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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 516 OF 2024
IN
COMMERCIAL ADMIRALTY SUIT NO. 44 OF 2021

Axis Trustee Services Limited,)
having their registered office at Axis)
House, Bombay Dyeing Mills Compound,)
Pandurang Budhkar Marg, Worli,)
Mumbai – 400 0025.) … Applicant/
Original Plaintiff

<u>IN THE MATTER OF</u>

Axis Trustee Services Limited,)
having their registered office at Axis)
House, Bombay Dyeing Mills Compound,)
Pandurang Budhkar Marg, Worli,)
Mumbai – 400 0025.) … Org. Plaintiff

V/s.

1. M.T PREM MALA IMO No. 9209972)
(and her owners and all other persons con-)
cerned and/or interested in her) along with)
her hull, tackle, engines, machinery, boats)
bunkers, equipment, paraphernalia and all)
other appurtenances presently at Port and)
Harbour Mumbai, within the territorial waters)
of India and within the Admiralty and Vice)
Admiralty Jurisdiction of this Hon'ble Court.)

2. Mercator Limited, through Mr. H.K. Mital/)
Mr. Shalabh Mittal, having its registered)
office at 3rd Floor, Mittal Tower, "B" Wing,)
Nariman Point, Mumbai 400 021.)

3. Mercator Oceantransport Limited, having)
their office at 3rd Floor, Mittal Tower,)
"B"Wing, Nariman Point, Mumbai 400 021.)

4. Mercator Petroleum Limited, having)
their office at 3rd Floor, Mittal Tower,)
"B" Wing, Nariman Point, Mumbai 400 021.)

5. State Bank of India, having their Corporate)
Office addressed at State Bank Bhavan,)
Madam Cama Road, Nariman Point,)
Mumbai- 400002 and branch office amongst)
others known as Stressed Assets Management)
Branch-1, 2nd floors, World Trade Centre,)
Cuffe Parade, Colaba, Mumbai – 400 005.) Original Defendants

And

1. Engineering Appliances Corporation, an)
Partnership firm established under the laws)
of India, having its office at Premises No.12B,)
Dr. Rajendra Prasad Sarani(formerly known as)
Clive Row), 1st Floor, Kolkata-700 001,)

West Bengal.)

2. Avdesh Kumar Verma)
Rank – Master)
Residing ATD-704, Royal Classic,)
Link Road, Mulund(West),)
Mumbai – 400 080.)

3. Awadh Kishore Diwakar)
Rank -Master)
Residing At diamond City West,)
18, Hochiiminh Sarani, T-8,)
FL-12H, Bakultala, Kolkata, West)
Bengal, Pin: 700 061.)

4. Abhijit Nair Radhakrishnan,)
Rank – Junior Officer)
Residing at 1-01-98/21, Mayuri Marg,)
Begumpet, Hyderabad, Pin: 500 016.)

5. Balveer Singh Rajawat)
Rank – Wiper)
Residing at 81, Hanuman Bagichi)
Nimera Phagi,Jaipur, Rajasthan, Pin: 303005.)

6. Kavindranath Singh)
Rank – Mechanic)
Residing at Village Samaur Bazar,)
Post – Bihar Bujurg, P.S – Patherwa,)

Dist – Kushinagar, Uttar Pradesh,)
Pin – 274401.)

7. Indian Oil Corporation)

a company incorporated under the Indian)
Companies Act, 1956 having its office at)
Indian Oil Bhavan, G9, Ali Yavar Marg,)
Bandra(East), Mumbai – 400 051.)… Respondents

Mr. Venkatesh Dhond, Senior Advocate a/w Mr. Bimal Rajasekhar, Mr. Samarth Jaydev and Ms. Keyna Bhavsar i/b. Mr. Ashwin Shanker for the Applicant/Plaintiff.

Mr. Siddhanth Chabaria a/w. Mr. Yohaan Shah, Mr. Hasan Mushabber i/b. Negandhi Shah and Himayatullah for Defendant No.7.

CORAM : GAURI GODSE, J.

RESERVED ON : 12th JANUARY 2026

PRONOUNCED ON : 8th JUNE 2026

JUDGMENT:

1) This application is filed by the plaintiff for the determination of priorities among the creditors to the sale proceeds of the vessel, MT Prem Mala (“said Vessel”), deposited in this Court, and for payment to the applicant in priority to the other claimants. The applicant has prayed for a direction to release the balance of the sale proceeds to the applicant after payment to the crew members in Admiralty Suit (L) No. 4545 of 2020.

