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

**COMPANY APPLICATION NO. 107 OF 2019
IN
COMPANY PETITION NO. 756 OF 2014**

Phoenix ARC Private Limited

A company incorporated and registered under the Companies Act, 1956 and having its registered office at 5th Floor, Dani Corporate Park, 158, C.S.T. Road, Kalina, Santacruz (E), Mumbai – 400 098 acting in its capacity as Trustee of Phoenix Trust FY 16 – 11 and Phoenix Trust FY 16 – 11 (Scheme B) through its authorised representatives Ms. Pallavi Chavan.

... Applicant

IN THE MATTER BETWEEN :-

Export Import Bank of India

A corporation established under the Export-Import Bank of India Act, 1981, having its head office at Center One Building, Floor 21, World Trade Center Complex, Cuffe Parade, Mumbai – 400 005.

... Petitioner

Versus

GOL Offshore Limited (Through the Official Liquidator)

A company registered under the Companies Act, 1956 and having its registered office at Energy House 81, D. N. Road, Mumbai – 400 001 and having CIN Number L11200MH2005PLC154793.

... Respondent

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Ms. Aneesha Cheema along with Ms. Sakshi Bhalla i/by Mr. Charles De Souza for the Applicant.

Mr. Aditya Pimple for the Official Liquidator.

Mr. Mahendra Aithe, Company Prosecutor for Official Liquidator present.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 6th FEBRUARY, 2020

PRONOUNCED ON : 26th FEBRUARY, 2020

JUDGMENT :

. By this Company Application filed under Section 457(3) and Section 460(6) of the Companies Act, 1956, the applicant seeks an order and direction against the official liquidator to reimburse the claim of the applicant for an amount of Rs.62,65,898/- towards liquidation expenses of vessels/tugs of the respondent company in liquidation rejected by the official liquidator out of the total claim of Rs.1,06,46,193/- in Official Liquidator's Report No. 141 of 2018. Some of the relevant facts for the purpose of deciding this Company Application are as under :-

2. Some time in the year 2014, Export Import Bank of India filed a Company Petition No. 756 of 2014 *inter-alia* praying for winding up of the respondent company. On 5th May, 2017, this Court admitted the said company petition and restrained the respondent from alienating, transferring, disposing off its assets in any manner whatsoever and appointed a provisional liquidator to take possession of the assets of the respondent. By an order dated 4th December, 2017 passed by this Court, the respondent was directed to be wound up and the official liquidator was directed to take charge of the assets of the respondent.

3. The applicant filed Company Application No. 171 of 2018, Company Application No. 170 of 2018 and Company Application No. 127 of 2018 for

the sale of certain vessels/tugs of the respondent exclusively mortgaged to the applicant. It is the case of the applicant that when such applications were made by the applicant, neither the applicant nor the official liquidator was in a physical possession of the of the vessels in respect of which those Company Applications were filed. By orders dated 14th February, 2018, 14th March, 2018, 28th March, 2018 and 4th April, 2018, the vessels/tugs of the respondent mortgaged to the applicant were sold to respective purchasers.

4. In Company Application No. 127 of 2018, this Court passed an order on 25th January, 2018, this Court recorded the statement of the applicant that expenses for enabling the liquidator to take possession and to man the ship MT Polaris after such possession is taken would be borne by the applicant and after taking such possession, the official liquidator would permit the prospective purchasers to visit and inspect vessel MT Polaris. By an order dated 14th February, 2018, the applicant agreed to incur cost for valuation of vessel MT Polaris to facilitate the sale of the same.

5. By an order dated 25th January, 2018 in Company Application No. 170 of 2018, the applicant agreed to appoint a manning agency to man and maintain Tugs Gal Beaufort Sea and Gal Ross Sea and bear expenses in relation thereto. It is the case of the applicant that the applicant had agreed to incur such expenses so as to protect the tugs and facilitate the sale of the tugs.

