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

COMPANY APPLICATION (L) NO.568 OF 2017
IN
COMPANY PETITION NO.756 OF 2014

Export Import Bank of India … Applicant

Versus

GOL Offshore Ltd (Through The Provisional Liquidator) …. Respondent

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Mr. Charles De Souza a/w. Mr. Aneesa Cheema I/b Verus for the Applicant.
Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.
Ms. Viloma Shah and Mr. Dhiren Durante I/b M/s. Hariani & Co. for M. Pallonji & Company Pvt. Ltd.
Ms. Divesha Agarwal a/w Mr. Shailendra Gupta and Ms. Manjiri Balerao, representative/officers of EXIM Bank present.
Mr. Rajiv Agarwal, Director of Tirupati Vessels Pvt. Ltd.
Mr. Rajesh Shahi, Managing Director of Glory Ship Management Pvt. Ltd.
Mr. Devesh Kalra, Director of KNK Ship Management Pvt. Ltd.
Mr. Lokesh Mangal, Director for Cube Offshore Services pvt. Ltd. present.

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CORAM : S.C.GUPTE, J.

DATE : 28 MARCH 2018

P.C. :

MT KANTI

1. By order dated 23 March 2018, sale of the vessel MT Kanti was deferred. This Court noted the offer of one M/s. KNK Ship Management for purchase of this vessel for a sum of Rs.1.26 crores. The party was asked if they were willing to raise the offer. The party was to communicate by today's date, if they agreed to do so. Today, when the matter is called out,

there is one more offer from one M/s. Tirupati Vessels Pvt. Limited. The offer is for Rs.1.40 crores. A Demand Draft in the sum of Rs.35 lakhs is enclosed towards earnest money. Since there are two offers for purchase of this vessel and which are close to each other, the parties are asked to bid in court. It so transpires that after this biding, the offer of M/s. Tirupati Vessesl Pvt. Limited stands as the highest offer. It is for a sum of Rs.1.60 crores. M/s. KNK Ship Management are not willing to match this offer. The Applicant has no objection to this offer being accepted.

2. The representative of the Official Liquidator requests the Court to re-advertise the sale of the vessel, since the final price is not up to the valuation made of the vessel. Considering the facts that (i) the difference between the offer price and the valuation which was a broad estimate, is not much, (ii) substantial expenses have to be incurred for manning the vessel and (iii) there is no guarantee that upon re-advertisement of sale, the vessel will fetch any higher value, the offer of M/s. Tirupati Vessel Pvt. Limited is accepted by the Court. The sale of the vessel MT Kanti is accordingly confirmed in favour of the M/s. Tirupati Vessel Pvt. Limited for a sum of Rs.1.60 crores. M/s. Tirupati Vessel Pvt. Limited shall deposit the balance amount of the bid price within a period of 21 working days from today by direct credit to the account of the Official Liquidator, being Acc. No.0062000100351097 of Punjab National Bank (IFSC Code:PUNB0006200) through RTGS. Against payment of the balance price as provided herein, the Official Liquidator shall forthwith hand over the possession of the Suit vessel, namely, MT Kanti, to M/s. Tirupati Vessel Pvt. Limited and issue a sale certificate in their favour. The EMD of the unsuccessful bidder may be returned.

GAL CONSTRUCTOR

3. As far as the vessel Gal Constructor is concerned, the offer price of Rs.7.20 crores of one M/s. Cube Offshore Services Private Limited was noted by the Court in the last order dated 23 March 2018. Today, when the matter is called out, there is another party, namely, M/s. Tirupati Vessel Pvt. Limited, who gives an offer of Rs.7.40 crores. Since the two offers, i.e. offer noted by the Court on 23 March 2018 and the offer received today, are quite close, the parties are asked to bid in the Court. After their *inter se* biding, it transpires that the offer of M/s. Tirupati Vessel Pvt. Limited for a sum of Rs.7.70 crores for this vessel is the highest offer received. M/s. Cube Offshore Services Private Limited do not match this offer. The Applicant has no objection to this offer being accepted. The representative of the Official Liquidator requests the Court to re-advertise the sale, since the offer is quite below the valuation made and placed on record before this Court.

4. Earlier when, for the first time, the sale of the vessel was advertised, not a single offer was received for purchase of this vessel. On the second occasion, though there are two parties willing to purchase the vessel, both offers are in the region of about Rs.7.60 crores to Rs.7.70 crores. The vessel has to be manned at a considerable expense. After two attempts of sale, the offers received today are quite substantial (over 75% of the estimated valuation). In the premises, this Court is of the view that the offer should be accepted. Accordingly, the offer of M/s. Tirupati Vessel Pvt. Limited for purchase of the vessel Gal Constructor is accepted and the sale of MT Gal Constructor is confirmed in their favour for a sum of Rs.7.70 crores.