2) The applicant claims first in priority on the ground that the applicant is the holder of a decree based on a registered mortgage on the said Vessel. The said Vessel belongs to defendant no. 2, who is undergoing the Corporate Insolvency Resolution Process ("CIRP"). The applicant claims preference over all other creditors of the insolvent company and is first in priority, in accordance with Section 52 of the Merchant Shipping Act, 1958 and/or under Section 10 read with Section 9 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("the Admiralty Act").

SUBMISSIONS ON BEHALF OF THE APPLICANT:

3) According to the learned senior counsel for the applicant, in the present case, i.e., involving an Indian insolvent ship owner, in view of Section 52 of the Merchant Shipping Act, the provisions of the Merchant Shipping Act, being a special law, will prevail over the provisions of the Admiralty Act. Hence, the applicant will have the highest priority and will even rank above the crew members. However, only on humanitarian grounds, it has no objection to releasing the crew members' claims.

4) Learned senior counsel for the applicant submitted that IOCL's claim cannot be a maritime lien as it is in the nature of damages in

connection with the alleged damage caused by the said Vessel, which is an oil tanker, to its jetty. The claim therefore arises out of damage in connection with the carriage of oil. The claim is made by IOCL under the law of tort for compensation. Hence, in view of Section 9(4) of the Admiralty Act, IOCL cannot attach its claim to the said Vessel as a maritime lien-holder.

5) Learned senior counsel for the applicant submitted that the alleged maritime lien of IOCL came into existence on 17th October 2019; the applicant's suit is dated 30th January 2020; the order of arrest was passed on 31st January 2020; and the sale of the said vessel was ordered on 26th May 2020. As IOCL's suit was filed on 15th September 2020, after a period of one year, the lien ended on the date of the Order of sale of the said Vessel. Even assuming IOCL's claim had the status of a maritime lien, such lien stood extinguished in view of Section 9 (2) of the Admiralty Act when the vessel was sold. A party that claims a higher priority on the vessel cannot stand by, refuse to participate in maintaining the vessel, and then assert a lien once the vessel is sold. The only exception is a crew member who has an unconditional two-year lien, as per the proviso to Section 9(2).

6) Learned senior counsel for the applicant submitted that even assuming that IOCL's claim will result in a decree, IOCL's claims will still not have priority over the applicant's first-priority mortgage decree. Even assuming IOCL's claim has the status of a maritime lien as of today, Section 52 of the 1958 Act would be applicable in determining priorities, not Section 10 of the Admiralty Act. Whereas Section 10 of the Admiralty Act deals with the general order of priorities of maritime claims, and Section 52 is a more specific provision squarely applicable to the present case. If Section 10 is applied even in a case such as the present one, Section 52 is rendered redundant. There is no situation in which Section 52 will ever be applied. The only way to read both harmoniously is to apply Section 10 generally and Section 52 in a specific situation like this. Learned senior counsel for the applicant relied upon the legal principle that a special provision shall prevail over a general, as set out in ***Commercial Tax Officer, Rajasthan v. Binani Cements Limited & Anr***[1].

7) Learned senior counsel for the applicant relied upon the Apex Court's decision in ***Epoch Enterrepots Vs M. V. Won Fu***[2] to support his submissions. He submitted that the Apex Court held that the

1 (2014) 8 SCC 319
2 (2003) 1 SCC 305

concept of maritime lien is of limited applicability and every kind of maritime damage arising in connection with a ship would not give rise to a maritime lien. Learned senior counsel for the applicant submitted that a maritime claim would continue, not a maritime lien. A lien must be enforced within the time limit.

8) Section 52 also finds a place in the new Merchant Shipping Act, 2025, which has received Presidential assent, was published in the Official Gazette on 18th August 2025, and will come into force on a date to be notified by the Central Government. Section 29 of the Merchant Shipping Act, 2025 is pari passu with Section 52 of the 1958 Act. Therefore, an Act subsequent to the Admiralty Act has retained this provision, indicating the legislature's intention to give the highest priority to a registered mortgage in the event of an Indian ship owner’s insolvency.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 7 (IOCL)

9) Section 9(4) provides that no maritime lien shall attach to a vessel to secure a claim which arises out of or results from damage in connection with the carriage of oil or other hazardous or noxious substances by sea. Learned counsel for IOCL relied upon a passage

from Christopher Hill that “a maritime lien is like a leech stuck to human skin”. It is thus submitted that, historically and across the world, in admiralty jurisprudence, it has always been recognised and held that a 'maritime lien' is a privileged claim, and now the exact same position has been categorically codified in Section 10 of the Admiralty Act. While the maritime lien may be extinguished qua the vessel upon a judicial sale, it is transferred to the sale proceeds of the said vessel and does not thereby extinguish vis-à-vis the sale proceeds. Section 9(2) refers only to the vessel and not her sale proceeds.

