



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

**INTERIM APPLICATION NO.3292 OF 2023
IN
COMPANY PETITION NO.756 OF 2014**

The Board of Mumbai Port Authority	... Applicant
<i><u>In the matter Between :</u></i>	
Export Import Bank of India and anr.	... Petitioners
Vs.	
Official Liquidator of GOL Offshore Limited (Vessel Malviya -18)	...Respondent

**WITH
INTERIM APPLICATION NO.3296 OF 2023
IN
COMPANY PETITION NO.756 OF 2014
WITH
INTERIM APPLICATION NO.3293 OF 2023
IN
COMPANY PETITION NO.756 OF 2014
WITH
INTERIM APPLICATION NO.3294 OF 2023
IN
COMPANY PETITION NO.756 OF 2014**

Mr. Kanishk Kejriwal (through video conferencing) with Mr. Amit Meharia, Ms. Paramita Banerjee and Mr. Shubham Sawant, Mr. Harshit Trivedi, Mr. Tushar Awasthi, Ms. Mansi Deore i/by M/s. Meharia & Co., Advocates for the Applicant.

Mr. Mutahhar Khan, Advocate for the Official Liquidator.

Mr. Chandan Kumar, Official Liquidator is present.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 18th OCTOBER, 2024

PRONOUNCED ON : 6th MAY, 2025

ORDER. :

1. These four Applications have been filed seeking to set aside the adjudication of claims made by the Official Liquidator with respect to the Port Authority's dues/claims made as overriding maritime lien by the Applicant – Port Authority in respect of four vessels.

2. Mr. Kanishk Kejriwal, learned counsel appearing (through video conferencing) for the Applicant in Interim Application No.3292 of 2023 submits that not only pursuant to section 64 of the Major Port Trusts Act, 1963 but also pursuant to section 4(1)(n) and (w) of the Admiralty Jurisdiction and Settlement of Maritime Claims Act, 2017 (the "Admiralty Act"), the claims of the Port Authority have a priority ahead of the secured creditors and the Official Liquidator has incorrectly adjudicated the claim of the Applicant.

3. Mr.Amit Meharia, learned counsel appearing for the Applicants in the other three Applications makes similar submissions.

4. Mr. Kejriwal has relied upon the decision of the Hon'ble Supreme Court in the case of *Board of Trustees, Port of Mumbai Vs. Indian Oil Corporation and another*¹, in support of his contention.

¹ (1998) 4 Supreme Court Cases 302

5. On 22nd March, 2024, after Mr.Kejriwal, learned Counsel for the Applicant made submissions, Mr.Khan, learned Counsel for the Official Liquidator had sought some time to file Reply. Thereafter, Reply was filed on behalf of the Official Liquidator on 5th July, 2024. It was submitted on behalf of the Applicant, on instructions, that no Rejoinders would be filed on behalf of the Applicant.

6. Thereafter, written submissions were filed on behalf of the Applicant on 6th September, 2024. Mr.Kejriwal, learned Counsel for the Applicant and Mr.Khan, learned Counsel for the Official Liquidator had concluded their arguments. However, since Mr. Khan, learned Counsel had relied upon the decision of this Court dated 10th May, 2024 in Interim Application No.3907 of 2023 in Commercial Admiralty Suit No.8 of 2024, to submit that this Court would not have jurisdiction to entertain the Applications, Mr.Kejriwal, learned Counsel for the Applicant had sought some time to make submissions on the said decision.

7. Finally on 18th October, 2024, Mr.Kejriwal, learned Counsel has concluded his arguments. Accordingly, it was recorded that arguments were concluded and order reserved. Liberty was granted to the parties to

file written submissions within a period of two weeks upon reopening after the Diwali break with a copy to the other side. Pursuant to the said liberty, the Applicant has filed written submissions on 22nd November, 2024 and written submissions have been filed on behalf of the Respondent Official Liquidator only on 16th January, 2025. Accordingly, this Court proceeds to decide these Applications.

