

IN THE HIGH COURT AT CALCUTTA
ADMIRALTY JURISDICTION
[COMMERCIAL DIVISION]
Original Side

IA NO. GA/3/2023
In AS/5/2022
GRASIM INDUSTRIES LTD AND ANR
Vs
THE OWNERS AND PARTIES INTERESTED IN THE VESSEL "M.V.
MARINTRUST-01 (IMO NO. 9783174)" & ANR.

IA NO. GA/4/2023
In AS/5/2022
GRASIM INDUSTRIES LTD AND ANR
Vs
THE OWNERS AND PARTIES INTERESTED IN THE VESSEL "M.V.
MARINTRUST-01 (IMO NO. 9783174)" & ANR.

BEFORE :
THE HON'BLE JUSTICE RAVI KRISHAN KAPUR
DATE: 28th June, 2023

Appearance:

Mr. Ratnanko Banerjee, Sr. Adv.
Mr. K. Thaker, Adv.
Mr. Souwik Kundu, Adv.
...for plaintiff.

Mr. Jishnu Chowdhury, Adv.
Mr. Soumyadip Saha, Adv.
Mr. Dwip Raj Basu, Adv.
...for defendant no. 1

Mr. Tilak Kumar Bose, Sr. Adv.
Mr. Pranit Bag, Adv.
Mr. Aditya Sarkar, Adv.
Mr. Subhajit Roy, Adv.
...for Kolkata Port Trust.

Mr. R. Ghosal, Adv.
Mr. P. Bandhopadhyay, Adv.
Mr. Anirban Ghosh, Adv.
...for intervenor.

The Court:-

GA/3/2023 & GA/4/2023

Both applications being G.A. No. 3 of 2023 and G. A. No. 4 of 2023 are taken up for hearing.

G.A. No. 3 of 2023 is an application filed by the plaintiffs, inter alia, for appointment of a Receiver and seeking directions to sell the vessel M.V. Marintrust. Prayer (a) of the application reads as follows:-

“(a) A Receiver be appointed with directions to sell the Vessel M. V. Marintrust-01 (IMO No. 9783174) on such terms as this Hon’ble Court deems fit.”

The other application being G.A. No. 4 of 2023 is an application filed by the Port Authorities, namely, Syama Prasad Mookerjee Port, for being added as defendant No.2. For the sake of convenience, prayers (a), (b) and (c) of the said application are set out hereinbelow:-

(a) M.V. Marintrust-01 (IMO No. 9783174) be sold by public auction after world-wide publication of notice for such sale in leading maritime journals, newspapers and digital platforms, on such terms and conditions as may be directed by this Hon’ble Court;

(b) The Director of Marine Department, Syama Prasad Mookerjee Port, Kolkata (or any other fit and competent person) be appointed as Special Officer for conducting the sale, making publication of notices for sale, receiving bids and offers from intending purchasers, receiving the sale consideration and holding the same in a separate interest bearing short-time deposit account with nationalized Bank operating within the territorial jurisdiction of this Hon’ble Court in its Commercial Division and to disburse such amount as per directions of this Hon’ble Court;

(c) *The Special Officer to be appointed under prayer (b) above, be empowered to physically deliver the vessel to the successful bidder and to execute Bill of Sale, if required and to file a report on compliance before this Hon'ble Court;*

Both the plaintiff and added defendant No. 2 are interested in sale of the vessel.

The Port Authorities contend that the vessel is in a precarious and dilapidated condition. The requisite certificate for plying of the vessel has expired. The vessel is presently being tied with ropes which also need to be replaced. The said crew members are demanding immediate replacement and no further crew members are being provided by the Owners for their replacement. In such circumstances, and in view of the forthcoming monsoon season the vessel must be sold immediately. The parties also rely on an unreported decision dated 26th September, 2019 passed by the Division Bench of this Court in APO No. 129 of 2019 in AS No. 11 of 2018 (*Leela Ship Recycling Private Limited vs Sohom Shipping Private Limited & Ors.*) wherein the various modalities for sale of vessels have been laid down.

The conduct of the defendant Owner throughout this proceeding has been one of indifference without taking any responsibility or liability in respect of any of the hurdles being faced since the order of arrest. The Owners oppose any order for sale of the vessel but do not offer to secure the claim of the plaintiff or the Port Authorities.