10) Once the vessel is sold by a court auction, i.e. a judicial sale, the maritime lien on the vessel is extinguished qua the vessel only, thereby barring any action against the vessel which has been purchased in a court auction by a bonafide purchaser. Thus, the new purchaser buys the vessel free from all maritime liens and encumbrances and need not fear a maritime lienholder proceeding to arrest his vessel after he has purchased it at a court auction. If the applicant's arguments on interpretation of Section 9(2) are accepted, it would mean that maritime lien-holders would be rendered remediless even though statutorily their time limit has not expired to exercise the maritime lien, merely because another statutorily lower-

ranking claimant has arrested and sold the vessel in a court proceeding.

11) If the applicant's argument on interpretation of Section 9(2) were to be accepted, then Section 10 of the Admiralty Act would actually be rendered otiose, and the determination of priorities would actually be decided only on the basis of who causes the sale of the first arrest in complete and utter derogation of Section 10 of the Admiralty Act.

12) Without prejudice to the above referred arguments, learned counsel for IOCL submitted that, a maritime lien does not get extinguished on the sale of the vessel, as long as the suit for enforcement of the maritime lien is filed within the statutory time limit of 1 year for all maritime liens under Section 9(1) (b) to 9(1)(e) and 2 years for crew members under Section 9(1) (a). The maritime lien always attaches to the vessel's sale proceeds, as held in ***O. Konavaloy Vs. Commander, Coast Guard Region***[3]***.*** Learned counsel for IOCL also relied upon the extracts from ***The Optima***[4]***, Buxton v. Snee***[5]***, The Sanko Mineral*** [6] and ***The Acrx*** [7].

3 2006 (4) SCC 620
4 (1905) 10 Asp. ML.C.147
5 1748 1 Ves. Sen. 154
6 [2015] Vol. 1 LLR 247
7 [1962] Vol. 1 LLR 405

13) This distinction between a vessel and its sale proceeds is also brought out in Rule 1087(e)(iv) of the Bombay High Court (OS) Rules, which provides that any person having a claim against the ship or the proceeds of sale thereof should file a suit to prove his claim before the expiration of that period. Thus, while a maritime lien may get extinguished against the vessel on its sale through a court auction, it gets transferred to the sale proceeds, and the maritime lien-holder can well proceed against its sale proceeds provided he files his suit within 1 year in the case of maritime liens under Section 9(1)(b) to (e) or within 2 years in the case of crew members under Section 9(1)(a). Section 9(2) of the Admiralty Act ought to be read with and in the context of Section 8 thereof, which provides for the vesting of rights on sale of vessels in exercise of its admiralty jurisdiction, on the vessel in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel.

14) The applicant's interpretation of Section 52 of the 1958 Act, is entirely out of context and incorrect, as the Admiralty Act, was enacted by the Parliament in the year 2017 to consolidate the laws relating to admiralty jurisdiction, legal proceedings in connection with vessels, their arrest, detention, sale and other matters connected

therewith or incidental thereto. The Admiralty Act was enacted by the Parliament after almost two-and-a-half decades of the judgment of the Hon'ble Apex Court in ***M. V Elisabeth and Ors. Vs Harwan Investment And Trading Pvt Ltd***.[8] in which judgment the Hon'ble Apex Court expressed an urgent need for codification, clarification and consolidation of admiralty laws in India. Section 10 of the Admiralty Act specifically provides for and deals with 'priority of claims', inter se priority of claims, and inter se priority of maritime liens. One of the objects of the Admiralty Act is categorically stated in its 'Statement of Objects and Reasons', to provide for inter se priorities of maritime claims, and it states that "The Bill also deals with admiralty jurisdiction in personam and the order of priority of maritime claims. "