8. Considering that the issues involved in all these four Applications are with respect to similar facts this Court deems it appropriate to consider the facts with respect to Interim Application No.3292 of 2023.

9. The Interim Application No.3292 of 2023, has been filed by The Board of Mumbai Port Authority ("Mumbai Port") against the decision of the learned Official Liquidator of GoL Offshore Limited dated 3rd February, 2023 *inter alia* categorising the admitted claim of Mumbai Port for Rs. 45,67,042/-, as unsecured claim. The Mumbai Port had filed its claim in respect of the vessel Malviya-18 ("said Vessel") of Gol Offshore Limited ("Company") before the learned Official Liquidator on or about 15th December, 2020.

10. Before going into liquidation the Company, *inter alia*, offered charter hire of drilling services, offshore logistics support services and port and terminal support services through a fleet of vessels and harbour tugs. These vessels operated in Indian and international waters.

11. It has been submitted that marine vessels, when not in operation, are required to be anchored at a designated location in a port/harbour, failing which the vessel would be drifting in the sea/ocean and will ultimately be lost. Harbours/ports look to the vessel in the limited anchoring slots that are available for a fee and on specified terms and conditions. When not being used, a marine vessel must obtain services of a Port Authority for its safekeeping and preservation. In other words, the "anchorage charge" is a rental fee for the anchoring slots for safekeeping of the vessel.

12. It has been further submitted that without the anchorage services of the Mumbai Port, the vessel(s) of the Company would drift away in the sea and be lost or completely damaged.

13. That in the present case, by order dated 5th May, 2017, *inter alia*, a provisional liquidator was appointed to take control of the assets of the company and the company was restrained from disposing of its assets. The Company's operations ceased and the said vessel/Malviya-18 was anchored at the Mumbai Port.

14. The claim of Mumbai Port, in these cases arises from Anchorage charges for the said vessels incurred post liquidation, after the winding up order, and that the Mumbai Port is governed by the Major Port Trusts Act, 1963.

15. Under Section 64 of the 1963 Act, the Mumbai Port distrains or arrests a vessel and the tackle, apparel and furniture belonging thereto and detains the same until the dues of the Port are paid. Further, the Mumbai Port also has the authority to sell the arrested/distrained vessel for the recovery of its dues.

16. As the company had unpaid outstandings and in the facts Interim Application No.3292 of 2023 of Rs.27,219/- as on 21st July, 2017, on 29th December, 2017, the Mumbai Port notified the Master of the said Vessel to

make payment of the said outstanding dues within 7 days from the notice, failing which Mumbai Port would distrain the said vessel under Section 64 of the 1963 Act. Similar is the case with the vessels in the other Interim Applications.

17. Mumbai Port distrained the vessels for the unpaid sum and further notified the Master of the said vessels that it shall be sold under the provisions of Section 64 of the Major Port Trusts Act, 1963.

18. At the hearing of an application made by Mumbai Port before this Court on 29th August, 2018, J.M. Financial Asset Reconstruction Company Limited (a secured creditor of the company) assured that it was ready and willing to pay the amounts due to Mumbai Port, pursuant to such assurance and order dated 29th August, 2018, JM Financial paid the claims of Board of Mumbai Port from time to time.

19. However, certain invoices for anchorage charges remained unpaid. The Company was also required to make payment of interest charged on delayed payment of other invoices. Such interest bills also remained unpaid.

20. Accordingly a total amount of outstanding claim for the services provided by Board of Mumbai Port to the vessels was Rs. 1,10,84,968/- (which is total of Rs.44,40,199 + Rs.12,21,776 + Rs.45,91,519 + Rs.8,31,474) in all the four Interim Application.

21. By order dated 18th September, 2020, an offer of Rs.4.50 Crore from Glory Ship Management Pvt. Ltd. was approved by this Court for the said vessel.