The vessel is now under the custody of this Court through the Marshal. Hence, this Court has jurisdiction to pass necessary directions with regard to sale of the vessel.

In such circumstances, the sale of the vessel M. V. Marintrust is ordered on the following terms and conditions:

- (i) Mr. Rudraman Bhattacharya, Advocate and a member of the Bar Library Club is appointed Receiver over the defendant vessel for the purpose of taking custody of the vessel and

steps for immediate sale of the vessel. The Receiver will be entitled to an initial remuneration of rupees 2,00,000/- (Rupees Two Lacs only) which shall be borne by the plaintiff at the first instance. It is clarified that this is an ad hoc remuneration and the final remuneration shall be decided upon completion of the sale. Inasmuch as the Port Authorities have also prayed for sale of the vessel, the Director, Marine Department is also appointed as a Joint Special Officer along with the Receiver for the purpose of conducting the sale. The Director, Marine Department shall not be entitled to any remuneration.

- (ii) The sale would be conducted through e-auction by MSTC Limited.
- (iii) It is clarified that for the purposes of conducting the sale in terms of the directions hereunder the Receiver and the Director, Marine shall act as Joint Special Officers and take expeditious steps for completion of the sale and all incidental steps relating thereto including maintenance and safety of the vessel until the sale is completed and possession finally handed over to the purchaser. All charges and expenses for conducting the sale including appointment of a valuer, advertisements, inviting bids and all steps necessary to handing over physical possession to the purchaser and expenses therefor including steps taken for compliance of this order shall be borne by the plaintiffs at the first instance upon written demand being made by the Receiver/Joint Special Officers. The Port Authorities shall bear all responsibility and expenses for maintenance of the vessel. All such expenses would be notified to the Joint Special Officers and shall be reimbursed on priority upon the sale being confirmed. In case of any disagreement between the

two Joint Special Officers in conducting the sale, the Joint Special Officers shall be at liberty to approach this Court.

- (iv) It is made clear that the Receiver will maintain a list of all expenses incurred by the Joint Special Officers enumerated above and submit a Report within seven (7) days of conclusion of sale and confirmation of the sale by this Court. On the basis of the said Report, the aforesaid expenses incurred by the Joint Special Officers will be first reimbursed to the party incurring such expenses. After deducting such expenses, the question of determining of priorities and disbursement of balance sale proceeds shall only arise and would be determined by this Court at a subsequent stage upon a prior written application being made.
- (v) The Owners are directed to render all assistance as may be required of them by the Receiver including but not limited to providing the vessel's certificates and maintaining and securing the vessel till, the vessel is handed over to the successful purchaser.
- (vi) The Joint Special Officers shall forthwith appoint a Valuer/Surveyor to carry out a valuation/survey of the vessel so as to ascertain the reserve sale price of the vessel.
- (vii) After valuation has been completed the Joint Special Officers shall publish advertisements. The advertisement shall incorporate inter alia:
 - (a) The sale of the vessel shall be conducted through e-auction by MSTC;
 - (b) The vessel shall be sold on 'as is where is whatever there is' basis;
 - (c) The last date for submission of offers in a sealed cover to be fixed by Joint Special Officers;
 - (d) Physical inspection of vessel within 12 days from the date of publication of the advertisement;

- (e) Date of opening of bids in Court shall also be mentioned in the advertisement and shall be not later than 10 days from the date of submission of scaled offers by the bidders;
- (f) The EMD (to be fixed on the basis of the valuation of the vessel) for the prospective bidders shall be submitted along with the bid by demand draft or pay order in favour of the 'Joint Special Officers' which shall be refunded to all unsuccessful bidders;
- (g) The possession of the Vessel will be handed over only upon full payment of the purchase price and free from all liens, claims, encumbrances, charges etc.;
- (viii) The Joint Special Officers would cause advertisements to be published in newspapers of their choice. If necessary, the Special Officers will publish advertisements in additional newspapers so that notice for sale gets wide publicity all over the country, particularly in the Port cities. Notice of sale will also be published in the website of the Port and such notice on website will indicate that offers are being invited also from foreign parties. The Special Officers will request all major Ports to put up such notice on their website and such Authorities should comply with such request unless there are special grounds not to do so, subject to the expense specific in such regard being limited to Rs. 5 lakhs +GST. Advertisements should be published in any international web based Maritime Journal or like website accessible to possible foreign bidders. If such websites do not agree to carry the notice for sale free, the Joint Special Officers will use their best discretion in such regard and keep it in mind that the object of the exercise is to ensure that the notice for sale receives wide publicity and prospective buyers have

sufficient time to arrange for earnest deposit to support their bids.