5. M/s. Tirupati Vessel Pvt. Limited shall deposit the balance amount of the bid price within a period of 21 working days from today by direct credit to the account of the Official Liquidator being Acc. No.0062000100351097 of Punjab National Bank (IFSC Code:PUNB0006200) through RTGS. Against payment of the balance price as provided herein, the Official Liquidator shall forthwith hand over the possession of the Suit vessel, namely, MT Gal Constructor, to M/s. Tirupati Vessel Pvt. Limited and issue a sale certificate in their favour. It is clarified that the vessel is being sold to the M/s.Tirupati Vessel Pvt. Limited on 'as is where is' basis but free of all encumbrances.

6. The EMD of M/s. Cube Offshore Services Private Limited shall be returned.

MT MALINI

7. As far as this vessel is concerned, this Court had noted on the last occasion the offer of Rs.31 lakhs submitted by M/s. Akil Corporation. Today, there is one more party present in Court. That party, M/s. Simson Offshore Services LLP, submits an offer of Rs.36 lakhs. M/s. Akil Corporation do not appear today, though, as noted by the Court on last occasion, their offer of Rs.35 lakhs ought to be still open. Since the offer received in Court for the sum of Rs.36 lakhs is the highest offer for purchase of this vessel, the Applicant has no objection to accept the offer. The representative of the Official Liquidator requests the Court to re-advertise the sale of the vessel, since the final price is not up to the valuation made of the vessel. Considering the facts that the difference between the offer price and the valuation which is anyway a broad estimate is not much and that substantial expenses have to be incurred for

manning the vessel and there is no guarantee that upon re-advertisement of the sale, the vessel will fetch any higher value, the offer of M/s. Simson Offshore Services LLP is accepted by the Court. Accordingly the sale of the vessel MT Malini is confirmed in favour of Ms/. Simson Offshore Services LLP for a sum of Rs.36 lakhs. M/s. Simson Offshore Services LLP shall deposit the balance amount of the bid price within a period of 21 working days from today by direct credit to the account of the Official Liquidator being Acc. No.0062000100351097 of Punjab National Bank (IFSC Code:PUNB0006200) through RTGS. Against the payment of balance price as provided herein, the Official Liquidator shall forthwith hand over the possession of the Suit vessel, namely, MT Malini, to M/s. Simson Offshore Services LLP and issue a sale certificate in their favour. It is clarified that the vessel is being sold to M/s. Simson Offshore Services LLP on 'as is where is' basis but free of all encumbrances.

8. The EMD of unsuccessful parties may be returned.

9. The order of 23 March 2018 may be corrected by correcting the name of purchaser of the vessel MT Malaviya Thirty as 'M/s. M Pallonji and Co. Pvt. Ltd.'. So also, the appearance on their behalf may be corrected as ‘Ms. Viloma Shah and Mr. Dhiren Durante I/b M/s. Hariani & Co. for M Pallonji & Company Pvt. Ltd.’. M/s. Pallonji and Co. Pvt. Ltd. are permitted to depute two of their representatives as crew members on the vessel.

10. Since the sale of all these vessels has now been accomplished, the Company Application can be disposed of. The Official Liquidator may present a report so as to enable the Court to consider disbursement of the sale proceeds and declaration of dividend. All necessary formalities for preparation of this report and invitation of an order from the Court in this

behalf shall be completed by the Official Liquidator. In the meantime, the amount of sale proceeds received towards sale of these six vessels shall be invested by the Official Liquidator in fixed deposit/s of nationalized bank/s. The particulars of such investments to be communicated by the Official Liquidator to the Applicant. Such deposits shall abide by further orders that may be passed by this Court. The Applicant may also in the meantime submit a bill of costs to the Official Liquidator, communicating the expenses incurred by the Applicant so far for manning the vessel and towards formalities for accomplishment of the Court sales. Payment of these expenses shall also form part of the Official Liquidator's report presented to the Court. Initial report in this behalf may be presented by the Official Liquidator to the Court within a period of four weeks from today. This report shall seek directions concerning invitation of claims under Rule 148 of the Companies Court Rules.

11. The Company Application is disposed of.

12. In the report to be submitted by the Official Liquidator, directions may also be sought concerning GST payable on the sales conducted through MSTC. Suitable direction would be passed on the report in this behalf. In the meantime, those of the parties, who have not paid GST for sales conducted through MSTC, shall not be required to pay any amount towards GST to the Official Liquidator. These parties, however, undertake to the Court that in case any GST is held payable on their respective sales by any order of this Court passed on the Liquidator's report as noted above, they shall immediately make the payment. Amount paid by such of the parties as have paid GST, need not be refunded till the Court considers the matter. In case, however, the Court holds that no GST is payable for sales

conducted by the Official Liquidator through MSTC, the amounts deposited by these parties shall be refunded to them with such interest as may have accrued on the amounts.

13. It is clarified that the expression “free from encumbrances” used in the orders passed by this Court for sale of these six vessels implies that the vessels shall be free of any mortgage payment or maritime liens or claims and also customs duty, if any.

(S.C.GUPTE, J.)