22. It has been submitted on behalf of the Applicant that having exercised the right under Section 64 of the 1963 Act to distrain the Vessels, Mumbai Port has become a secured creditor of the company, having paramount right over the said Vessels and its sale proceeds. The subsequent sale of the Vessel was allowed by Mumbai Port on the assurance/undertaking of the secured creditor of the company under order dated 29th August, 2018. That therefore, the Liquidator cannot now defeat the claim of Mumbai Port by categorizing the claim as unsecured claim.

23. Without prejudice to the contention that Mumbai Port is a secured creditor of the company, it has been submitted that the claim of Mumbai Port is related to expenses for preservation of the Vessels which are assets of the company, incurred during the winding up proceedings. That therefore, such expenses are required to be paid in priority to the rights of secured creditors and before distribution to any other person/entity as provided in Rule 338 of Company (Court) Rules, 1959.

24. It has been submitted that under Rule 338 of the Company (Court) Rules, 1959, it is provided that the assets of a company in liquidation shall be distributed only after payment of fees and expenses incurred in preservation, realising or getting in the assets of a company.

25. Under Section 476 of the Companies Act, 1956, this Court has the power to make an order for the payment of costs, charges and expenses incurred in the winding up of the company in such order of priority as this Court thinks just.

26. Learned Counsel for the Applicants submit that considering the nature of the claim and order dated 29th August, 2018, passed by this

Court, it is just and proper that the learned Official Liquidator be directed by this Court to make payment of the claims of Mumbai Port in priority to all other claims against the Company.

27. Reliance has been placed on the following judgments where the Courts directed the Liquidator to make payments of rent, property tax and even water tax in preference to other claims, being expenses incurred in the winding up of the company as provided for under Rule 338 of the Company (Court) Rules, 1959 read with Section 476 of the Companies Act, 1956 :

i. *IISCO Ujjain Pipe and Foundry Company Ltd V/s. Ujjain Nagar Palika Nigam and Ors*².

ii. *N.R. Ravi V/s. Official Liquidator of Sem India Systems Pvt Ltd (In Liquidation) Company Application No.8 of 2016*³.

28. Learned Counsel for the Applicants including Mr.Kejriwal have submitted that based on the above facts and circumstances, it is evident

2 (2023) 8 SCC 138

3 MANU/KA/3646/2022

that the claim of Mumbai Port is required to be categorized as secured claim or as expenses properly incurred in preserving the assets of the company.

29. Mr.Kejriwal, and Mr.Amit Meharia learned Counsel submit that therefore this Court allow the Applications.

30. On the other hand it has been submitted on behalf of the Official Liquidator that the present application is not maintainable. It is submitted that in terms of Rule 164 of the Companies (Court) Rules, 1959, the creditor being dissatisfied against the decision of Official Liquidator has to file an appeal within 21 days from the date of service of notice. However, instead of preferring an appeal, the Applicant has filed an Interim Application which is not maintainable.

31. That by an order dated 5th May, 2017 passed by this Court in Company Petition No. 756 of 2014 presented by M/s. Export Import Bank of India (the Petitioner) and Company Petition No. 119 of 2015 presented by Punjab National Bank (International) Ltd. (the Petitioner) the Official Liquidator attached to this Court was appointed as Provisional Liquidator with usual powers under the Companies Act, 1956 and subsequently by an

order dated 4th December, 2017, passed by this Court in Company Petition No. 756 of 2014, the company was ordered to be wound up and the Official Liquidator has been appointed as Liquidator of GOL Offshore Ltd. with usual powers under the Companies Act, 1956.

32. That the Official Liquidator invited claims from the seafarers, Employees and Creditors of the Company (in liquidation) by publishing advertisement in newspapers as per the requirement of Rule 148 of the Companies (Court) Rules, 1959. The last date of submission claim was 6th June, 2018. In response to the advertisement, the Official Liquidator received approximately 1130 claims from the seafarers, employees and creditors of the company (in liquidation).