6. By an order dated 1st March, 2018, this Court recorded that all charges payable for the vessels including the port charges upto date shall be to the official liquidator's account, to be paid from out of the sale proceeds coming into the hands of the liquidator in pursuance of the said order. This Court also clarified that all claims against the sale proceeds of the vessels including maritime liens and maritime claims shall be considered by the official liquidator in accordance with the applicable law of priority of claims. It is further provided that the charges incurred by the applicant towards sale of the suit vessel including the advertisement charges shall be paid by the official liquidator from out of the sale proceeds in consultation with the applicant including the manning charges and also the expenses incurred towards advertisement etc. This Court clarified that any expenses incurred by the applicant towards manning of the vessel in the course of liquidation proceedings would be treated as liquidation expenses and disbursed to the applicant from out of the sale proceeds of the vessels.

7. By an order dated 28th March, 2018, this Court recorded that the charges of the vessel including all port charges upto date shall be to the account of the official liquidator and shall be paid from out of the sale proceeds. This Court clarified that all claims against the sale proceeds of the vessel including maritime liens and maritime claims shall be considered by the official liquidator in accordance with the applicable law of priority of

claims. This Court directed that cost incurred by the applicant towards sale of vessels including advertisement charges and manning charges shall be paid by the official liquidator from out of the sale proceeds.

8. It is the case of the applicant that by an order dated 4th April, 2018 in Company Application No. 171 of 2018, this Court noted that the applicant was entitled to submit bill of costs to the official liquidator indicating the expenses incurred by the applicant, so far for manning the vessel and towards formalities of accomplishment of Court sales. This Court also directed that within a week of communication of the costs by the applicant, such charges and costs shall be paid by the official liquidator to the applicant without reference to the Court.

9. On 19th June, 2018, the applicant submitted its affidavit of proof of debt, for reimbursement of a total amount of Rs.1,06,46,193/-. There was delay in filing the said affidavit of proof of debt. The applicant applied for condonation of delay in filing the said affidavit of proof of debt. On 19th October, 2018, the official liquidator filed a report bearing no. 141 of 2018 in this Court *inter-alia* for various directions and allowing the claim of the applicant to an extent of Rs.43,80,295/- and rejecting the claim for an amount of Rs.62,65,898/-. By an order dated 28th November, 2018, this Court allowed the said Official Liquidator's Report No. 141 of 2018 and directed the official liquidator to reimburse an amount of Rs.43,80,295/- to

the applicant which was allowed in the said Official Liquidator's Report No. 141 of 2018. The applicant filed this Company Application *inter-alia* for recovery of the balance amount which was rejected by the official liquidator.

10. Ms. Aneesha Cheema, learned counsel for the applicant invited my attention to the various orders passed by this Court which are annexed to the Company Application and would submit that the claims which are rejected by the official liquidator were arising out of the expenses incurred by the applicant towards travelling, lodging, management charges, port charges, salaries and supply and provisioning of food aboard the vessels/tugs of the respondents which were mortgaged to the applicant. The official liquidator has not recorded any reasons for rejecting these claim. Some of the claims are rejected on the ground that the official liquidator took possession of the vessels/tugs of the respondent mortgaged to the applicant prior to the actual handing over of those vessels/tugs. She submits that the official liquidator has not rejected the claims made by the applicant on the ground that expenses were not supported by relevant documents or were exorbitant or unjustified. Learned counsel invited my attention to the particulars of the claims rejected by the official liquidator annexed at Exh. N of this company application.

11. It is submitted by the learned counsel that though this Court by orders dated 25th January, 2018, 14th February, 2018, 1st March, 2018, 28th March,

2018 and 4th April, 2018 passed in various Company Applications filed by the applicant had directed that all the expenses incurred by the applicant in respect of the manning, maintaining, safeguarding and consequent sale of the vessels/tugs of the respondent mortgaged to the applicant shall be reimbursed to the applicant within one week from furnishing the bill of costs, though such expenses were incurred and squarely fell within the ambit of the aforementioned orders passed by this Court, the official liquidator has rejected these claims contrary to the orders passed by this Court. She submits that all such expenses i.e. travelling, lodging, management charges, port charges, salaries and supply and provisioning of food aboard the vessels/tugs were in connection with the Court sales and/or manning and maintenance and thus the official liquidator was bound to reimburse the said amount incurred by the applicant towards those expenses.

