IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO.86 OF 2018
IN
COMPANY PETITION NO.756 OF 2014

Axis Bank Limited And Another … Applicants

In the matter between :

Export Import Bank of India … Petitioner
Versus
GOL Offshore Limited And Another … Respondents

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Mr. Chetan Kapadia a/w Mr. Abhishek Bhadang, Mr. Bhalchandra Palav And Ms. Shreya Jha I/b Cyril Amarchand Mangaldas for the Applicants.
Ms. Aneesa Cheema I/b Verus for Original Petitioner.
Mr. S.P. Bharti for Respondent No.2.
Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator.

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CORAM : S.C. GUPTE, J.

DATE : 26 APRIL 2018

P.C. :

. This company application seeks directions to the Official Liquidator for completion of the balance work of a pending project of Respondent No.2-ONGC, which had been awarded to the respondent company and pending completion of which the company went into liquidation. The Applicants are secured creditors of the company in liquidation. M/s Yes Bank Limited have issued a guarantee for completion of the ONGC project by the company in liquidation, whilst Axis Bank Limited have given a counter guarantee to M/s Yes Bank Limited. Under orders passed by this Court from time to time, the parties including Respondent No.2-ONGC, the

Official Liquidator, the sub-contractors engaged by the company in liquidation for the contract work as well as ex-directors of the company in liquidation, have made several attempts to work out modalities for completion of the ongoing project. The project has vital importance for Respondent No.2-ONGC.

2 By its order dated 19 April 2018, this Court had indicated to consider on the next occasion, whether the balance contract work, either as a whole or in part, could be assigned either to the sub-contractors or any other outside agency or agencies that may be identified by Respondent No.2-ONGC for the pending work. Ex-directors of the company in liquidation have identified M/s Mathew Associates Hook-UP & Weld Services ("Mathews") to act as Project Management Consultants ("PMC") for carrying out the balance work. The agency is acceptable to Respondent No.2-ONGC as well. The agency has addressed a communication to the Official Liquidator on 23 April 2018 identifying *inter alia* the various punch points for execution of the balance work. It has offered to provide all site assistance with the requisite skilled manpower and tools & tackles for attending to these open punch points and ensure formal closure of the project through CA/TPI/ONGC teams. It has estimated a tentative schedule of 5-6 months for completing the entire work. It has given an estimate of costs together with separate components associated with mobilization of Mathews team, procurement of project material, coordination with CA/TPI/ONGC for closure of each of the open points. Its own proposal towards the project management cost in managing the balance work is also submitted along with this communication. Ex-directors of the company in liquidation have also addressed a

communication to the Official Liquidator communicating the status of the unfinished ONGC Project and the procedure for completion of all pending jobs. The communication also encloses two outstanding lists, i.e. one of names, and descriptions of vendors and related works and the other of the outstanding amounts payable to the various vendors and other pending costs and time implications for completion of the balance project. Both these communications, i.e. the communication of Mathews and the communication of ex-directors, have been placed before this Court by the Official Liquidator.

3 Based on these communications, the broad position which emerges is that there is an outstanding amount of about Rs.16.88 crores payable to the various vendors of the company in liquidation towards the ONGC project. These vendors want at least 75 per cent of their outstanding payment upfront so that they can take up the balance work and complete the same in accordance with the project specifications. As against this outstanding amount, Respondent No.2-ONGC has to pay a sum in the region of Rs.30 crores to the company in liquidation towards its project. The project, as indicated by Mathews, can be completed under their project management within a period of six months and at an estimated cost of about Rs.3,35,94,440/- plus the project management cost of Rs.91,50,000/-. If that is so, the project can very well be completed as indicated by the ex-directors and Mathews.

4 Learned Counsel for Respondent No.2-ONGC is in broad agreement with this proposal, but he expresses one particular apprehension. Learned Counsel submits that since the amount that may now have to be paid to the

various vendors with a view to enable them to take up and complete the balance work will be in the nature of advance payment, ONGC may be permitted to charge interest in accordance with its prevailing policy and adjust the same towards the final amount payable to the vendors or the company in liquidation, as the case may be. This order is being passed by this Court after taking into account various circumstances, which form part of the subject matter of the present company application. This payment is being directed to be made by ONGC as part of its past dues and not as an advance payment. In the premises, there is no question of ONGC charging any interest towards the amount required to be paid under the orders of this Court.

5 The Official Liquidator submits to the orders of the Court.

6 In the light of what is discussed above and the positive response of all stakeholders to the arrangement proposed, the following order is passed :-

(i) M/s Mathew Associates Hook-Up & Weld Services are appointed as Project Management Consultants for completion of the balance project of ONGC under their contract with the company in liquidation;

(ii) ONGC shall pay an amount of Rs.12.66 crores towards 75 per cent of outstanding dues of the vendors as indicated in Appendix-'A' to the communication of P.C. Kapoor, Ex-Chairman of the company in liquidation, dated 24 April

2018;

(iii) These amounts shall be paid directly to the vendors named in Appendix-'B' to the communication dated 24 April 2018 and proportionate to the respective outstandings indicated against their names;

(iv) Immediately after payment of these amounts, the individual vendors shall proceed with the balance work of the project and complete the same in accordance with over all directions and under the supervision of Mathew Associates Hook-Up & Weld Services;

(v) Further dues of the vendors towards the completion of the balance work as well as towards 25 per cent of their past dues shall be paid only after the particular project work to the account of the individual vendor is accomplished by such vendor. Such payment shall be made by ONGC upon instructions in that behalf by the Official Liquidator. The Official Liquidator in turn shall certify such payment after seeking appropriate instructions from Mathew Associates Hook-Up & Weld Services;

(v) The Applicants shall extend the present counter guarantees described in paragraphs 5 and 9 of the affidavit in support of the company application by a further period of six months and communicate such renewal / extension to

ONGC as well as the Official Liquidator;

(vi) All payments made by ONGC to Mathew Associates Hook-Up & Weld Services in pursuance of the orders of this Court shall be a complete discharge of the liability owed by ONGC to the company in liquidation to the extent of the amounts paid to Mathew Associates Hook-Up & Weld Services;

(vi) Rajesndra Prasad Mada, the representative of Mathew Associates Hook-Up & Weld Services, gives an undertaking to the Court that the entire balance work, subject to ONGC honouring payments in accordance with this order, shall be completed within a period of six months from today;

(vii) It is made clear that these orders shall be construed as special directions of the Court under Section 537 of the Companies Act, 1956;

(viii) Company Application is disposed of accordingly.

(S.C. GUPTE, J.)