IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO. 234 OF 2017
IN
COMPANY PETITION NO. 756 OF 2014

Axis Bank **….. Applicant**

IN THE MATTER BETWEEN

Export Import Bank of India **….. Petitioner**

VERSUS

GOL Offshore Limited **….. Respondent**

AND

Axis Bank and others **….. Interveners**

AND

Easy Yoke Consultants LLP **….. Third Party/ Intending Purchaser**

Mr.Chetan Kapadia, a/w. Mr.Bhalchandra R.Palav, i/b. Cyril Amarchand Mangaldas for the Applicant/Intervener.

Mr.Kunal Chheda, a/w. Mr.Kartik Shenoy, i/b. M.V.Kini & Co. for the Petitioner in CP/119/2015.

Ms.Nirali Chopra, i/b. Junnarkar & Associates for the Respondent.

Mr.Prateek Seksaria, a/w. Mr.Naheed Carrimjee, Ms.Aditi Prabhu, i/b. Desai Desai Carrimjee & Mulla for the Third Party/Intending Purchaser.

Mr.Charles D'souza for the Original Petitioner.

Mr.Vinod Sharma, Official Liquidator present.

CORAM : R.D. DHANUKA, J.

DATE : 6th JUNE, 2017

P.C.

By consent of parties, company application is heard finally at the ad-interim stage.

2. By this application, the applicant seeks leave under section 536(2) of the Companies Act, 1956 for disposition of the Rig Kedarnath, belonging to the respondent company (in liquidation) by way of proposed sale to the intending purchaser described in prayer clause (a) of the company application and also seeks directions against the provisional liquidator to forthwith execute a memorandum of understanding/agreement to sell with the intending purchaser.

3. Mr.Kapadia, learned counsel appearing for the applicant invited my attention to the order dated 5th May, 2017 passed by this court in Company Petition No. 756 of 2014 and in Company Petition No.119 of 2015 thereby admitting those company petitions and appointing the Official Liquidator as the provisional liquidator in terms of prayer clause (b) of the company petitions excluding the words 'dealing with'.

4. My attention is also invited to the public notice issued by ONGC inviting tenders for eight number of rigs. He states that insofar as Rig Kedarnath is concerned, the applicant has first charge in respect of the said rig. In support of this submission, he invited my attention to some of the documents annexed to the application including deed of hypothecation. He also tendered a draft minutes of the order and would submit that the offer made by the intending purchaser i.e. Easy Yoke Consultants LLP for Rs.89 crores in respect of the said rig is more than reasonable offer and on the basis of such offer, the applicant shall be permitted to execute the memorandum of understanding with the intending purchaser to enable

the said intending purchaser to submit its bid with ONGC before the closure of the bid i.e. on or before 12th June, 2017. He submits that the offer made by the intending purchaser is more than the valuation of the said rig. In support of this submission, the learned counsel relied upon the valuation report in respect of the said bid annexed to the application.

5. Learned counsel for the original petitioner on the other hand invited my attention to some of the clauses of the tender conditions and would submit that the applicant cannot be allowed to enter into any such MOU with intending purchaser and if allowed, it it is would prejudice the interest of the other creditors and also the workers.

6. Mr. Seksaria, learned counsel for the intending purchaser submits that if reliefs as prayed by the applicant are granted, his client will have to comply with several other formalities to make his client qualified for the purpose of submitting its bid with ONGC. He submits that till today, since the company is not wound up, section 536 of the Companies Act, 1956 would not be attracted.

7. Learned Official Liquidator submits that if the applicant claims to be the secured creditor and has first charge over the Rig Kedarnath, the applicant can exercise its rights available in law for the purpose of sale of the said asset subject to the provisions of the Companies Act, 1956. He submits that the Official Liquidator is not able to make any comment today on the valuation report relied upon by the applicant.

8. In rejoinder, Mr.Kapadia, learned counsel for the applicant invited my attention to the letter dated 31st May, 2017 addressed by the respondent company

to the applicant giving its no objection to the proposed sale of Rig Kedarnath to the intending purchaser for total consideration of Rs.89 crores subject to the leave of this court.

9. With the assistance of the learned counsel appearing for the parties, I have perused the bid documents issued by ONGC and also the draft minutes of the order tendered by Mr.Kapadia, learned counsel for the applicant for perusal of this court. I have also perused the valuation report submitted by the applicant on record. Insofar as leave of this court sought under section 536(2) of the Companies Act, 1956 is concerned, it is not in dispute that the company petitions are not yet allowed and the respondent company is not yet wound up by any order of this court. The company petition is simplicitor admitted and the Official Liquidator has been appointed as a provisional liquidator of the assets of the respondent.

10. It is an undisputed position that except the valuation report, the applicant has not produced any other documents to justify the amount of Rs.89 crores offered by the intending purchaser for sale of the property in question. This court thus cannot approve the proposed transaction between the applicant and the intending purchaser on the terms and conditions suggested by the applicant.

11. In view of the fact that the applicant claims to be a secured creditor in respect of the Rig Kedarnath and claims first charge in respect thereof and in view of the respondent having granted no objection if favour of the applicant for sale of the Rig Kedarnath, in my view interest of justice would be met with if the applicant is permitted to exercise its rights as a secured creditor in respect of the Rig Kedarnath however subject to the strict compliance of the provisions of Companies Act, 1956.

12. It is made clear that if the applicant seeks to exercise its rights as a secured creditor, it shall inform the steps to be taken by the applicant for sale of the said property in favour of the intending purchaser or any third party to the Official Liquidator from time to time.

13. The statement made by Mr.Kapadia, learned counsel for the applicant that the sale proceeds of the said Rig Kedarnath would be deposited in a separate lien account of the applicant which would bear the interest is accepted. The applicant shall not withdraw any amount from the said lien account without leave of this court.

14. It is not in dispute that the Official Liquidator has not taken the possession of the said Rig Kedarnath till date as the provisional liquidator or otherwise. In view of the fact that the applicant proposes to sell the said Rig Kedarnath, the Official Liquidator is directed not to take the physical possession of the said Rig Kedarnath. The applicant would be at liberty to take physical possession directly from the respondent. The order passed by this court on 5th May, 2017 is modified to this extent.

15. Company application is disposed of in the aforesaid terms. No order as to costs.

(R.D.DHANUKA, J.)