15) Therefore, it is wholly incorrect to suggest that Section 10 of the Admiralty Act is a general provision and Section 52 of the Merchant Shipping Act is a specific provision, as it would completely render Section 10 of the Admiralty Act otiose. The Admiralty Act is a subsequent statute, whereas the Merchant Shipping Act is a prior Act. The Admiralty Act specifically provides for inter se priorities of maritime claims. Section 52 of the Merchant Shipping Act is not a provision that deals with the priority of maritime claims. The only

8 AIR 1993 SC 1014

provision in Indian law intended to determine the priorities of maritime claims is under the Admiralty Act, and Section 52 of the Merchant Shipping Act provides no mechanism to determine priorities amongst maritime claims. Therefore, Section 10 of the Admiralty Act would prevail over Section 52 of the Merchant Shipping Act. Learned counsel for IOCL relied upon paragraph 83 of the judgment in ***M V Elisabeth***. He also relied upon Rule 1087(c) of the OS Rules, which provides for the order of priorities in accordance with the provisions of Sections 9 and 10 of the Admiralty Act.

16) Therefore, the determination of priorities is governed by the Admiralty Act. Learned counsel for IOCL relied upon the decision of this Court in ***Raj Shipping Agencies v. Barge Madhwa & Anr***[9] to justify that the maritime lien attaches to the sale proceeds of the subject vessel if the vessel has been judicially sold.

17) IOCL's Admiralty Suit against the sale proceeds of the said Vessel is not to secure a claim which either arises out of, or results from, damage in connection with the carriage of oil by sea. IOCL's claim arises out of an incident in which, during the course of

9 2020 SCC Online Bom 651

discharge of the petroleum cargo, the said Vessel, for the purpose of discharging cargo, was dragged and sheared at the flange.

18) Learned counsel also relied upon the International Convention on Maritime Liens and Mortgages, 1993 to support his submissions that the rationale in Section 9(4) for exclusion of maritime liens arising out of damage in connection with the carriage of oil is that such claims are instead channelled through dedicated treaties such as the 1969/1992 International Convention on Civil Liability for Oil Pollution Damage (CLC), which mandate owners of oil-tankers to maintain insurance up to certain specified limits, and for handling of claims via a dedicated fund, which has no relation in the present case of IOCL. The suit filed by IOCL is still pending, and thus, in view of Rule 1087 of the OS Rules, the prayers in the present application are premature and cannot be decided until the decision in IOCL's suit is decided.

CONSIDERATION OF THE SUBMISSIONS AND ANALYSIS:

19) In ***Raj Shipping Agencies***, this court considered whether leave under Section 446 of the Companies Act was required before proceeding further in the suits seeking claims against the vessel and its owner. Admiralty Suits were filed, and Orders of Arrest were passed in most of the suits. Company Petitions against the owner of

Vessels were admitted, and winding up was initiated. However, according to the learned senior counsel for the applicant, IOCL's reliance upon the decision in ***Raj Shipping Agencies,*** the said judgment is misplaced as the above judgment does not specifically deal with Section 9 (2) of the Admiralty Act or discuss this issue as part of its ratio.

20) The question of whether there is a conflict between actions *in rem* filed under the Admiralty Act and the provisions of the IBC was also decided in the said judgment. This court referred to the legal principles settled in ***M.V. Elisabeth*** and held that, for the purpose of an action *in rem* under the Admiralty Act, the ship is treated as a separate juridical personality, with an almost corporate capacity, having not only rights but also liabilities, sometimes distinct from those of the owner. It is further held that the action *in rem* is an action against the ship itself and the action is a remedy against the corpus of the offending ship. This court discussed the maritime claim, also known as a statutory right in rem. A closed list of maritime claims is set out in Section 4 of the Admiralty Act. It is thus held as under:

> "42. In order of priority, maritime claims (excluding maritime lien and mortgages) fall in the category of *"All Other*

Claims' appearing in Section 10 (1)(c) and rank below maritime liens and also below mortgages. Thus a financial creditor who has a registered mortgage on the ship would recover in priority over all parties who have maritime claims but not maritime liens. A vast majority of the claims are maritime claims (18 out of 23) which are listed in Section 4 of the Admiralty Act and which will rank below a mortgagee. ***Only those who have a maritime lien get priority over a registered mortgage.*** The reason why a maritime lien holder is given priority over a registered mortgage is to accord highest priority to crew wages and thereafter to claims involving loss of life or personal injury in connection with the operation of a ship and to Salvors but for whose efforts the ship would have been irretrievably lost or damaged thus destroying the security of a mortgagee. After these, rank statutory dues of a port, canal and other statutory dues related to the vessel and claims based on tort if the ship causes physical damage to another ship or property because the ship is considered to be the wrong doer. We need to highlight that even port dues are given priority only after crew wages and salvage claims are paid. "

