IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 3494 OF 2025
IN
COMMERCIAL ADMIRALTY SUIT NO. 284 OF 2015

RAJ SHIPPING AGENCIES LIMITED)... APPLICANT

IN THE MATTER OF

RAJ SHIPPING AGENCIES LIMITED)... PLAINTIFF

V/s.

BARGE MADHWA AND ANR.)... DEFENDANTS

Mr.Dhruva Gandhi a/w. Mr.Heetkumar Vachhani and Ms. Benaifer Dsouza i/by Crawford Bayley & Co., Advocate for the Plaintiff in COMAS/284/2015 and for the Applicant in IA/3494/2025.
Mr.Malhar Zatakia a/w. Ms.Harsha Uppal, Mr. Akash Manwani and Mr. Aksh Jain i/by AZB and Partners, Advocate for the Liquidator of the Defendant No. 2.

CORAM : ABHAY AHUJA, J.

DATE : 13th MARCH 2026

P.C :

1. This Interim Application has been filed by the Applicant/Plaintiff under Order XIII-A of the Code of Civil Procedure, 1908 (“CPC”), as amended by the Commercial Courts Act, 2015.

2. Today when the matter is called out, Mr. Dhruva Gandhi, learned Counsel appears for the Applicant/Plaintiff and submits that affidavit in

reply dated September 2025 has been filed by Defendant No.2 to the said Interim Application however no rejoinder is necessary and this Court may proceed to hear the matter.

3. Mr. Gandhi submits that the Suit has been filed for a judgment and decree for a sum of Rs. 1,88,67,826/-: the principal claim amount of Rs. 1,76,65,964/- and further interest at the rate of 12% per annum amounting to Rs. 12,01,862/- from the due date of each invoice till payment and / or realization of the monies, and for costs.

4. Mr. Gandhi submits that the Plaintiff is a limited company, which owns a few vessels and charters them on a regular basis. The Defendant No.1 is an Indian dumb barge owned by Defendant No.2 as the registered owner, lying at Mumbai Port at the time of its arrest, within the jurisdiction of this Court.

5. It has further been submitted that the Plaintiff entered into Uniform Time Charter Party Agreements with Defendant No.2 for two vessels, i.e. M.V. Offshore Runner and Dumb Barge Bhagheeratha. Both these vessels were required for off shore services and/or support services. The Plaintiff has been raising invoices against the same, some of which were paid-in-part and some of which have been outstanding.

6. Mr. Gandhi has further submitted that the Plaintiff has at the moment an outstanding invoice towards charter hire for an amount of Rs.1,88,67,836/- which includes a principal amount of Rs.1,76,65,964/-, as per particulars of claim annexed to the Plaint (Exhibit UU).

7. As and by way of illustration, Mr. Gandhi has drawn this Court's attention to the Uniform Time Charter Party For Offshore Service Vessels dated 16th November 2013, executed between the Plaintiff and Defendant No. 2 and to Box 18 titled "*Offshore duties within the natural capabilities of the vessel*". Box 19 states that the Charter Hire was to be Rs.1,25,000/-, exclusive of fuel and water, but inclusive of lubes. Boxes 26 and 27 state the rates of meals and accommodation. Mr.Gandhi has also drawn the attention of this Court to Part II of the Charter Party, and in particular to Clauses 8, 10(a) and 10(e). Mr.Gandhi has further submitted that this Charter Party was extended by five addenda from time to time. Mr. Gandhi submits that under the terms of the Charter Party, the Plaintiff raised invoices from time to time upon the Defendant No. 2. Illustratively, Mr. Gandhi has shown Invoice No.336 at Exhibit D to the Plaint and Invoice No. 401 at Exhibit O to the Plaint. Mr. Gandhi submits that the Invoice No. 336 was

delivered by way of a letter dated 1st March 2014 (Exhibit E), which letter also bears the stamp of the Defendant No. 2. Likewise, Invoice No. 401 was delivered by way of a letter dated 31st March 2014 (Exhibit P), which too was hand-delivered. Mr.Gandhi submits that these invoices, like the other invoices, were received by the Defendant No. 2 without demur. In fact, Defendant No. 2 has even made part-payments to the Plaintiff. To this effect, Mr. Gandhi has drawn this Court's attention to two intimations sent by the Defendant No. 2 to the Plaintiff, the first at Exhibit F showing part-payment of Invoice No. 336 and the second at Exhibit Q showing part-payment of Invoice No. 401. Mr. Gandhi submits that similarly, there are other invoices which have been raised from time to time under this Charter Party. That a similar Charter Party was executed for the Dumb Barge Bhaghreetha, and invoices were raised thereunder as well.