12. It is submitted that those expenses were incurred with a view to safeguard the said vessels/tugs. The applicant was constrained to incur all such expenses since official liquidator has refused to release any monies from the general pool of the respondent. The official liquidator did not take any steps to take possession of the assets of the respondent and more particularly the vessels/ tugs of the respondent which were mortgaged in favour of the applicant. The official liquidator refused to incur any expenses to salvage the vessels/tugs and to maintain those vessels/tugs.

13. It is submitted by the learned counsel that the Vessel MT Polaris was lying abandoned at the Kakinada Port. Hull, tackle, gear, engine, bunkers, plant, apparel, machinery, fixtures, equipment and all appurtenances aboard the said Vessel MT Polaris were being stolen or were at the threat of being stolen by the locals. She submits that Tug Sangita was in a precarious condition and were listed dangerously and was in danger of capsizing. The applicant was thus required to take necessary steps to safeguard the vessels/tugs of the respondent mortgaged in favour of the applicant. The official liquidator thus could not have rejected the claim for reimbursement of those expenses and more particularly incurred for travelling and lodging. If the applicant would not have incurred such expenses, the vessels/tugs of the respondents mortgaged in favour of the applicant would not have been sea worthy and could have sunk. In such an event, no recoveries would have been made from the sale of those vessels/tugs. Only because of the efforts taken by the applicant and incurring such expenses, the official liquidator could realize a substantial amount upon sale of those vessels/tugs.

14. Mr. Aditya Pimple, learned counsel for the official liquidator on the other hand invited my attention to the orders passed by this Court from time to time in various Company Applications filed by the applicant annexed to the Company Application. He also invited my attention to various averments made by the official liquidator in OLR No. 141 of 2018. He submits that by an order dated 28th March, 2018, this Court had confirmed the sale of

various vessels/tugs. The official liquidator had received a claim of affidavit from the petitioner Exim bank for seeking reimbursement of expenses for an amount of Rs.2,33,75,943.27/- incurred by the Exim bank towards the sale of those vessels. The official liquidator has admitted the claim of the said Exim bank for an amount of Rs.1,33,82,986/-. The official liquidator rejected the claim of Exim bank of Rs.99,92,957.27/- which was claimed towards the travelling, lodging expenses and deploying of tug and repair work which were not admissible. He invited my attention to those details of claim made by the Exim bank in paragraph 6 of the said Official Liquidator's Report No. 141 of 2018.

15. It is submitted by the learned counsel that by an order dated 14th March, 2018, this Court had allowed the Company Application filed by the applicant for the sale of vessel MT Polaris and confirmed the said sale in favour of M/s. Pragati Marine Services Pvt. Ltd. for a sum of Rs.7.30 crores. By an order dated 14th February, 2018, this Court confirmed the sale of Gal Ross Sea for an amount of Rs.3,01,00,000/-. By an order dated 28th March, 2018, this Court confirmed the sale of Tug Sangita for an amount of Rs.2,10,00,000/-. Both these orders were passed on the Company Applications filed by the applicant to seek permission to sell those tugs which were secured in favour of the applicant by way of registered mortgage under Section 51(1) of the Merchant Shipping Act, 1958.

16. It is submitted by the learned counsel that the official liquidator has already allowed the claim of reimbursement of Rs.1,59,300/- towards expenses incurred for the sale of the vessels i.e. Gal Ross Sea, Gal Beaufort Sea and Sangita which were found admissible by the official liquidator. The official liquidator also allowed the claim of Rs.3,71,241/- found admissible towards expenses incurred for the sale of vessel i.e. MT Polaris. The official liquidator had taken possession of the vessel MT Polaris on 6th February, 2018 whereas the sale of the said vessel had been confirmed on 14th March, 2018. He submits that official liquidator thus held that the management cost between that period would be treated as Liquidation expenses amounting to Rs.2,59,305/- along with GST.