33. It has been submitted that the Official Liquidator had appointed Chartered Accountant from panel of the Official Liquidator for adjudication of the claims. The details post adjudication of claims are set out as under :

<u>Status of adjudication of claims of Seafarers, Workers and Banks</u>					
Sr. No.	Category	No. of Claims Lodged	No of Claims Admitted	No of Claims Rejected	Amount Admitted

1.	Seafarers, Workers	529 A	859	794	62	31,28,87,685
	Staff	530	271	255	16	31,42,07,966
Total			1130	1049	78	62,70,95,651
2.	Bank (Secured Creditors)		14	7	3	12,20,89,12,729

34. It is submitted that the Board of Mumbai Port Authority has filed its claim for a sum of Rs.44,40,199/-, Rs.12,21,776/-, Rs.45,91,519/- Rs.8,31,474/- with the Official Liquidator respectively against defendant vessels Malaviya-18, Malaviya-3, Malaviya-16, Malaviya-1, however, the Official Liquidator has, through the empanelled Chartered Accountant, adjudicated the claim filed by the Board of Mumbai Port Authority and the said claims have been admitted held to be unsecured claims. The same has been communicated by the Official Liquidator to the Board of Mumbai Port Authority vide notices of admission of proof of debt dated 3rd February, 2023.

35. It has been submitted on behalf of the Official Liquidator that the claims raised by the Applicant towards pilotage and anchorage charges are in the nature of maritime claims and that by virtue of Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017,

this Court, in its admiralty jurisdiction is empowered to adjudicate questions of maritime claim against any vessel. That all questions arising as to the appropriation of sale proceeds from any vessel sold may be determined by this Court in its admiralty jurisdiction.

36. Mr.Khan, learned Counsel for the Official Liquidator has further submitted that this Court in the course of winding-up proceedings would not have jurisdiction to entertain or adjudicate the maritime claims and has drawn this Court's attention to the decision of this Court in the matter of the *Board of Trustees of Mumbai, Raj Shipping Agencies Vs. Barge Madhwa & Anr alongwith the connected matters*⁴.

37. It is submitted that accordingly, the Applicant was required to refer these claims before the Court exercising admiralty jurisdiction. The Official Liquidator while adjudicating claims is bound by the Companies (Court) Rules, 1959. In accordance with the Rules applicable to the Official Liquidator based on the documents submitted by the Applicants, the claims of the Applicant have been adjudicated.

4 2020 SCC OnLine Bom 651

38. Mr.Khan, learned Counsel has submitted that in the light of what has been submitted above, there is no error in the adjudication of the claim by the Official Liquidator and Notice of Admission of Proof of Debt dated 3rd February, 2023 and these Applications are liable to be rejected with costs.

39. I have heard the learned Counsel and considered their submissions.

40. It is not in dispute that the Official Liquidator had been appointed as liquidator of the owner of the vessels Malaviya – 1, Malaviya – 3, Malaviya – 16 and Malaviya -18 by order dated 4th December 2018. Pursuant to various orders passed by this Court, the aforementioned vessels were sold by the Official Liquidator to various third parties. The proceeds generated from the said sales admittedly continue to be retained with the Official Liquidator.

41. The Official Liquidator has submitted that claiming priority on the basis of Section 64 of the Major Port Trusts Act, 1963, is misplaced as the Applicant would only have lien in respect of the subject vessels and not against the company in liquidation, as the claims towards anchorage, port

charges etc. would constitute maritime claim as defined under Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. Mr.Khan has relied upon the decision of this Court in the case of *Raj Shipping Agencies Vs. Barge Madhwa and Another (supra)*, in support of his contentions. It has been submitted that the enforcement of a lien under Section 64 of the Major Port Trusts Act, 1963, is essentially an action *in rem* against the subject vessels and not an action *in personam* against the owner of the subject vessels and such a proceeding is restricted to the sale proceeds of the vessel and cannot extend to the other assets of the company and therefore the priority sought to be asserted is only so far as the vessel is concerned and does not extend to the general body of creditors. That, any one claiming a maritime lien is only entitled to file an action *in rem* against the sale proceeds.