8. Mr. Gandhi submits that a tabulation of all invoices raised is at Schedule A to the Interim Application, and that a tabulation of the part-payments received at Schedule B thereof. It is submitted that despite persistent efforts, the payments of the then outstanding dues were not coming through. As a consequence, a Demand Notice dated 15th November 2014 (Exhibit SS) titled Demand Notice No. 2 came to be

addressed to Defendant No. 2, *inter alia* with respect to the outstanding dues of Rs. 1,87,57,477.04/- of the Plaintiff and that this letter stated that no concrete steps had been taken to settle the long standing dues and that if the outstanding amounts were not cleared, the Plaintiff would be constrained to initiate legal proceedings. It is submitted that by a communication dated 18th November 2014 (Exhibit TT) addressed to the Raj Group of Companies, the Defendant No.2 had assured to clear the outstanding dues of the Plaintiff. That the liability towards the Plaintiff has not been rejected and instead, time has been sought for a reconciliation of accounts. That the Plaintiff was requested to bear with Defendant No. 2 for some more time and that the 2nd Defendant's team was working hard to get the outstanding payments released from its clients and that as soon as they would receive their overdue payments, they would make the payments against the outstanding liabilities.

9. Mr.Gandhi has submitted that the communication dated 18th November 2014 is a clear assurance to clear the liabilities of Defendant No. 2 to the Plaintiff Group including the Plaintiff.

10. Mr.Gandhi would further submit that due to non-payment of its dues towards charter hire by Defendant No. 2, the Plaintiff was

constrained to file Commercial Admiralty Suit No. 284 of 2015 in accordance with the Admiralty Law, whereby a maritime claim can be claimed against any vessel of the owner/charterer against whom there is a claim arising out of a time charter. Mr. Gandhi would further submit that the services of the two vessels chartered by the Plaintiff were enjoyed by Defendant No. 2.

11. It is submitted that the Defendant No.2 is liable to make payment to the Plaintiff for the outstanding charter hire, victual expenses and / or meals and / or accommodation and / or satellite phone charges, failing which the Plaintiffs are entitled to proceed against the Defendant No.1 and Defendant No.2. The Plaintiff's claim arises by reason of outstanding charter hire and associated expenses for vessels provided on charter by the Plaintiff to the Defendant No.2.

12. It has been submitted that the Plaintiff's claim is a recognised maritime claim within the Admiralty Courts Act, 1861, the Supreme Court Act, 1981 and various International Maritime Conventions. It is submitted that the Supreme Court of India in the case of M.V. Elizabeth has also recognized such a claim as constituting a valid maritime claim.

13. Mr.Gandhi, learned Counsel has submitted that the Plaintiff is entitled to proceed *in rem* and this Hon'ble Court has jurisdiction to entertain try and dispose of the Suit under the provisions of the Admiralty Courts Act, 1861 and the provisions and principles of admiralty law as applicable and having force of law in India.

14. It has been submitted that the vessel-Barge Madhwa was arrested and later on sold in an admiralty auction and the proceeds thereof are lying with the Prothonotary and Senior Master of this Court and can be appropriated towards satisfaction of the Plaintiff's claim in view of Section 5(2) of the Admiralty (Jurisdiction and Settlement of Marine Claims) Act, 2017 (the "Admiralty Act).

15. Mr. Gandhi further submits that in the light of (a) the receipt of the invoices without demur, (b) part-payments made by the Defendant No.2 and (c) the assurance to clear outstandings made vide letter dated 18th November 2014, a fit case has been made out under Order XIII-A of the CPC, as there are no real prospects of defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. That, the Plaintiff is therefore entitled to a summary judgment/decree on admission in

terms of prayer clauses (A) to (C) of the Interim Application in the sum of Rs. 1,88,67,826/- in addition to further interest and costs.

16. Mr.Gandhi has relied upon the decisions of this Court in the cases of ***Raj Shipping Agencies Vs. Barge Madhwa and Ors.***[1] and ***Raj Transport and Trading Co. Vs. Barge Madhwa & Ors.***[2] in support, submitting that this Court has allowed an Interim Application seeking decree on admission in similar facts in the case of sister concern entities.

17. Mr.Gandhi submits that, therefore, this Interim Application has also been filed seeking a summary judgment and the same be allowed in view of the aforesaid submissions.

18. On the other hand, Mr. Malhar Zatakia, learned Counsel appearing for the Liquidator of Defendant No. 2 submits that a reply has been filed on behalf of the Liquidator opposing the Application under Order XIII-A of the CPC and submits that although this Court in the case of *Raj Shipping Agencies Vs. Barge Madhwa and Ors.(supra)* and *Raj Transport and Trading Co. Vs. Barge Madhwa & Ors. (supra)*,

1 IAL No. 15746 of 2023 in ADMS No. 6 of 2015 dated 24th January, 2025.
2 IAL No. 4027 of 2025 in ADMS No. 17 of 2015 dated 4th April 2025.