17. It is submitted by the learned counsel that the official liquidator also found an amount of Rs.7,54,167/- as admissible being charges of valuation and publication incurred towards the sale of vessel Malaviya-Ten. The official liquidator had taken possession of the said vessel on 4th January, 2018 and the sale of the said vessel had been confirmed by this Court on 4th April, 2018. Learned counsel submits that the management cost between that period would be treated as Liquidation expenses amounting to Rs.26,27,554/-. He relied upon various reasons recorded by the official liquidator while rejecting the claims made by the applicant in the said Official Liquidator's Report.

18. It is submitted by the learned counsel that out of the claim of Rs.19,70,231/- made by the applicant towards expenses incurred from sale of vessel i.e. MT Polaris, the official liquidator has already admitted an amount of Rs.14,39,296/- in part being the charges of valuation, publication and manning charges and has rejected the balance amount of Rs.5,30,935/-. He relied upon paragraphs 2 and 3 of the order dated 25th January, 2018 passed by this Court and would submit that this Court had recorded a statement made by the applicant that though technically there was a ongoing charter for the said vessel MT Polaris which was operative till about June 2018, for all practical purposes, the said vessel/tug stood abandoned at the port of Kakinada and thus was required to be taken possession by the official liquidator. The report of the official liquidator submitted that the expenses for enabling the liquidator to take possession as also to man the ship after the said possession must be borne by the applicant. Learned counsel for the applicant gave no objection to the said statement made by the representative of the official liquidator.

19. It is submitted that only in view of the said statement made by the learned counsel for the applicant, this Court directed the official liquidator to take possession of MT Polaris. It was made clear in the said order that the cost for taking such possession and thereafter to man the ship in taking possession after the date of the said order dated 25th January, 2018 and incurred pursuant to the said order can be treated as liquidation expenses and

would not cover the travelling and lodging of Rs.79,374/-, manning expenses of Rs.1,63,886/- and port charges of Rs.2,87,675/- incurred by the applicant since those expenses were neither approved by this Court nor conveyed to the official liquidator prior to incurring such expenses.

20. It is submitted by the learned counsel that the travelling and lodging expenses of Rs.79,374/- have been rightly rejected by the official liquidator as those expenses could not be judged by the official liquidator as to whether they were minimum, required and economical. Manning expenses of Rs.1,63,886/- have been rightly rejected in view of paragraph 10 of the order dated 25th January, 2018 passed by this Court. He submits that in so far as the port dues of Rs.2,87,675/- are concerned, since the said claim would fall under Section 530 of the Companies Act, 1956 being Government dues, would be paid after payment to workman and secured creditors. If such claims are admitted, it would result in disturbing the priority mechanism provided under Companies Act, 1956 and would result a disadvantage to the workman and secured creditors. He submits that no expenses which are incurred by the applicant without the permission of this Court, without prior intimation to the official liquidator and intimation before taking possession of the vessel/tug by the official liquidator can be allowed. He submits that in any event the applicant being the secured mortgagee cannot claim such expenses from the official liquidator as liquidation expenses. In respect of such expenses, applicant may be considered as an unsecured creditor. Statement is accepted.

21. It is submitted by the learned counsel for the official liquidator that the official liquidator will not be able to admit the travelling, lodging and food expenses of Rs.1,56,093/- manning expenses of Rs.30,47,751/-, salary expenses of Rs.2,68,927/- and port dues of Rs.22,62,182/- incurred by the applicant if any since these expenses were neither approved by this Court nor were conveyed to the official liquidator prior to incurring such expenses and thus would not be considered as liquidation expenses.

