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

COMPANY APPLICATION NO.695 OF 2017
IN
COMPANY PETITION NO.756 OF 2014
WITH
COMPANY APPLICATION (L) NO.10 OF 2018
(NOT ON BOARD)

Axis Bank Limited ... Applicant

In the matter between :

Export Import Bank of India ... Petitioner
Versus
GOL Offshore Limited And Others ... Respondents

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Mr. Chetan Kapadia a/w Mr. Abhishek Bhadang and Ms. Shreya Jha I/b Cyril Amarchand Mangaldas for the Applicant.
Mr. Aziz Khan a/w Mr. Deepak Singh I/b Divya Shah Associates for Respondent No.2 (ONGC).
Mr. J.S. Saluja for Respondent No.4.
Mr. Surel Shah I/b Mr. Ashish Mishra for Dulam International Limited for the Applicant in Company Application (L) No.10 of 2018.
Ms. Aneesa Cheema I/b Verus for Original Petitioner- EXIM Bank.
Ms. Namrata Shah Saurastri I/b K. Ashar & Co. for the Ex-Employees.
Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.

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CORAM : S.C.GUPTE, J.

DATE : 15 JANUARY 2018

P.C. :

MINUTES OF THE ORDER

1. The present Application is filed by Axis Bank Limited representing a

consortium of nine banks ("Lenders"). The Applicant claims to have an outstanding recoverable amount of Rs.379.22 cr. (approx.). The said loan is secured by a mortgage of MSV Malaviya 36 ("M-36"), a multi-purpose support vessel, in favour of the Lenders. M-36 was the subject matter of a contract dated 7th April 2014 between Oil and Natural Gas Corporation of India ("ONGC") and GOL Offshore Limited (now in liquidation) whereunder ONGC had taken the vessel on charter hire for a period of 5 years on terms and conditions and for consideration set out in that contract. Under this contract, M-36 was generating a revenue in the range of Rs.12.00 cr. per month.

2. In Company Petition No.756 of 2014, filed by Export and Import Bank of India ("EXIM Bank") against GOL Offshore Limited, an order was passed on 5th May 2017, whereby the Petition was admitted and Official Liquidator was appointed as Provisional Liquidator of the Respondent Company. By a subsequent order dated 4th December 2017, the Respondent Company was ordered to be wound up.

3. On 28th June 2017, M-36 was berthed at Mumbai Port Trust for dry-docking. However, in view of appointment of Provisional Liquidator of the Respondent Company, the necessary works on M-36 were not undertaken. By an order dated 11th August 2017, passed in Admiralty Suit (L) No.452 of 2017 filed by one Kenneth Barry Stewart claiming a sum of USD 1,89,000.00/-, an order of arrest of M-36 was passed.

4. In view of the now outstanding period of two years under the

contract with ONGC, the Official Liquidator and lenders led by Axis Bank took various steps in order to work out some arrangement where the dues of the crew members of M-36, vendors of M-36 and Lenders, and other liabilities regarding M-36 could be discharged, albeit in instalments and also, to that end, carry out the outstanding work required to make M-36 seaworthy again. In this regard, this Court has passed various orders, viz. orders dated 18th September, 2017, 21st September, 2017, and 27th September, 2017, to facilitate settlement amongst the concerned parties. As seen from these orders, the Lenders have also offered to provide some funds upfront for making M-36 seaworthy. These funds are presently lying in a Trust Retention Agreement (TRA) Account of Axis Bank. While these efforts were underway, the Document of Compliance ("DOC") of the company (in liquidation) expired on 30th September 2017.

5. By an order dated 29th September 2017, the ex-director of the company (in liquidation) was directed to co-operate with the Official Liquidator to make an application for DOC. However, in view of unpaid wages, that application has not met with success. On 1st November, 2017, the crew members and Master have discontinued their services with M-36.

6. The present Application is a step towards this endeavour on the part of the Lenders to make M-36 seaworthy and resume its charter with ONGC so as to generate revenue for the benefit of all stakeholders, rather than sale of the security. The Insurance premium for full and machinery has also been duly paid on by Axis Bank in accordance

with leave granted by order dated 13th November, 2017

7 After hearing the Applicant and the Advocate for the Director General of Shipping, Respondent No.4 herein, the following order is passed with the consent of the parties:

i) The Director General of Shipping, Mumbai, Respondent No.4 herein shall consider a joint application filed by the Official Liquidator with the Technical Manager as contemplated under Clause 5.2 of the Merchant Shipping Notice dated 15th May 2014. All necessary compliances and undertakings under the applicable rules shall be furnished by the organization undertaking the technical management of MSV Malaviya-36 who will assume the role as 'the Company (in liquidation)' for the implementation of Safety Management Certificate ("SMC"). Such responsibility in regard to MSV Malaviya-36 shall be implemented by such organization.

ii) The Technical Manager and the Organisation referred above in clause (i) shall be appointed by the Official Liquidator with consultation and approval of Axis Bank on behalf the Lenders.

iii) Respondent No.4 shall consider the joint application filed by the OL and technical manager within a period of three weeks from its submission in accordance with law.

iv) There shall be no orders as to costs.

v) Parties to act on the authenticated copy of this order.

7. A third party, M/s Dulam International Limited, represented through Counsel, informs the Court that it has moved the Official Liquidator with a proposal to run the concerned vessel and that its proposal deserves to be considered. It is submitted that the Official Liquidator has, by communication dated 5 January 2018, informed the third party to approach this Court with their offer. Since the Technical Manager and the Organization referred to in clause-(i) of paragraph-6 above are to be appointed by official liquidator in consultation and with approval of Axix Bank on behalf of the Lenders, it will be open to the Official Liquidator to consider offer of M/s Dulam International Limited whilst appointing such Technical Manager and the Organization.

9 Since M/s Dulam International Limited is permitted to apply to the official liquidator with their offer, learned Counsel for M/s Dulam International Limited does not press Company Application (L) No.10 of 2018 (NoB). The application is dismissed as not pressed. All rights and contentions of the parties on merits are kept open.

10 The present order is passed without reference to the contentions of Respondent No.2 M/s Oil And Natural Gas Corporation. If M/s Oil And Natural Gas Corporation has taken or takes any steps in the

matter, they shall not be prejudiced by the present order.

(S.C. GUPTE, J.)