which are sister concerns of the Plaintiff herein, has allowed the Application, however, while reiterating the submissions made in the said cases, learned Counsel submits that firstly the said applications were for decrees on admission under Order XII Rule 6 of the CPC whereas the present application is under Order XIII-A of the CPC and accordingly, in the letter dated 18th November 2014, although with respect to the other two group entities there may have been some admission, however, with respect to the present application, Mr.Zatakia submits there is no admission as the letter clarifies that the Respondent No. 2 is "*still in the process of reconciling statement of accounts for Raj Shipping Agencies Ltd. invoices viz-a-viz our records.*"

19. Mr.Zatakia has further submitted that after the Suit was filed, pursuant to Corporate Insolvency Resolution Process (the "CIRP") proceedings before the National Company Law Tribunal (the "NCLT"), Defendant No. 2 was liquidated by order dated 27th May 2022 of the NCLT. Mr.Zatakia submits that after the passing of the liquidation order, the Liquidator had invited claims from the creditors and stakeholders in accordance with the liquidation regulations and that the Plaintiff had submitted its claim before the Liquidator for an amount of Rs.2,99,12,690/- (principal amount being Rs.2,79,56,212/-)

and interest thereon in Form-C. Mr.Zatakia submits that since it has been categorically mentioned by the Plaintiff in Form-C that the Plaintiff has relinquished its security interest and that the claim of the Plaintiff has been admitted in accordance with the Insolvency and Bankruptcy Code, 2016 (the "IBC") and will be treated as per Section 53 of the said Code, the Plaintiff cannot be permitted to pursue two remedies for the same claim and that therefore, the Application be dismissed, fairly submitting that the Liquidator of the Defendant No. 2 too has admitted the claim of the Plaintiff.

20. Mr.Zatakia would further submit that by way of this Application, the Plaintiff is seeking a summary judgment against Defendant No.2. It is submitted that the Plaintiff cannot be permitted to recover its claim in priority over other creditors when the company is under liquidation but would have to follow the priorities as per Section 53 of the IBC. Mr.Zatakia further submits that the claims of all creditors of the Corporate Debtors viz. Defendant No. 2 will be treated in accordance with the IBC and the regulations thereunder and that the claim of the Plaintiff cannot be given any priority, as the Plaintiff's claim has been admitted by the Liquidator.

21. Mr.Zatakia seeks to rely upon the decision of this Court in the case of ***Raj Shipping Agencies Vs. Barge Madhwa and Another alongwith the connected matters***[3] ("*Barge Madhwa*") submitting that in paragraph no. 101 of the said decision, this Court has observed that a claimant, who has a maritime claim or a maritime lien and has obtained an order of arrest before liquidation, will be considered a secured creditor and will be entitled to enforce and realize the security interest in accordance with the applicable law viz. the Admiralty Act as provided under Section 52(4) of the IBC. Mr.Zatakia however submits that the Plaintiff being a secured creditor but having given up its security interest viz. the interest in the sale proceeds of Defendant No. 1 and the claim of the Plaintiff before the Liquidator of Defendant No. 2 having been admitted, the Plaintiff has subjected itself to distribution of assets under Section 53 of the IBC and in particular under Section 53(1)(b)(ii) of the IBC and cannot jump the process or the priorities set out under Section 53 of the IBC by obtaining a decree on admission by way of this Application, having already relinquished its security interest under Section 52(1)(a) of the IBC.

3. 2020 SCC OnLine Bom 651.

22. Mr. Zatakia also submits that by voluntarily submitting to the statutory process under the the IBC, the Plaintiff has elected to relinquish its security interest and avail itself of the waterfall mechanism under Section 53 of the IBC. Mr. Zatakia submits that the Plaintiff cannot approbate and reprobate. Having made this election, the Plaintiff cannot now enforce the same claim, that too in respect of security which it has relinquished, before this Court. Such an attempt amounts to approbating and reprobating qua the same security interest i.e. Defendant No.1 vessel, which is impermissible under law. The Plaintiff, having exercised the option of relinquishing its security interest and participate in the liquidation process as a secured creditor who has relinquished its security interest (and would thus receive its dues under Section 53(1)(b)(ii) as opposed to Section 53(1)(e)(ii) under IBC, cannot now assert an inconsistent position to redeem the same security interest through an alternative remedy under the admiralty jurisdiction. Mr. Zatakia relies upon the decision of the Hon’ble Supreme Court in the case of ***Union of India & Ors Vs. N. Murugesan & Ors.***[4] in support of his submissions.

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4 (2022) 2 SCC 25

23. Mr. Zatakia further adopts the very same submissions on costs made by him in the case of *Raj Transport and Trading Co. Vs. Barge Madhwa & Ors. (supra),* and submits that for similar reasons, costs should not be granted.

24. Mr.Zatakia submits that no case under Order XIII-A of the CPC has been made out in view of the aforesaid defences and that the Application therefore be rejected.

