Company Application Nos.337 & 338 of 2023
in Company Application Nos.102 & 104 of 2022
in Company Petition No.36 of 2006

KRISHNAN RAMASAMY, J.

These Company Applications have been filed by the applicant seeking to modify the common order dated 13.04.2023 passed by this Court in Company Application Nos.102 & 104 of 2022 in Company Petition No.36 of 2006.

2. On 13.04.2023, this Court passed the following order in Company Application Nos.102 & 104 of 2022:

> *"When this application came up for hearing on 06.04.2023, this Court recorded the submission of learned Official Liquidator and passed the following order:*
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> > *"Today when the matter is taken up for hearing, the learned counsel appearing for the secured creditors would submit that a sum of Rs.5,25,00,000/- is available out of the sale proceeds of the secured assets. Out of the said amount, the secured creditors are entitled to 50% of the amount. Therefore, he seeks permission of this Court to utilise 50% of the realized amount.*
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> > *2. The learned Official Liquidator would submit that there are two claims viz., (1) secured claim and (2) workmen's claim. Therefore, he would further submit that the workmen are also entitled on par with the secured creditors. Hence, he seeks time to file a report in this regard.*

At request of the learned Official Liquidator, for filing a report, post the matter on 13.04.2023."

2. Pursuant to the above order, the learned Official Liquidator filed his report and the relevant portion of the said report is extracted hereunder:

> *"6. That the applicant vide letter dated 26.07.2021 informed that the property was sold for Rs.5,25,00,000/- through e-auction and remitted the said sale proceeds into the credit of the W.P.No.35347 of 2019 as per the directions of this Hon'ble Court, the said amount is in fixed deposit created in the name of "The Registrar General, High Court, Madras". A copy of the said letter dated 26.07.2021 is enclosed and marked as Annexure A to this report.*
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> *7. That in view of the above, the Official Liquidator has no objection to release 50% of the sale proceeds of Rs.5,25,00,000/- in fixed deposit created in the name of "The Registrar General, High Court, Madras".*

3. Since the learned Official Liquidator and the applicant would submit that 50% of Rs.5,25,00,000/- can be released in favour of the Official Liquidator towards the workmen's claim as they are entitled pari passu charge on the secured assets at par with secured creditors, this Court is of the considered view that the said amount, i.e., 50% of the sale proceeds, shall be transferred to the Official Liquidator, so that he can utilise the same for the purpose of disbursement of the claims of workmen.

4. As far as the remaining amount is concerned, the applicant is permitted to withdraw the same and appropriate the sale proceeds towards the debts of the Company.

5. With the above directions, these applications are disposed of."

3. The learned counsel for the applicant submitted that already this Court vide order dated 02.03.2023 in Company Application No.103 of 2022, permitted the applicant to appropriate expenses of Rs.19,50,942/- incurred by it towards safeguarding the secured immovable property of the respondent company from and out of the sale proceeds of Rs.5,25,00,000/- realised from the sale of secured immovable property of the respondent company.

3.1. He further submitted that after adjusting the aforesaid amount of Rs.19,50,942/-, a sum of Rs.5,05,49,058/- is lying in the no-lien account of the applicant. In such circumstances, when the Company Application Nos.102 & 104 of 2022 were taken up for consideration on 13.04.2023, he made a submission before this Court that the applicant may be permitted to withdraw 50% of Rs.5,05,49,058/- from its no-lien account and to retain the balance 50% of Rs.5,05,49,058/- in its no-lien until the claims of workmen are adjudicated by the learned Official Liquidator. However, in 3rd paragraph of the aforesaid order, it has been recorded by this Court that since the learned Official Liquidator and the applicant would submit that 50% of Rs.5,25,00,000/- can be released in favour of the Official Liquidator towards the workmen's claim as they are entitled pari passu charge on the secured assets at part with secured creditors, this Court is of the considered view that the said amount, i.e., 50% of the sale proceeds, shall be transferred to the Official Liquidator, so that he can utilise the same for the purpose of disbursement of the claims of workmen. The said 3rd paragraph of the order misinterprets that the workmen are entitled to 50% of Rs.5,05,49,058/-.

3.2. In the present case, the learned Official Liquidator has not yet adjudicated the claims of workmen. While so, if the balance 50% of Rs.5,05,49,058/- is retained in the no-lien account of the applicant until the claims of workmen are adjudicated by the learned Official Liquidator, no prejudice would be caused. Hence, the learned counsel prayed this Court to modify the 3rd paragraph of the aforesaid order.

4. Considering the above submissions made by the learned counsel for the applicant, this Court is inclined to modify the 3rd paragraph as well as 4th paragraph of the order dated 13.04.2023 passed in Company Application Nos.102 & 104 of 2022. Accordingly, the 3rd & 4th paragraphs of the said order are modified as follows:

> *"3. The learned counsel for the applicant submitted that this Court vide its earlier order dated 02.03.2023 in Company Application No.103 of 2022, permitted the applicant to appropriate expenses of Rs.19,50,942/- incurred by it towards safeguarding the secured immovable property*

of the respondent company from and out of the sale proceeds of Rs.5,25,00,000/- realised from the sale of secured immovable property of the respondent company. After reckoning the said amount of Rs.19,50,942/-, now, the amount lying in the no-lien account of applicant is Rs.5,05,49,058/-. Hence, the learned counsel prayed this Court to permit the applicant to withdraw 50% of Rs.5,05,49,058/- from its no-lien account and to retain the balance 50% of Rs.5,05,49,058/- in its no-lien account until the learned Official Liquidator adjudicates the claims of workmen. He also prayed this Court to permit the applicant to release the balance 50% of Rs.5,05,49,058/- to the learned Official Liquidator, depending upon the quantum of claims adjudicated by him.

4. Upon perusing the Report filed by the learned Official Liquidator and hearing the above submission made by the learned counsel for the applicant, I am of the opinion that being a secured creditor, the applicant is entitled to withdraw the 50% of aforesaid amount of Rs.5,05,49,058/- from its no-lien account. Hence, this Court permits the applicant to withdraw 50% of Rs.5,05,49,058/- from its no-lien account. So far as the balance 50% of Rs.5,05,49,058/- is concerned, the same has to be retained in the no-lien account of the applicant until the learned Official Liquidator adjudicates the claims of the workman. Only after the completion of adjudication, depending upon the quantum of *claims adjudicated by the learned Official Liquidator, the balance 50% of Rs.5,05,49,058/- will be released from the applicant's no-lien account to the learned Official Liquidator."*

5. In all other aspects, the order dated 13.04.2023 passed by this Court in Company Application Nos.102 & 104 of 2022 remains the same. Registry is directed to issue a fresh order copy to all concerned, after carrying out the above corrections.

23.06.2023

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KRISHNAN RAMASAMY, J.

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