22. It is submitted by the learned counsel that the salary remittance of Rs.2,68,927/- would fall under Sections 529A or 530 of the Companies Act, 1956 depending upon the nature of work and thus has been rightly rejected by the official liquidator. It is submitted that the order passed by this Court on 28th November, 2018 allowing the Official Liquidator's Report No. 141 of 2018 has not been impugned by the applicant. This Court thus shall not interfere with the order passed by the official liquidator in rejecting the claim of Rs.57,34,953/- in respect of the vessel MT Polaris and Malaviya-Ten.

23. Learned counsel for the applicant in rejoinder placed reliance on the order dated 13th December, 2017, passed by this Court in Company Application (Lodging) No. 603 of 2017 and would submit that this Court in the said order had held that the applicant had a right to sell the vessel i.e.

Malaviya-Ten without intervention of Court in terms of Section 51(1) of the Merchant Shipping Act, 1958. This Court had directed the official liquidator to take charge and possession of the asset on as-is-where-is basis and to make a report to the Court. This Court also recorded that the applicant had already appointed an agent for manning the vessel and would continue until further orders. This Court recorded the statement made by the learned counsel for the applicant that the expenses of Rs.10,00,000/- p.m. were being incurred on the said agency alone. She submits that the huge amount have been incurred by the applicant to salvage the situation.

24. Learned counsel invited my attention to the letter dated 16th November, 2017 from the applicant to the official liquidator contending that the applicant had exclusive charge over the vessels/tugs i.e. Malaviya-Ten, MT Polaris, MT Sangita, MT Gal Beaufort and MT Gal Ross Sea. She submits that the applicant had specifically contended that since the respondent had abandoned the vessel due to non availability of funds and the official liquidator was still in the process of taking over the possession of the vessel, applicant being the secured creditor has exclusive charge over the vessel thought it was prudent for the applicant to and had taken steps to secure and man the said vessel by appointing Hoger Offshore and Marine Private Limited vide an agreement dated 31st October, 2017 as its agent. She submits that in view of the fact that the applicant had salvaged the situation and had incurred huge amount, the official liquidator was required to admit

the entire claims made by the applicant. She submits that the order thus passed by the official liquidator rejecting the substantial part of the claim made by the applicant be set aside and the prayers sought in the Company Application filed by the applicant be allowed.

25. A perusal of the affidavit of proof of debt filed by the applicant indicates that the applicant claimed to be one of the creditors of the respondent company. It was the case of the applicant that the applicant had incurred expenses amounting to Rs.1,06,46,193/- for maintenance, up keep and sale of the vessels exclusively mortgaged to the applicant. By an order dated 25th January, 2018, this Court recorded the statement made by the learned counsel for the applicant that the vessel/tugs MT Plaris stands abandoned at the port of Kakinada and as a result the said vessel/tug had required to be taken possession by the official liquidator. The official liquidator made a submission that the expenses for enabling the official liquidator to take possession as also to man the ship after such possession must be borne by the applicant. The learned counsel for the applicant gave no objection to bear such expenses for enabling official liquidator to take possession and also to man the ship after such possession was taken by the official liquidator. This Court accordingly directed the official liquidator to take possession of MT Polaris and made it clear that the costs for taking possession and thereafter to man the ship, shall be borne by the applicant.

26. By another order dated 14th February, 2018 passed by this Court, this Court recorded the statement that a valuer who has worked in association with the official liquidator has already been appointed for valuing the suit tugs. The costs of such valuation were being borne by the applicant. This Court directed the applicant to advertise sale of the suit tugs in Trade Wings Journal as also Free Press Journal without any reserve price. On 14th February, 2018, this Court passed an order in the Company Application filed by the applicant *inter-alia* praying for permission to the applicant to sell three tugs, the applicant claimed to be a registered mortgagee under Section 51(1) of the Merchant Shipping Act, 1958. This Court directed the official liquidator to sell two tugs namely Gal Beaufort Sea and Gal Ross Sea to M/s. Akil Corporation in accordance with the terms proposed by the party.