42. The Official Liquidator has submitted that since at the time the vessels were auctioned, no objection was raised by the Applicant whereby the Applicant asserted that it was keen to exercise its lien in respect of the said vessels, it cannot, in respect of the claims categorized as unsecured by the Official Liquidator, exercise its lien or even seek priority over secured creditors and workers.

43. Mr.Khan appearing for the Official Liquidator has also sought to distinguish the decisions relied upon by Mr.Kejriwal for the Applicant.

44. I am afraid, I am unable to agree with the propositions sought to be canvassed on behalf of the Official Liquidator. While there can be no doubt about the proposition that the Court which is winding up the Company would not have jurisdiction to entertain or dispose of an action *in rem* against the ship filed in a High Court, which has been conferred with Admiralty jurisdiction under the Admiralty Act and that such a Suit *in rem* is not against the Company and can only be entertained by the High Court under the Admiralty Act, it would be pertinent here to consider whether the claim made by the Applicant before the Official Liquidator with respect to the Port Authorities' dues can be said to be an action *in rem* or *in personam*.

45. As noted above, the claim had been lodged by the Applicant towards anchorage, port charges etc. These are rates which have to be recovered. Admittedly the Applicant has filed claims towards anchorage, port charges etc. with the Official Liquidator based on the invoices and the Official Liquidator has accepted the claims and only categorized part of

the claims as unsecured. In my view, therefore, the claims lodged with the Official Liquidator are actions *in personam* and not actions *in rem* even if the Official Liquidator has sold the vessels. The claim has been filed against the Official Liquidator as a claim *in personam* and not as a claim *in rem*.

46. In my view, therefore, even if the Official Liquidator had sold the vessels pursuant to orders of this Court, the claims filed with the Official Liquidator would be against the company in liquidation and not against the vessels. The Official Liquidator sold the vessels as the Official Liquidator of the ship owner company in liquidation and admittedly adjudicated the claims under the Companies Act, 1956 and the Companies (Court) Rules, 1959.

47. The Official Liquidator seems to suggest that just because the claim is a maritime claim, any action to claim the same would be an action *in rem* is a completely misconceived proposition of law. The decision of this Court in the case of *Raj Shipping Agencies Vs. Barge Madhwa and Another (supra)* restricts a winding up Court's jurisdiction to dispose off an action *in rem* against a ship but not an action *in personam* filed against the

Official Liquidator of a company who happens to be the ship owner and for a claim which would also be a maritime claim. It has been held in *Raj Shipping Agencies Vs. Barge Madhwa and Another (supra)* itself that an action *in rem* against a ship is not an action against the owner (company) or an asset of the owner (company).

48. The dispute therefore sought to be raised on behalf of the Official Liquidator as to the jurisdiction of the Company Court is therefore misconceived.

49. Having held that the claims by the Port Authority are claims *in personam* let us now examine whether such claims by the Port Authority are to be paid as secured claims.

50. However, before proceeding further, it would be pertinent to quote Section 64 of the Major Port Trusts Act, 1963, as under :

“64. Recovery of rates and charges by distraint of vessel. –

(1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distrain or arrest such vessel and the tackle, apparel and furniture

belonging thereto, or any part thereof, and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distraint or arrest, is paid.

(2) In case any part of the said rates or penalties, or of the cost of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand."

51. In the case of *Board of Trustees, Port of Mumbai Vs. Indian Oil Corporation and Another(supra)*, the Hon'ble Supreme Court had the occasion to interpret Section 64 and in paragraphs 7, 8 and 9 the Hon'ble Supreme Court has observed that the statutory right under Section 64 embodies the overriding right of the harbour authority over the vessel for the recovery of its dues and that the said right stands above the rights of the secured and unsecured creditors of a company in winding up and the lien cannot be extinguished without its express or implied consent. The said paragraphs are usefully quoted as under :

"7. Under Section 529 of the Companies Act, in the winding up of an insolvent company, the same rules shall prevail and be observed with regard, inter alia, to the debts provable and the respective rights of secured and unsecured creditors as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent. The proviso to

