All three Notices of Motion will be kept pending for reasons that will presently become apparent. I will return to a summation of the prayers in these three Notices of Motion shortly.

2. The Plaintiff sanctioned credit facilities to Pratibha Shipping Co Ltd. The company was put into liquidation by an order dated 28th July 2014 in Company Petition No. 128 of 2013. The Official Liquidator stood appointed of the company and its assets.

3. The Plaintiffs' claim under the credit facilities was then at Rs. 68.98 crores. The loan was secured by the following:

(a) a first, exclusive mortgage or charge on the vessel *Pratibha Indrayani*;

(b) a first, exclusive mortgage or charge on the vessel *Pratibha Chandrabhaga*;

(c) a *pari passu* second charge on the vessel *Pratibha Kauvery*";

(d) a *pari passi* second charge on the vessel *Pratibha Warna*.

4. Pratibha Shipping did not pay its dues. The Plaintiff filed Original Application No. 222 of 2013 before the Debts Recovery Tribunal – II, Mumbai for recovery. This Original Application was decreed in the amount of Rs. 59,66,61,194/-, the entire claim.

5. In the meantime, on 6th November 2012 a foreign company named DET Norske Veritas filed Admiralty Suit No. 34 of 2013 seeking an arrest of the vessel *Pratibha Indrayani* and recovery of its dues. The Plaintiff, Corporation Bank, intervened in that suit saying it held an exclusive and first mortgage on that vessel. On 9th July 2013 this Court ordered the sale of *Pratibha Indrayani*. It was ultimately sold to Best Oasis Limited for Rs. 16 crores. By another order dated 13th September 2013, this Court ordered or sanctioned payments of Rs. 4 crores from the total sale proceeds of Rs 16 crores. The Admiralty Suit filed by DET Norske Veritas and Corporation Bank's Motion for intervention were disposed of as withdrawn. The remaining amount, then about Rs. 12,84,85,406/- continued in a term deposit with the Prothonotary & Senior Master..

6. Corporation Bank claims that it is entitled to appropriate the entire sale proceeds. It has filed the three Notices of Motion I noted earlier. Notice of Motion No. 8 of 2014 seeks an injunction against release of sale proceeds and leave to appropriate this entire amount lying with the Prothonotary & Senior Master towards Corporation Bank's claim. Notice of Motion No. 34 of 2015 seeks a similar injunction but also asks that the Fixed Deposit Receipt with Indian Overseas Bank be broken and the amount be invested with Corporation Bank itself. Notice of Motion No. 35 of 2015, the more relevant one for today's purposes, seeks that the priority of all claims be decided and a direction to the Prothonotary and the Sheriff to publish a notice inviting claims under Rule 951(3) of the Bombay High Court Original Side Rules.

7. On 9th July 2015, SJ Kathawalla J passed an order *inter alia* in terms of the last of these reliefs, i.e., publication of notice inviting claims in accordance with Rule 951(3). On 30th March 2017, I passed an order directing the Official Liquidator to make a report as to whether there are any other claims against the sale proceeds of the vessel in question.

8. The Official Liquidator reports that 88 claims have been lodged against the company, Pratibha Shipping. A total of claims of just over Rs 1.20 crores have been lodged against the vessel *Pratibha Indrayani*, although the claims against the company itself are considerably more. I am concerned only with the claims against the sale proceeds of the vessel in question and not claims against the company itself. Mr Narichania submits that the reason why these claims perhaps stand apart is because these are claims and rights *in rem* against the vessel. The other creditors, who account for about Rs. 5 crores, may have claims against the company but not against the sale proceeds in specie of any particular vessel. For instance, a crew member's claim enjoys a maritime lien against a specified, named vessel or its sale proceeds; and this is in contrast to the claim of, say, an ordinary creditor (a lender or supplier) of the company that owns the vessel. The former is a claim against a named vessel, though it is an asset of the company in liquidation. The latter is a generalized claim that may be satisfied by any of the assets of the company in liquidation. The maritime claim is always *in rem*, but the general class of creditors have claims only *in personam*; they can claim no rights to proceed against any particular asset. His suggestion, therefore, is that an amount of Rs. 1.25 crores be kept aside to meet the claims of those who have lodged their claims against the sale proceeds of *Pratibha Indrayani*, viz., those who have such a maritime lien or claim, and that the rest be released to the Plaintiff in partial satisfaction of its claim subject to further orders.

9. The Official Liquidator must assess even the maritime claims made against the sale proceeds of *Pratibha Indrayani* for completeness, accuracy etc. I will not accept these as filed merely because they are maritime claims. Some may be exaggerated or without sufficient basis. The Official Liquidator will examine these and will place a report with a tabulation for an order of the Court, when these claims may be accepted in whole or in part, or not at all. Those claims will be met from the Rs. 1.25 crores that will continue to remain in the hands of the Prothonotary & Senior Master. After distribution if any amount is yet left over, this will then be further available to the Corporation Bank for a second round of adjustment against its pending claim.

10. There is no doubt that the crew members would have a maritime lien and would enjoy of priority over Corporation Bank and all other mortgagees. This is however subject to the qualification that these crew members must establish that they worked aboard this very vessel and not just as employees of the company or on board some other vessel; and they must also be able to satisfy the Court or any one appointed by it that the claim is genuine, supported by sufficient documentation and not exaggerated.

11. I accept the submission made by Mrs Satalkar for the Official Liquidator that there may yet be other claims from other crew members. This however does not mean that Corporation Bank should be asked to wait indefinitely for what is partial satisfaction and not even 25% of its entire decretal amount. It will be sufficient to direct that a valid claim from a crew member would enjoy priority.

For this reason, the release to Corporation Bank must be conditional: should it be found at any stage that there are any other valid claims of crew members who worked aboard *Pratibha Indrayani* and which claims cannot be met from the Rs. 1.25 crores in retention, Corporation Bank will bring back the necessary amounts required to meet those claims. Mr Narichania states that he has instructions to make a statement in those terms, and that, in law, he is required to do so given the relative priorities of the two claims. A ex-director of Pratibha Shipping is personally present in Court when this order is passed.

12. Hence, the following directions:

(a) The Prothonotary & Senior Master will retain an amount of Rs. 1.25 crores from the sale proceeds of Pratibha Indrayani;

(b) The remaining amount computed with accretions till date of release will be released to the Corporation Bank;

(c) The Corporation Bank agrees and undertakes to bring back to Court, if necessary any amount required to meet the valid claim of any crew member or other person having a maritime lien or claim in respect of *Pratibha Indrayani* in priority to Corporation Bank's claim and which cannot be met from the retention amount of Rs. 1.25 crores;

(d) For the purposes of implementing this order, the Prothonotary & Senior Master will break the fixed deposits.

13. The Notices of Motion No. 8 of 2014 and 34 of 2015 will not survive in view of this order and are disposed of accordingly.

14. Notice of Motion No. 35 of 2015 is kept pending for a limited purpose. The Official Liquidator is directed to make a further report within six months after assessing the correctness and validity of the crew members' claims that he has received. The Official Liquidator will be at liberty to call for such documents and records as he thinks fit to verify these claims. Copies of the Official Liquidator's Report will be sent to the Advocates for Corporation Bank.

15. List Notice of Motion No. 35 of 2015 for further directions and orders on 12th January 2018.

16. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)