emphasis applied by me

21) In ***O. Konavalov,*** the issue concerned the claim for wages arising from the sale of the ship. It was held that the Merchant Shipping Act has laid down exhaustive provisions for seamen's wages and the Act itself recognises that recovery of wages shall not be subject to attachment and thus held that all the seamen who were on board the vessel were entitled to their full wages and perks. It was held that the most unique concept of all in admiralty law is the maritime lien and is a concept which is *sui generis*, but for practical purposes it may be considered as a charge upon maritime property, arising by operation of law and binding the property even in the hands of a bona fide purchaser for value and without notice, but which can only be enforced by an admiralty claim *in rem.* It is held in paragraph 23 as under:

> **"23.** A maritime lien:
>
> "adheres to the ship from the time that the facts happened which gave the maritime lien, and then continues binding on the ship until it is discharged, either by being satisfied or from the laches of the owner, or in any other way which, by law, it may be discharged. It commences and there it continues binding on the ship until it comes to an end."

22) In ***Epoch Enterrepots***, the Apex Court dealt with the attributes of maritime lien to exist in the event of damage done by a ship, salvage, seamen's and master's wages, master's disbursements and bottomry. It is held that in the event a maritime lien exists in the aforesaid five circumstances, a right in rem is said to exist; otherwise, a right in personam exists for any claim that may arise out of a contract.

23) In light of the legal principles, as discussed in the above paragraphs, I have considered the rival submissions of the parties. In view of the rival submissions made on behalf of both parties, the questions to be decided in this application are twofold. Firstly, whether the priorities of the claims against the said Vessel or its sale proceeds has extinguished and can be determined in this application at this stage before the decision in IOCL's suit and secondly, whether the applicant can claim priority higher than the claim of IOCL for seeking release of the balance amount of sale proceeds, for enforcing the decree in favour of the applicant.

24) In the present case, the applicant claims priority in view of the decree in favour of the applicant on the ground of registered mortgage. Therefore, relies upon the Merchant Shipping Act. The

scope of the Merchant Shipping Act is regulatory and covers the regulation of ships, seamen, shipping administration, and connected maritime functions, matters concerning seafarers, shipping governance, that is, powers and functions of shipping, authorities, safety, navigation, and related concerns. The said Act is not restricted to maritime claims and liens and does not govern the priorities. The rights under a mortgage are governed by Section 51 of the Merchant Shipping Act. Therefore, the right under a registered mortgage can be realised or enforced to recover the amount due under the mortgage by selling the ship even without coming to the High Court under the admiralty jurisdiction. Section 52 provides that a registered mortgage of the ship would not be affected by the mortgagor's insolvency. In such a situation, the claim would be governed under the Transfer of Property Act. Therefore, a claim of a registered mortgage is not restricted to the admiralty jurisdiction and would not extinguish, even in the absence of arrest and sale of the vessel.

25) The Admiralty Act is a statute governing maritime claims and defines maritime claims and liens, and it also governs the procedure to enforce them by arrest of a vessel and its sale. The priorities of the claims and liens are also defined under the said Act. Thus, the Merchant Shipping Act provides for shipping rights and remedies and

is not equivalent to the Admiralty Act. Therefore, it cannot be said that the Merchant Shipping Act is a special statute and therefore would prevail over the Admiralty Act. I do not find any substance in the arguments raised on behalf of the applicant that the provisions of the Merchant Shipping Act would prevail over the Admiralty Act, and therefore only the applicant would have priority on the sale proceeds on the ground that it is a decree holder on the ground of registered mortgage. Hence, the legal principles settled in the case of the ***Commercial Tax Officer*** would not assist the arguments raised on behalf of the applicant.

26) "Maritime Claim" is defined under Section 2(f) of the Admiralty Act to mean a claim referred to in Section 4. A "Maritime Lien" means a maritime claim against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of Section 9, which shall continue to exist under sub-section (2) of that section. The admiralty jurisdiction and maritime claims under the Admiralty Act are prescribed in Chapter II. Section 4, which deals with maritime claims. The claim for loss or damage caused by the operation of a vessel is covered under section 4(d). Section 9 of the Admiralty Act governs the inter se priority on Maritime Liens. Amongst the maritime liens, the claims based on tort

arising out of loss or damage caused by the operation of the vessel, other than loss or damage to cargo and containers carried on the vessel, are provided under clause (e) of sub-section (1) of Section 9.