27. By another order dated 1st March, 2018 passed by this Court in one of the Company Application filed by the applicant, this Court directed that the official liquidator shall not disburse any amounts received by the sale of the two tugs i.e. Gal Beaufort Sea and Gal Ross Sea without appropriate orders from this Court. It was made clear that if the official liquidator proposes to disburse or utilize the said amounts, the official liquidator shall give prior notice to the applicant or its advocate. This Court directed that all charges payable for the vessels including the port charges up to date of the said order shall be to the account of the official liquidator, to be paid from out of the sale proceeds coming into the hands of the official liquidator in pursuance of

the said order. This Court also clarified that all claims against the sale proceeds of the vessel including maritime liens and maritime claims shall be considered by the official liquidator in accordance with the applicable law of priority of claims.

28. This Court directed that the charges incurred by the applicant towards sale of the vessel including the advertisement charges shall be paid by the official liquidator from out of the sale proceeds in consultation with the applicant including the manning charges and also the expenses towards advertisement etc. as liquidation expenses. This Court directed that the charges receivable by the port authorities shall be recovered from the official liquidator. In so far as the vessel MT Sangita is concerned, this Court directed that the said vessel is properly manned by the applicant. This Court made it clear that any expenses incurred by the applicant towards manning of the said vessel in the course of liquidation proceedings will be treated as liquidation expenses and would be disbursed to the applicant from out of the sale proceeds of the said vessel.

29. By an order dated 14th March, 2018 in Company Application filed by the applicant, this Court accepted the offer given by M/s. Pragati Marine Services Private Limited for purchase of the vessel M.T. Polaris. It was directed that the possession of the said vessel shall be handed over by the official liquidator to M/s. Pragati Marine Services Private Limited on as is

where is basis. It was made clear that the earnest money deposited by M/s.Pragati Marine Services Private Limited with the applicant shall be adjusted towards the purchase of the said Tug MT Polaris. EMD received by the applicant shall be made over by them to official liquidator after adjusting their expenses including advertisement charges paid by them from out of the said amount.

30. By an order dated 28th March, 2018 passed by this Court in one of the Civil Application filed by the applicant confirming the sell of vessel MT Sangita in favour of M/s. Vedant Ship Management for sum of Rs.2,10,00,000/-, it was directed that against payment of the amount by the said party, the official liquidator shall forthwith hand over the possession of the said vessel MT Sangita to the said party M/s. Vedant Ship Management on as is where is basis free from all encumbrances. This Court directed that the charges of the vessel including all port charges up to date shall be to the official liquidator's account and shall be paid from out of the sale proceeds. This Court also clarified that all claims against the sale proceeds of the vessel including maritime liens and claims shall be considered by the official liquidator in accordance with the applicable law of priority of claims. This Court further directed that the costs incurred by the applicant towards the sale of the vessel including advertisement charges and manning expenses shall be paid by the official liquidator from out of the sale proceeds as liquidation expenses. The charges receivable by the port authorities in

respect of the vessel shall be recovered from the official liquidator.

31. By an order dated 4th April, 2018 passed by this Court in one of the Company Application filed by the applicant directed that the applicant may also 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. This Court directed that payment of those expenses shall also form part of the official liquidator's report presented to the Court. This Court also directed the applicant to raise a bill of costs including manning charges incurred by the applicant as also advertisement charges paid for sale of the vessel MT Polaris and directed the official liquidator to pay such charges and costs to the applicant without reference to the Court.

32. A perusal of the records as referred to aforesaid, in respect of valuation charges claimed by the applicant for vessel Gal Ross Sea, Gal Beaufort Sea and MT Sangita, indicates that the official liquidator admitted the entire claim of Rs.2,59,305/-. Official liquidator also allowed the claim towards valuation charges of Rs.53,100/- incurred by the applicant in respect of the vessel MT Polaris. In so far as travelling allowance and lodging expenses claimed by the applicant in sum of Rs.79,374 is concerned, such charges are rightly rejected by the official liquidator as the same were to be borne by the applicant.