25. Mr.Gandhi as noted above has relied upon the decisions of this Court in the case of *Raj Shipping Agencies Vs. Barge Madhwa and Ors. (supra)* and *Raj Transport and Trading Co. Vs. Barge Madhwa & Ors. (supra)* and submits in rejoinder that this Court has already dealt with and rejected the very same arguments of the Liquidator of the Defendant No.2. Mr. Gandhi submits that the claimant is a secured creditor of the vessel and not of the owner and draws this Court's attention to paragraph 87 of the decision in the case of *Barge Madhwa (supra)* as well as paragraphs 36 to 41 and 44 of the decision of this Court in the case of *Raj Shipping Agencies Vs. Barge Madhwa and Ors. (supra)* and paragraphs 36 to 44 of the decision of this Court in the

case of *Raj Transport and Trading Co. Vs. Barge Madhwa & Ors. (supra)*.

26. As far as the submissions based on the letter dated 18th November 2014 are concerned, Mr. Gandhi submits that the test under Order XIII-A of the CPC is different from that under Order XII Rule 6 of the CPC. Mr. Gandhi further submits that the Defendant No. 2 has failed to point out any triable issue or to show that it has a reasonably good chance of defending the claim, particularly considering that the Applicant's claim has been admitted by the Liquidator of the Defendant no.2.

27. Mr.Gandhi, learned Counsel accordingly submits that this Court reject the objections raised by Mr.Zatakia on behalf of the Liquidator of Defendant No.2 and allow the application for summary judgment.

28. Mr.Gandhi has further submitted that the costs in accordance with prayer clause (D) of the Interim Application also be granted submitting that the litigation has been going on since last 12 years and that the amount of Rs. 8,50,000/- claimed as costs is justified towards the cost of litigation.

29. I have heard the learned Counsel at length and considered the submissions.

30. While most of Mr. Zatakia's arguments have already been dealt with by this Court in the decision of the Applicant's sister concerns in the cases of *Raj Shipping Agencies vs. Barge Madhwa and others (supra)* and *Raj Transport and Trading Co. Vs. Barge Madhwa & Ors. (supra)*, it would be first apposite to compare Order XII Rule 6 of the CPC and Order XIII-A of the CPC as the present application is under Order XIII-A of the CPC whereas the two decisions are pursuant to applications made under Order XII Rule 6 of the CPC.

31. Order XII Rule 6 of the CPC provides as under:

> **Judgment on admissions.—**
> (1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
>
> (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

32. And Order XIII-A Rule 3 of the CPC provides as under:

> **Grounds for summary judgment.—**The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—
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> (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and
>
> (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

33. A comparison of the bare text of these two Rules suggest that the test for summary judgment under Order XIII-A of the CPC is different from that for a judgment on admission under Order XII Rule 6 of the CPC. Under Order XIII-A, the Plaintiff does not carry the burden of establishing that there has been an admission on part of the Defendant. Instead, the Plaintiff must only show that the Defendant has no real prospect of successfully defending the claim and that there is no compelling reason why the claim should not be disposed of without recording oral evidence. In the present case, Mr. Zatakia has not spelt out any reason as to why oral evidence would be required. No triable issue has been cited. Instead, as Mr. Zatakia has fairly conceded, the Liquidator of Defendant No. 2 has himself admitted the claim of the

Plaintiff. The Defendant No. 2 has not furnished any material to demonstrate as to how it would have a reasonable chance of succeeding at trial.

34. Mr.Zatakia's principal opposition revolves around the proposition that if this Application is allowed, the Plaintiff will claim priority over other creditors and despite the Plaintiff's claim having been admitted under IBC, the Plaintiff would jump the priorities under Section 53 of the IBC and in particular under Section 53(1)(b)(ii) which the Plaintiff cannot be permitted to do, having already relinquished the security interest under Section 52(1)(a) of the IBC. Mr.Zatakia, learned Counsel has relied upon paragraph 101 of the decision in the case of Barge Madhwa, which is usefully quoted as under :-

> *"101. If the company is liquidated then Plaintiff's action being an action in rem will proceed and the vessel will be sold by way of an Admiralty sale to maximize its realisation value. Section 33(5) of the IBC does not prohibit the continuation of pending suits and the liquidator will be entitled to defend it as this power is expressly provided in Section 35(1)(k) of the IBC. Viewed at from another angle, Plaintiff and any other claimant who has a maritime claim or a maritime lien and has obtained an order of arrest before liquidation, will be considered a secured creditor and will be entitled to enforce and realize his security interest in accordance with the applicable law, viz., Admiralty Act, as provided in Section 52(4) of the IBC."*