27) The order of priority of maritime claims is provided under Section 10 of the Admiralty Act. A registered mortgage and charges of the same nature on the vessel are second in the rank of maritime claims. A claim on the vessel where there is a maritime lien is first in rank in the order of priorities, provided under Section 10 of the Admiralty Act. IOCL has a claim for physical damage allegedly caused by the said Vessel to its jetty in Kandla on 17th October 2019 during oil discharge. According to IOCL, such a claim constitutes a maritime lien and, therefore, by virtue of being a maritime lien and by reason of the provisions of Section 10 of the Admiralty Act, the claim of IOCL has priority over the applicant's claim.

28) Therefore, if IOCL's claim is accepted as a maritime lien, it will be higher than the applicant's maritime claim. IOCL's claim is on the grounds of the loss that occurred due to the damage caused by the vessel to the jetty. A jetty damage is not categorised, but it would be a loss by operation of the vessel if it is proved in the IOCL's suit that the damage caused to the jetty is by operation of the said Vessel.

Therefore, once a jetty damage is considered to be covered within Section 4(d), it would be covered under Section 9(1)(e) as a maritime lien. Therefore, if IOCL succeeds in its suit to prove that the loss is caused to its jetty by the operation of the said Vessel, its claim would be treated as a maritime lien, resulting in it being above the applicant's claim on the ground of registered mortgage. The issue of whether the loss is caused to the jetty by the operation of the said vessel is yet to be decided in the IOCL's pending suit.

29) Learned counsel for IOCL has rightly relied upon the observations of this Court in the order dated 10th January 2023 passed in a separate Interim Application (L) No. 16401 of 2022 filed by the applicant for determination of priorities. I have perused the said order. The relevant paragraphs 8 and 10 of the said order read as under:

> "8. Evidently, there are claimants who have lodged claims against the sale proceeds of Defendant No. 1 Vessel. Thus, at this stage, without delving into the question sought to be raised in the Application, it would be in the fitness of things to determine the priorities amongst all the claimants as the claims have already been invited in accordance with Rules 1087 and

1088 of the Bombay High Court (Original Sides) Rules, 1980. All the questions, including the question as to whether the Applicant is entitled to priority over all the creditors of Defendant No.2 in view of the provisions contained in Section 52 of the Merchant Shipping Act, 1958 can be legitimately considered at the time of determination of priorities amongst all the claimants.

9. Keeping open all the contentions, including the aforesaid question, the Application stands disposed."

30) Thereafter, the applicant's intervention in IOCL's suit was allowed by order dated 24th January 2023, passed in Interim Application No. 969 of 2022, in COMAS No. 35 of 2021. I have perused the said order. The applicant is permitted to file a written statement to raise defences restricted to the extent of demonstrating that IOCL is not entitled to a decree in excess of the genuine and sustainable claim and raise only those defences which are appropriate to its character as the competing maritime lien holder/claimant.

31) Therefore, there is substance in the arguments made on behalf of IOCL that it would be premature to decide the controversy of

priority between the applicant and IOCL, and it must be settled after the result in IOCL's suit. However, learned senior counsel for the applicant has relied upon the Order dated 26th July 2020, directing MMD to register the applicant's charge over the said Vessel and the Order dated 5th May 2021, disposing of the applicant's suit in terms of the consent terms and granting the decree on admission in favour of the applicant. Thus, according to the applicant, in view of the said orders, the applicant is entitled to the determination of priorities at this stage and for directions to release the balance sale proceeds to the applicant.

32) Although the applicant is recognised as having a registered mortgage on the said Vessel, in view of SBI's claim also on the ground of registered mortgage, the inter se priority among them is decided by consent, and their respective suits are decreed in terms of the consent terms. However, so far as the decision on the priority between the applicant and IOCL is concerned, it must await the decision in IOCL's suit. It is only in the IOCL's suit that it will be decided whether the IOCL's claim is due to the loss caused by the operation of the said Vessel or not. It is only if IOCL succeeds in proving that the loss is caused to the jetty by the operation of the said Vessel that its maritime claim can be considered as a maritime lien.