Section 529(1) sets out that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workman to the extent of the workman's portion therein, in the manner set out in that section and Section 529-A. The position, however, of the appellant-Port Trust is somewhat different from the position of a secured creditor in winding up. The vessel which is one of the properties of the company in winding up, has been arrested by the appellant in the exercise of its statutory right to arrest the vessel for recovery of its rates and charges under the Major Port Trusts Act, 1963 and the Rules framed thereunder. Section 64 of the Major Port Trusts Act, 1963 provides as follows:

“64. Recovery of rates and charges by distraint of vessel.—(1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distrain or arrest such vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distraint or arrest, is paid.

(2) In case any part of the said rates or penalties, or of the cost of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.”

8. *The port authorities have a paramount right to arrest a vessel and detain the same until the amounts due to it in respect of extending the port facilities and services to the vessel are paid.*

Under sub-section (2), in case any part of the said rates, charges, penalties or the cost of the distress or arrest or of the keeping of the same remain unpaid for a space of five days next after any such distress or arrest has been made, the Board may cause the vessel so distrained or arrested to be sold. The proceeds of such sale shall satisfy such rates or penalties and costs including the costs of sale remaining unpaid. The surplus, if any, is to be rendered to the master of such vessel on demand.

9. The statutory right under Section 64 embodies this overriding right of the harbour authority over the vessel for the recovery of its dues. This right stands above the rights of secured and unsecured creditors of a company in winding up — in the present case, the shipping company which owns the vessel. The harbour authorities allow ships — national or foreign to anchor and avail of the services provided by them. For payment they look to the vessel. The owner may be foreign or even unknown to the harbour authority. The latter's right to recover its dues is not affected by any pending proceedings against the owner in any court — whether in winding up or otherwise. The harbour authority can arrest the vessel while it is anchored in the harbour and recover its dues in respect of that vessel by sale of the vessel if the dues are not paid. This lien of the harbour authority over the vessel is paramount. The lien cannot be extinguished or the vessel sold by any other authority under the directions of the court or otherwise, unless the harbour authority consents to such sale. Thus, in the case of Ashoke Arya v. M.V. “Kapitan Mitsos” [AIR 1988 Bom 329] the Bombay High Court relied upon the decision in The Emilie Millon [(1905) 2 KB 817 : 93 LT 692 : 75 LJKB 31] and held that the lien given by statute to a dock or harbour authority cannot be extinguished by the court unless it be done with the authority's express or implied consent.”

(emphasis supplied)

52. Ergo, the claim of the port authority is a secured claim which ought to be paid in priority to all other classes.

53. In view of what has been held as above, the submission made on behalf of the Official Liquidator that since at the time the vessels were auctioned no objection was raised by the Applicant whereby the Applicant asserted that it was keen to exercise its lien in respect of the said vessels, it cannot in respect of the claims categorized as unsecured by the Official Liquidator exercise its lien or even seek priority over secured creditors and workers, is without merit.

54. Further, since this Court has held that the claims of the Port Authority are secured claims which ought to be paid in priority to all other claims, it would not be necessary to consider the submission that the claims would be expenses properly incurred in preserving the assets of the company under Section 476 of the Companies Act, 1956 or Rule 338 of the Companies Court Rules, 1959 or even the judgments cited in relation to the said provisions.

55. The Official Liquidator has also objected to the maintainability of these applications submitting that only an appeal under Rule 164 of the

Company (Court) Rules, 1959, can be filed against the order of the Official Liquidator whereas only applications have been filed.

56. Under Section 460(6) of the Companies Act, 1956, any person aggrieved by an act or decision of the Liquidator may apply to the Company Court and the Company Court may confirm, reverse, or modify the act or decision, or make such further orders as it thinks just in the circumstances.