35. On the other hand, Mr.Gandhi, learned Counsel has relied upon paragraphs No.84, 87, 102 and 103 of the very same decision in support of his contentions that parties having a maritime lien or a maritime claim are entitled to file an action in rem against the sale proceeds and that the determination of priorities would be done in accordance with Section 10 of the Admiralty Act and inter se priorities of maritime liens under Section 9 of the Admiralty Act and that Section 53 of the IBC which refers to distribution of assets will not apply. Paragraphs No.84, 87, 102 and 103 of the said decision in the case of Barge Madhwa are also usefully quoted 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.*
>
> *87. The authorities also are unanimous in stating that once a ship is arrested in respect of a maritime lien or a maritime claim, the Claimant becomes a secured creditor qua that arrested vessel and the vessel is effectively encumbered*

with the Plaintiff's claim. In **In re ARO Company Ltd.** *reported in (1980) 1 Ch 196 (C.A.), it was held that Plaintiffs having arrested the ship and perfected the security of their claim were thus secured creditors with the result that the vessel was effectively encumbered with their claim. In the book Admiralty Jurisdiction and Practice by Nigel Meeson and John A. Kimbell, (5th Edition) (hereinafter referred to as Meeson), paragraphs 3.89 and 3.90, the authors say in paragraph 3.89 that "The holder of a maritime lien is also a secured creditor from the moment the maritime lien arises which is simultaneously with the claim". And in paragraph 3.90, "A claimant having only a statutory right of action in rem becomes a secured creditor at the latest when he causes the ship to be arrested." The Claimant is not a secured creditor of the owner but only that of the particular ship and to the extent of the value of the ship. This also meets with the definition of "secured creditors" as per Section 3(30) and "security interest" as per Section 3(31) of the IBC.*

102. Since the sale proceeds represent the res, the Admiralty Court will be entitled to invite claims against the sale proceeds by following the Admiralty procedure prescribed in the Rules. In admiralty law there is no difference between an action in rem against a ship and an action in rem against the proceeds of sale of that ship (See m.v. The Convenience Container). Parties having a maritime lien or a maritime claim will be entitled to file an action in rem against the sale proceeds. The determination of priorities will also be done in accordance with Section 10 of the Admiralty Act and inter se priorities of maritime liens will be decided in accordance with Section 9 of the said Act. Section 53 of the IBC which refers to distribution of assets will not apply. If the ship is sold by the Admiralty Court in exercise of its

> *jurisdiction in rem then the machinery of the Admiralty Act will apply and the sale proceeds will be distributed on the basis of priorities determined under the Admiralty Act.*
> *103. All those claimants who are unable to recover their claim from the sale proceeds will have to pursue their claim in the liquidation as unsecured creditors."*

36. The decision in the case of Barge Madhwa has very succinctly captured the inter play between the provisions of the Admiralty Act and the IBC.

37. An action in rem against a ship is not an action against the owner of the ship who may be the corporate debtor as defined under the IBC. That neither is the action in rem considered as a proceeding against the assets of the owner/corporate debtor. That it is a proceeding against the ship to recover the claim from the ship and not an action against the owner/corporate debtor to recover the claim by attachment of the assets of the owner/corporate debtor or by lodging a claim with the Liquidator of the corporate debtor.

38. In maritime law, once a ship is arrested in respect of a maritime lien or a maritime claim, the claimant becomes a secured creditor vis-a-vis the arrested vessel and the vessel is encumbered with the Plaintiff's

claim as all those who have maritime lien and claims can enforce them by filing an action against the sale proceeds.

39. The claimant is not a secured creditor of the owner but only that of the particular ship and to the extent of the value of the ship.

40. Holding that the Admiralty Act and the IBC are to be construed harmoniously, so as to give effect to both, the decision in the case of Barge Madhwa has categorically held that a ship against whom a maritime claim can proceed in an action in rem does not fall within the definition of corporate debtor under the IBC. Neither is the ship being proceeded against as an asset of the corporate debtor. It is the ship itself which is liable and which is arrested for crystallizing the maritime claim. The ship is an independent juridical entity which is sued in its own name dehors the status of its own owners, who may be the corporate debtor and without reference of its owner.

41. Thus an action in rem filed under the Admiralty Act for arrest of the ship would not amount to an institution of suit against a corporate debtor as defined under the IBC nor would continuation of an action in rem amount to continuation of a suit against a corporate debtor.

42. As an action in rem proceeds in accordance with the applicable law, namely, the Admiralty Act, the priorities for payment out of the sale proceeds will also be determined in accordance with the said Act and Section 53 of the IBC will not apply.