33. In so far as the management charges in respect of the vessel MT Polairs are concerned, the applicant had claimed a sum of Rs.15,19,616/-. The official liquidator admitted the part of the claim in sum of Rs.13,55,730/- against the said amount and rejected the claim of Rs.1,63,886/- on the ground that official liquidator had taken possession on 6th February, 2018 and the sale had been confirmed on 14th March, 2018. The official liquidator thus admitted the claim only for that period. I do not find any infirmity with the rejection of the claim of Rs.1,63,886/- and the same is in conformity with the order passed by this Court.

34. The official liquidator also admitted the claim of publication charges in respect of vessel MT Polaris. The official liquidator rejected the claim for port charges in the sum of Rs.2,87,675/- on the ground that the said port charges were claimed for the period from 27th October, 2017 to 21st April, 2018 whereas the official liquidator had taken possession on 6th February, 2018 and the sale has been confirmed on 14th March, 2018. The official liquidator was not required to pay any such charges in respect of the past period.

35. In so far as the vessel Malaviya-Ten is concerned, in my view the official liquidator has rightly rejected the claim for travelling charges in the sum of Rs.86,660/- as the sale was not covered by any of the orders passed

by this Court. Similarly, claim for lodging charges in the sum of Rs.2,950/- is also rightly rejected. The official liquidator has already admitted claim of Rs.53,100/- towards valuation charges in respect of the said vessel Malaviya-Ten. In so far as the management charges claimed by the applicant in the sum of Rs.57,26,766/- in respect of the vessel Malaviya-Ten is concerned, the official liquidator has rightly admitted part of the claim in the sum of Rs.26,79,015/- on the ground that the official liquidator had taken possession of the said vessel only on 4th January, 2018 and the sale had been confirmed by this Court on 4th April, 2018. Similarly, the official liquidator also rightly rejected the claim for salary remittance for the month of June 2017 on the similar ground in respect of the said vessel Malaviya-Ten. Travelling expenses in the sum of Rs.19,935/- is also rightly rejected by the official liquidator on the similar ground. The official liquidator has already allowed the claim of Rs.49,584/- towards publication charges.

36. In my view, the official liquidator has rightly rejected the claim for supply of food provision on board on 4th September, 2017 in the sum of Rs.42,040/-. The claim for port charges in the sum of Rs.6,51,473/- is rightly rejected on the ground that official liquidator had taken possession on 6th February, 2018 and as the same were neither approved by this Court nor informed to the official liquidator prior to incurring such expenses and thus could not be considered as liquidation expenses. The manning expenses were incurred by the applicant without permission of this Court and without

conveying such expenses to the official liquidator before taking possession by the official liquidator.

37. In my view, the official liquidator rightly rejected the claim for reimbursement of salary expenses in the sum of Rs.2,68,927/- as the said claim would fall under Section 529A or 530 of the Companies Act, 1956 depending upon the nature of work. The port dues of Rs.2,87,675/- and Rs.22,62,182/- have been rightly rejected under Section 530 of the Companies Act, 1956 being Government dues which shall be paid only after payment of workman and secured creditors. I am inclined to accept the submission made by the learned counsel for the official liquidator that the claim for port dues cannot be admitted and if would have been admitted would result in disturbing the priority mechanism provided as per the provisions of Companies Act, 1956.

38. In my view, the report submitted by the official liquidator before this Court being OLR No. 141 of 2018 allowing the claims made by the applicant partly and rejecting the part of the claims shows no infirmity and is based on various orders passed by this Court from time to time. The claims which were not admissible as liquidation expenses have been rightly rejected by the official liquidator. The said Official Liquidator's Report No. 141 of 2018 has been already accepted by this Court. No case is made out by the applicant for reimbursement of Rs.62,65,898/- as claimed or otherwise as liquidation expenses. The Company Application is devoid of merits.

39. I therefore pass the following order :-

- (a) Company Application No. 107 of 2019 is dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)