- (ix) The sale notice shall indicate the earnest money which shall not be less than 10% of the reserve price to be fixed by the Special Officers on the basis of the valuation report.
- (x) The sale notice must be published within two (2) weeks of the valuation report being made available to the Joint Special Officers.
- (xi) The Joint Special Officers shall place before this Court a report of all bids, received along with the valuation report on the date as published in the advertisement. On considering the report of the bids and vessel valuation report, this Court may decide whether *inter se* bidding is required and pass further orders for the same, if any. In case it is decided not to have any *inter se* bidding after the opening of the bids, this Court shall proceed to confirm the sale of the defendant vessel.
- (xii) The acceptance of the successful purchaser would be ultimately confirmed by the Admiralty Court.
- (xiii) The successful tenderer shall pay 25% of the bid amount within five (5) days from the date of acceptance of the tender and balance amount within fifteen (15) days from that date. In default of payment of 25% of the bid amount within five (5) days from date of acceptance of the tender, the sale shall, unless otherwise ordered, stand automatically revoked and the earnest money shall be forfeited and the sale shall have to be resold at the risk of the tenderer whose tender was accepted.
- (xiv) The vessel shall be removed by the successful bidder at his cost within thirty (30) days after confirmation of sale in favour of the highest bidder. In default, the entire money paid by the successful purchaser shall be forfeited.

- (xv) Under no circumstances, the successful purchaser shall be permitted to dismantle or break the ship inside harbour or within the Port limits unless or otherwise it is specifically permitted to do so.
- (xvi) On and from the date of confirmation of the bid, all rates/penalties, taxes and other charges shall be on the buyer's account. Upon confirmation of the bid, the buyer will be responsible for payment of further Port charges and dues of the Port Authorities until the vessel is removed from the Port limits.
- (xvii) The Customs and Excise duties as well as taxes, local taxes etc. shall be applicable on buyer's account on and from the date of confirmation of sale and the buyer should remit such amounts on account of such duties and taxes to the concerned authorities and produce the receipts for such payments before the clearance is granted to the vessel by the Port.
- (xviii) Upon confirmation of the sale, the Receiver and the Joint Special Officers would stand discharged save and except for the purpose of filing of accounts of the costs incurred as directed above.
- (xix) Immediately after acceptance of the tender, the buyer shall make an arrangement for manning and maintenance of the vessel by a certified Master, certified Officers and certified Engineer with adequate number of crew during the period the vessel is kept inside the dock.
- (xx) In case of failure of the buyer in making necessary arrangements for manning and maintenance of the vessel, the Port Authorities may hire and employ proper persons for that purpose and, if necessary, for removal of vessel from the Ports limit and all reasonable expenses incurred in this connection shall be recovered from the buyer.

Insofar as the remaining prayers (b) and (c) of GA/3/2023 are concerned, the respondents are directed to deposit the books and records stated in paragraphs 5 and 6 with the Receiver appointed pursuant to this order in terms of prayer (c) of the Notice of Motion in GA3 of 2023.

Insofar as prayer (b) of the Notice of Motion, the Statement of Master, Chief Engineer and Crew of the said vessel are concerned, it is submitted by the plaintiff that the Statement of Master and Chief Engineer be recorded, at this stage, before commencement of the trial in view of the fact that the Master and the Chief Engineer may read the jurisdiction of this Court. For the purposes of recording the evidence of the two witnesses, Ms. Ananya Sinha, a junior member of Bar Library Club is appointed as Commissioner at a remuneration of 3000 gms to record the evidence of the two persons as expeditiously as possible and preferably within one week from date without granting any unnecessary adjournments to either of the parties.

The Advocates appearing on behalf of the defendant Owner undertakes that the said two persons would be made available for recording their evidence.

With the above directions, both the applications being G.A. No. 3 of 2023 and G.A. No. 4 of 2023 stand disposed of.

Liberty to apply to any of the interested parties if the circumstances so warrant.

(RAVI KRISHAN KAPUR, J.)