43. In paragraphs 99 and 100 of the said judgment in the case of Barge Madhwa, it has been held that, if CIRP is not successful and the company is ordered to be liquidated, the security provided for Plaintiff's claim will inure to the benefit of Plaintiff alone. It is in such a case that the Plaintiff will be a secured creditor in liquidation and will be entitled to realise its security interest as provided in Section 52(4) of the IBC which provides "A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it." The law as applicable would be the Admiralty Act. Consequently, upon an order of liquidation being made and a liquidator being appointed, the Suit will proceed in personam under the Admiralty Act and the Plaintiff will be entitled to realise its security and it will be open to the Liquidator to defend the suit which right is available to him as provided in Section 35(1)(k) of the IBC. It is in this context that in paragraph

101 it has been held that, if the company is liquidated then Plaintiff's action being an action in rem will proceed and the vessel will be sold by way of an Admiralty sale to maximize its realisation value and the Plaintiff and any other claimant who has a maritime claim or a maritime lien and has obtained an order of arrest before liquidation, will be considered a secured creditor and will be entitled to enforce and realize his security interest in accordance with the applicable law, viz., Admiralty Act, as provided in Section 52(4) of the IBC.

44. In the facts of this case, pursuant to CIRP the claim lodged by the Applicant with the Liquidator has been admitted and therefore even if the Applicant has given up its security interest under Section 52(1)(a) of the IBC, the Applicant admittedly having a maritime lien/maritime claim against the sale proceeds, the determination of priorities will be in accordance with Section 10 of the Admiralty Act and inter se priorities of the maritime liens will be decided in accordance with Section 9 of the said Act and as held in paragraph 102 of the said decision in the case of Barge Madhwa, Section 53 of the IBC which refers to distribution of assets will not apply as the ship has been sold by the Admiralty Court in exercise of its jurisdiction in rem and the machinery of the Admiralty Act will apply and the sale proceeds will be

distributed on the basis of priorities determined under the Admiralty Act.

45. The additional issue of approbation and reprobation is also sought to be raised in support of the same proposition that since the Plaintiff has elected to relinquish its security interest and avail itself of the waterfall mechanism under Section 53 of the IBC, having made this election, the Plaintiff cannot now enforce the same claim in respect to the security which has been relinquished. It is in this context and in respect of the very same issue that has been raised in the earlier matters, it has been submitted that such an attempt amounts to approbation and reprobation in respect of the same security interest, viz. Defendant No.1-vessel and that same is impermissible in law. It has been sought to canvass that having exercised the option of relinquishing the security interest and having participated in the liquidation process as a secured creditor who has relinquished its security interest to receive its dues under Section 53(1)(b)(ii) as opposed to Section 53(1)(e)(ii) under the IBC, the Applicant cannot now assert an inconsistent position regarding the same security interest through the alternative remedy under the Admiralty jurisdiction.

46. I am of the view that the above argument on behalf of the liquidator of the Defendant No.2 is completely misplaced, and rather misconceived. Firstly, the notion that the remedy under admiralty jurisdiction is an alternative remedy, in my view, needs to be dispelled. It has been observed in the case of Barge Madhwa, that the action against a vessel is an action in rem and action against the corporate debtor or owner of vessel is an action in personam. In the said decision, conflict between Admiralty Law and Insolvency Law has been reconciled. It has been held in paragraph 84 of the said decision in the case of Barge Madhwa that 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. Once a ship is arrested in respect of a maritime lien or a maritime claim, the claimant becomes a secured creditor of that arrested vessel and not the owner. Having arrested the ship, the security of the claim is perfected. The holder of maritime lien is a secured creditor from the moment the maritime lien arises. The said claimant is not a secured creditor of the

owner, but only that of the particular ship and to the extent of the value of the ship. As also noted in the case of Barge Madhwa (Supra) and reiterated in the case of Raj Shipping Agencies vs. Barge Madhwa and others (supra) that, Section 53 of the IBC or the priorities set out thereunder will not apply. That therefore the question of application of Section 53(1)(b)(ii) as opposed to Section 53(1)(e)(ii) would not arise and the Applicant cannot be said to be asserting an inconsistent position to redeem the same security interest through an alternative remedy under the admiralty jurisdiction.

47. Accordingly, I am of the view that an endeavour to apply the principle of approbation and reprobation in support of the aforesaid proposition, in the facts of this Application, is only a misconceived attempt to once again raise conflict of the two jurisdictions, one in rem and other in personam as the issue has already been settled in the case of Barge Madhwa. The decision of the Hon'ble Supreme Court in the case of Union of India and others vs. N. Murugesan and others (supra), relied upon by the learned Counsel for the Liquidator of the Defendant No.2 is in an entirely different context and the present Application is based on a completely different context and therefore the said principle of approbation and reprobation is not applicable to the present case. It

has been held in the said decision that a person who knows that if he objects to an instrument, he will not get the benefit he wants, cannot be allowed to do so, while enjoying the fruits; one cannot take advantage of one part while rejecting the rest; a person cannot be allowed to have the benefit of an instrument while questioning the same; it discourages a practice that if a party enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. It is a common law principle and there is an element of fair play which is inbuilt in this principle and also a species of estoppel dealing with the conduct of a party. Learned Counsel for the Liquidator of the Defendant No.2 has drawn attention of this Court to paragraph 26 of the said decision in respect of his contentions, which is usefully quoted as under :