33) Not all maritime claims create a lien, but all liens arise from maritime claims. Therefore, maritime claims are broader. An order to arrest a vessel is intended to secure a maritime claim, but it does not automatically create priority. Therefore, in the present case, the decision on whether the IOCL's maritime claim can be considered as a maritime lien would depend upon the result of IOCL's suit. Hence, the decision on priority between the applicant and IOCL must await the decision in IOCL's suit.

34) Another argument on behalf of the applicant that, in view of the time contemplated under Section 9(2), the IOCL's claim filed after the end of one year from the date of the claim came into existence will be extinguished on the order of sale of the said Vessel and shall not survive against the sale proceeds has no meaning.

35) This Court in ***Raj Shipping Agencies,*** held that as the sale proceeds represent the ship, the action continues in rem against the sale proceeds and a notice is published inviting claims against the sale proceeds as per established admiralty rules or procedure. The relevant extract from the said decision in paragraphs 84 and 85 reads as under:

“ **84.** Once this fundamental distinction between an action *in rem* against a vessel which is a distinct and separate entity dehors its owner is recognized, it is easy to reconcile the ostensible conflict between Admiralty and Insolvency. Thus, an action*in rem* against the ship is not an action against the owner of the ship who may be the corporate debtor as defined under the IBC. Neither is the action *in rem* considered as a proceeding against the asset of the owner/corporate debtor. It is a proceeding against the ship to recover the claim from the ship, not an action against the owner/corporate debtor to recover the claim by attachment of the asset of the owner/corporate debtor.

85. Also, to be borne in mind is the principle that an action *in rem* continues as an action *in rem* notwithstanding that the owner may have entered appearance, if security is not furnished for release of the vessel. The action will continue *in rem* against the ship which will be sold and the sale proceeds paid out to the successful claimants after determination of priorities amongst the various maritime claimants. As the sale proceeds represent the ship, the action continues *in rem*against the sale proceeds and a notice is published inviting claims against the sale proceeds as per established Admiralty rules or procedure. Thus, whilst the judicial sale by the Admiralty Court extinguishes all maritime liens and the claims, thus giving a free and clear title to the purchasers, all those who have maritime liens and claims can still enforce them by filing an action against the sale proceeds. “

36) The wording in Section 9(2) of the Admiralty Act provides that a maritime lien under sub-section (1) shall continue to exist on the vessel and would get extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such an arrest or seizure has led to a forced sale by the High Court. In the present case, the cause of action for IOCL is 17th October 2019. Therefore, the period of one year would expire on 16th October 2020. Before the expiry of one year, the sale of the vessel was ordered on 26th May 2020, and the suit was filed on 15th September 2020 against the sale proceeds. Therefore, the IOCL's maritime lien would not extinguish in view of sub-section (2) of Section 9 of the Admiralty Act.

37) The arguments raised on behalf of the applicant by referring to sub-section (4) of Section 9 of the Admiralty Act would also depend upon the decision in IOCL's suit. Sub-section (4) provides that no maritime lien shall attach to a vessel to secure a claim which arises out of or results from the damage in connection with the carriage, or other hazardous or noxious substance by the sea, for which compensation is payable to the claimants pursuant to any law for the time being in force. In the present case, IOCL's claim is based on tort arising out of loss or damage caused to the jetty by the operation of

the vessel. Nothing is shown to point out that IOCL's claim would amount to a claim resulting from damage in connection with the carriage of oil for which compensation is payable pursuant to any law. IOCL's claim, specifically pleaded in IOCL's suit to show how the said Vessel caused damage to the jetty, is still awaiting decision.

38) There are three suits pending raising claims against the said Vessel and its sale proceeds. The respective plaintiffs in the three pending suits are made party respondents in this application. IOCL, which is respondent no. 7, is the only claimant who has filed an affidavit-in-reply opposing this application. One of the three suits is by the crew members; however, the applicant consents to pay them the amounts claimed in their suit from the sale proceeds.

39) In view of the reasons recorded in the above paragraphs, the applicant's prayer for holding that the applicant is entitled to the highest priority and should be paid the balance amount of sale proceeds cannot be considered at this stage. However, the applicant would be at liberty to apply for deciding priority and release of the balance sale proceeds after the decision in the IOCL's suit or make such a prayer in IOCL's suit, inasmuch as the applicant is already permitted to intervene and file a written statement in the IOCL's suit.

40) The application is therefore dismissed subject to the aforesaid liberty.

(GAURI GODSE, J.)