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

COMPANY APPLICATION (L) NO.603 OF 2017
WITH
COMPANY APPLICATION (L) NO.28 OF 2018
IN
COMPANY PETITION NO.756 OF 2014

Phoenix Arc Pvt. Ltd. … Applicant

<u>In the matter between:</u>
Export Import Bank of India … Petitioner

Versus

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

WITH
COMPANY APPLICATION (L) NO.18 OF 2018
IN
COMPANY PETITION NO.756 OF 2014

Malcolm Anjirbag & Ors. … Applicants

<u>In the matter between:</u>
Export Import Bank of India … Petitioner

Versus

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

Versus

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

…..

Zubin Behramkamdin a/w Mr. Aneesa Cheema I/b Verus for the Applicant in CAL/603/2017.
Mr. Kunal Gaikwad for Applicants in CAL/28/2018.

Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.
Mr. Utsav Agarwal, Director of Tirupati Vessels (P) Limited present.
Mr. Faruk, representative of Akil Corporation present.
Mr. Saad Gundigara, representative of R. R. Corporation.

…..

CORAM : S.C.GUPTE, J.

DATE : 4 APRIL 2018

<u>P.C.</u> :

1. The Company Application concerns inter alia the sale of vessel known as Malaviya 10, which is owned by the company in liquidation.

2. In pursuance of a notice of E-auction issued in response to the order passed by this Court on 21 February 2018, no offer was electronically received by the Official Liquidator. However, three private offers have come in for purchase of the suit vessel, two submitted to the Applicant and one to the Official Liquidator. Amongst the offers received by the Applicant, M/s. Tirupati Vessels (P) Limited have submitted an offer of Rs.3.55 crores, whilst M/s. Akil Corporation have submitted an offer for Rs.3.65 crores. The offer received by the Liquidator's office is from M/s. R. R. Corporation. It is for a sum of Rs.3.61 crores. All three parties are present in court. The vessel has been valued by valuers appointed by the Applicant in consultation with the Official Liquidator. The valuers, M/s. UBA Insurance Surveyor and Loss Assessors LLP, have valued the vessel in the range of Rs.4 crores. The parties present in Court are directed to make a further bidding, since their offers are quite close to each other. M/s. Tirupati Vessels (P) Limited submit an offer of Rs.3.70 crores. None of the

other parties is willing to match this offer. The representative of the Official Liquidator present in court requests the Court to re-advertise the sale, since the highest price offered for purchase of the vessel is not up to the valuation of the vessel. The Applicant has no objection to this offer being accepted.

3. Considering the facts that the present auction was a re-auction (the first having resulted in no response) and that the vessel has to be manned pending accomplishment of its sale at considerable expenses and also that the highest price now received is over 90% of the estimated valuation, this Court is of the view that it is in the interest of justice to accept the highest offer.

4. Accordingly, the offer of M/s. Tirupati Vessel (P) Limited for purchase of the vessel, Malaviya 10, is accepted and the sale of Malaviya 10 is confirmed in their favour for a sum of Rs.3.70/- crores. M/s. Tirupati Vessel (P) 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, Malaviya 10, to M/s. Tirupati Vessel (P) Limited and issue a sale certificate in their favour. It is clarified that the vessel is being sold to M/s. Tirupati Vessel (P) Limited on 'as is where is' basis but free of all encumbrances. The EMD of the unsuccessful bidders may be returned.

5. Since the sale of all vessels forming the subject matter of this Company Application 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 this vessel 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.

6. 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 directions 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.

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

8. The Company Application (L) No.18 of 2018 taken out in the present Company Petition is mentioned and taken on board by consent of Counsel and heard. It is ordered that the EMD of M/s. Pragati Marine Services Pvt. Ltd. received by the Applicant shall be made over in its entirety by the Applicant to the Official Liquidator. Simultaneously, the Applicant shall raise a bill of costs including manning charges incurred by the Applicant as also the advertisement charges paid for sale of the vessel MT Polaris. Within a week of such communication, such charges and costs shall be paid by the Official Liquidator to the Applicant without reference to the Court.

(S.C.GUPTE, J.)