> *"26. These phrases are borrowed from the Scott's law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party*

> *actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."*

48. As can be seen from the afore-quoted paragraph, no party can be allowed to accept and reject the same thing and thus one cannot blow hot and cold; a person cannot be allowed to have a benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. The maxim that a person cannot approbate and reprobate is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage. Once the person has elected that the transaction is valid then a party cannot be permitted to turn around and say that the transaction is invalid. Several decisions of the Hon'ble Supreme Court have been quoted in the decision of Union

of India vs. N. Murugesan (supra) and certainly these are time tested principles of law, but in the facts of this case, what we are concerned with, is not a transaction or an instrument where the Applicant has first accepted it and thereafter is turning around and saying that the same is unacceptable or invalid. In the present case, we are concerned with the right of the Applicant in two jurisdictions. One is the admiralty jurisdiction and the other is civil jurisdiction and as noted above, the Applicant is making the claim in rem i.e. against the vessel and in the other is a claim in personam i.e. against the owner of the vessel. The Applicant herein is a secured creditor of the vessel and not of the owner. Paragraph 87 of the decision in the case of Barge Madhwa quoted above clearly elucidate this position.

49. Also as noted in the decision in the case of Barge Madhwa and reiterated in the earlier decisions, pursuant to the CIRP, the claim lodged by the Applicant with the Liquidator has been admitted however, since the Applicant admittedly has a maritime lien / maritime claim against the sale proceeds, the claim is to be decided in accordance with Section 9 of the Admiralty Act and as held in the case of Barge Madhwa (supra), Section 53 of the IBC which refers to distribution of assets will not apply as the ship has been sold by the

Admiralty Court in exercise of its jurisdiction in rem and the machinery of the Admiralty Act will apply and the distribution of the sale proceeds will be in accordance with the Admiralty Act.

50. In my view, therefore, the principle of approbation or reprobation or the doctrine of election would not apply to the facts of this case and the proposition on behalf of the learned Counsel for the Liquidator of the Defendant No.2 is completely misconceived and is therefore, rejected. Accordingly, the decision of the Hon’ble Supreme Court in the case of *Union of India vs. N. Murugesan (supra)* does not assist the case of Liquidator for the Defendant No.2.

51. Of course needless to say that if the entire claim is recovered under the Admiralty Act, the Applicant cannot seek to recover the same claim even though admitted by the Liquidator under the IBC. Therefore, the question of Plaintiff/Applicant jumping the process or the priorities set out under Section 53 of the IBC would not arise, if this Court decrees the Suit in favour of the Plaintiff/Applicant.

52. No doubt if the claim is unable to be recovered or satisfied from the sale proceeds, the said part will have to be pursued under the IBC.

53. In my view, therefore, by allowing this application and decreeing the suit, would not result in the Plaintiff's jumping the process of priorities set out under Section 53 of the IBC in as much as, the said provision will not apply in view of what has been held as above in view of the decision in the case of Barge Madhwa. Therefore, the objection by Mr.Zatakia, learned Counsel is to be rejected.

54. The decision of the Hon'ble Delhi High Court in the case ***Su-Kam Power Systems Ltd. Vs. Kunwer Sachdev & Anr.***[5] is also useful wherein after undertaking a study of the comparative jurisdictions under Order XII Rule 6 of the CPC and Order XIII-A of the CPC, the Hon'ble Court observed in paragraphs 49 to 52 as under:

> *"49. Consequently, this Court is of the view that when a summary judgment application allows the Court to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. It bears reiteration that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the Court the confidence that it can find the necessary facts and apply the relevant legal principles so as to resolve the dispute as held in Robert Hryniak (supra).*
>
> *50. In fact, the legislative intent behind introducing summary judgment under Order XIIIA of CPC is to provide a remedy independent, separate and distinct from judgment on admissions and summary judgment under Order XXXVII of CPC."*

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51. This Court clarifies that in its earlier judgment in Venezia Mobili (India) Pvt. Ltd. vs. Ramprastha Promoters & Developers Pvt. Ltd. & Ors., while deciding two applications, both filed by the plaintiff in the said case (one under Order XII Rule 6 and other under Order XIIIA) it had applied the lowest common denominator test under both the provisions of the Code of Civil Procedure and held that the suit could be decreed by way of a summary judgment.

52. Consequently, this Court is of the opinion that there will be 'no real prospect of successfully defending the claim' when the Court is able to reach a fair and just determination on the merits of the application for summary judgment. This will be the case when the process allows the court to make the necessary finding of fact, apply the law to the facts, and the same is a proportionate, more expeditious and less expensive means to achieve a fair and just result."