57. Rule 164 of the Companies (Court) Rules, 1959 provides that if a creditor is dissatisfied with the decision of the Liquidator in respect of his proof, the creditor may not later than 21 days from the date of service of notice upon him of the decision of the Liquidator, appeal to the Court against decision. The procedure in the said rule requires that the appeal shall be made by a judge's summons supported by an affidavit which shall set out the grounds of such appeal and notice of the appeal shall be given to the Liquidator. That on such appeal the Court shall have all the powers of an Appellate Court under CPC.

58. As can be seen, Rule 164 is a rule of procedure for implementing that the substantive provision of Section 460(6) under the Companies Act, 1956, and the form of an appeal as per the rule is by way of a judge's summons with affidavit in support. Under the Bombay High Court Rules on the Original Side as well as Appellate, all the interim procedures are by way of interim applications.

59. The Rajasthan High court in the case of *M/s.Babulal Rukmanand Vs. The Official Liquidator, Bharatpur Oil Mills (Pvt.) Ltd.*⁵ has while considering Section 460(6) read with Rule 164 observed that there is justification for the argument that the appeal is really by way of application for the scrutiny by the Court of the decision complained against, and that there is no requirement that this right or opportunity is not subject to any rigid rules of procedure but the Court obviously has the powers of an Appellate Court under Section 96 read with Order 49 of the Code of Civil Procedure, 1908 ("CPC").

60. Paragraph 3 of the decision is usefully quoted as under :-

"3. An Official Liquidator is an officer of the Court and, as has been observed in Halsbury's Laws of England, third edition, volume 6, paragraph 1142, he must "maintain an even and Impartial hand"

5 1967 SCC OnLine Raj 20

between all the individuals whose interests are involved in the winding up proceedings. It is his duty to make himself thoroughly acquainted with the affairs of the company, and technical hurdles as to procedure are not viewed with favour and have to be overcome. The liquidator has to act fairly and honourably in considering the claims of persons against the company. This is why supervisory jurisdiction has been vested in the Court under sec. 460 of the Indian Companies Act, 1956 and a specific provision has been made to the following effect in sub-sec. 6 of that section-

“(6) Any person aggrieved by any act or decision of the liquidator may apply to the Court; and the Court may confirm reverse or modify the act or decision complained of and make such further order as it thinks just in the circumstances.”

To give effect to this provision, so far as it relates to the rejection of a creditor's proof, it has been stated in rule 164 of the Companies (Court) Rules, 1959 that if a creditor is dissatisfied with the decision of the Liquidator in respect of his proof, he may, not later than 21 days from the date of service of the notice upon him of the decision of the Liquidator, appeal to the court against the decision. Then the rule provides the mode of filing the appeal, and goes on to say that, in deciding it, the court shall have "all the powers of an appellate court under the Code". When therefore the provision of sub-sec. (6) of sec. 460 of the Act is read with rule 164, it becomes quite clear that there is Justification for the argument that the appeal is really by way of an application for the scrutiny, by the court, of the decision complained against. There is no requirement that this right or opportunity is subject to any rigid rules of procedure for, while rule 164 provides that, on the presentation of an appeal, the Court shall have all the powers of an appellate court under the Code of Civil Procedure, it does not go on to provide further that the rigid rules of procedure contained in the Code in respect of an appeal shall be applicable to such appeals also. I am therefore persuaded to take the view that while considering an appeal against the rejection of a creditor's proof, the Court is at liberty to consider; any additional evidence that may be led by the parties.”

61. Moreover it is settled law that the procedure is the handmaiden of justice. Therefore, the objection by the Official Liquidator that these Applications are not maintainable is to be rejected and should not come in the way of doing substantial justice.

62. In the facts of these Applications, the claims have been rejected only on the ground the claims they are unsecured. There has been no dispute as to the amount of the claim or the computation thereof nor has there been any dispute as to the bills/invoices annexed to the claim. Therefore although while considering an Appeal/Application under Section 460(6) of the Companies Act, the Company Court is entitled to reappraise evidence, however, in the above facts that would not be necessary.

63. Apropos the above discussion, the Interim Applications stand allowed in terms of prayer clauses (a) to (d) and are disposed as such.

(ABHAY AHUJA, J.)