55. Communication dated 18th November, 2014 from the Defendant No.2 has assured that the Defendant no.2 is committed towards its business partners and their payments and has requested to bear with them for some more time and to note that the team of the Defendant no.2 is working hard to get its outstanding payment released from its client and as soon as they receive their due payment from their client, they would make the payment against the outstanding liabilities, albeit as regards the Plaintiff, the Defendant no.2 was at the relevant time in the process of reconciling statement of accounts, invoices vis-a-vis the

records. Neither the delivery of services nor the Tax invoices nor the statement containing outstanding dues to the Plaintiff at Page 95 nor the Particulars of Claim has been disputed. It is also not in dispute that the liquidator of the Defendant no.2 has himself admitted the claim of the Applicant/Plaintiff and has not furnished any material to demonstrate that it would have a reasonable chance of succeeding at the trial. This, in my view, also takes care of Mr. Zatakia's submission that as regards the Applicant herein, the Defendant no.2 was still in the process of reconciling the statement of accounts. Facts and circumstances clearly suggest that the Defendant No.2 does not have any reasonable chance of success at trial. In my view, the Defendant has no real prospect of successfully defending the claim, nor is there any other compelling reason why the claim should not be disposed of before recording of oral evidence. The facts clearly warrant a summary judgment in terms of Order XIII-A of the CPC and to do so would certainly be proportionate and timely.

56. Box 24 of the Charter Party for M. V. Offshore Runner provides that payments made beyond the payment date would be charged

interest @ 12% per annum, which has not been disputed by Defendant No. 2 or its Liquidator.

57. As regards costs, it is noted that the litigation has been going on since more than ten years and that the Liquidator has been appointed as Liquidator of the Defendant no.2 and has been acting as Liquidator of the Defendant no.2 in liquidation. Legal costs as set out in Exhibit D of the application have not been disputed by the learned Counsel for the Liquidator of the Defendant no.2. The costs claimed are on the basis of legal expenses incurred by the Applicant in respect of professional fees, Court fees, Counsel fees and miscellaneous expenses which have not been disputed in any manner by the Liquidator of the Defendant no.2.

58. Accordingly, costs of Rs.8,50,000/- would also have to be allowed.

59. In view of the above discussion, I am inclined to allow this Application.

60. Accordingly, Interim Application is allowed in terms of prayer

clauses (A) to (D), which read thus :

> (A) Pass a summary judgment declaring that the Defendants are jointly and severally liable to pay a sum of Rs.1,88,67,826/- (Rupees One Crore Eighty-Eighty Lakhs Sixty-Seven Thousand Eight Hundred and Twenty-Six only) to the Plaintiff, along with further interest @12% p.a. from the date of the Suit till payment and / or realisation.
>
> (B) Pass an order and decree declaring that the sale proceeds of Defendant No. 1 Vessel shall be appropriated towards satisfaction of the Plaintiff's claim as declared in prayer clause (A), the costs of the Plaintiff's suit as sought herein below, and poundage.
>
> (C) Pass an order and decree directing Defendant No. 2 to pay to the Plaintiff the balance portion of Rs. 1,88,67,826/- (Rupees One Crore Eighty-Eight Lakhs Sixty-Seven Thousand Eight Hundred and Twenty-Six Only) along with interest thereon computed @ 12% p.a., as left unpaid after the sale proceeds are appropriated towards a satisfaction of the Plaintiff's claims in accordance with prayer clause (B);
>
> (D) Pass an order as to the costs incurred by the Plaintiff, as set out more particularly in the Schedule of Costs annexed at Exhibit "D" hereto.

61. In view of the above, the Suit is decreed in terms of prayer clause (b) which reads thus :

> "(b) Thus, the Plaintiff is entitled to a judgment and decree for a sum of Rs. 1,88,67,826 (Rupees One Crore Eighty-Eight Lakhs Sixty-Seven Thousand Eight Hundred and Twenty-Six Only). The Principal claim being Rs. 1,76,65,964 (Rupees One Crore Seventy Six Sixty Five Thousand Nine Hundred and Sixty Four Only) together with interest thereon at the rate of 12% pa amounting to Rs. 12,01,862 (Rupees Twelve Lakhs One Thousand Eight Hundred and Sixty Two Only) from due date of the Invoices till payment and / or realization, and poundage;

62. Considering the submissions on behalf of the Plaintiff and the liquidator of Defendant No.2 on the issue of costs, I deem it appropriate to award the cost of litigation of Rs. 8,50,000/- to be paid to the Plaintiff.

63. It is made clear that the decree does not entitle the Plaintiff to a pay out as yet and therefore, for deciding priorities and payout, a separate application would have to be preferred by the Plaintiff/Applicant. The Suit is therefore kept pending only for the purpose of deciding priorities and pay out.

64. The Interim Application accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)

ARTI VILAS KHATATE

Digitally signed by ARTI VILAS KHATATE
Date: 2026.03.21 21:31:59 +0530