

IN THE HIGH COURT AT CALCUTTA  
ADMIRALTY JURISDICTION  
ORIGINAL SIDE

The Hon'ble **JUSTICE SANJIB BANERJEE**

And

The Hon'ble **JUSTICE SUVRA GHOSH**

APO No. 129 of 2019

GA No. 2042 of 2019

In

AS No. 11 of 2018

LEELA SHIP RECYCLING PRIVATE LIMITED

-VERSUS-

SOHOM SHIPPING PRIVATE LIMITED AND OTHERS

**With**

APO No. 130 of 2019

GA No. 2046 of 2019

In

AS No. 11 of 2018

LEELA SHIP RECYCLING PRIVATE LIMITED

-VERSUS-

SOHOM SHIPPING PRIVATE LIMITED AND OTHERS

**With**

APO No. 131 of 2019

GA No. 2047 of 2019

In

AS No. 11 of 2018

LEELA SHIP RECYCLING PRIVATE LIMITED

-VERSUS-

SOHOM SHIPPING PRIVATE LIMITED AND OTHERS

**With**

APO No. 132 of 2019  
GA No. 2043 of 2019  
In  
AS No. 11 of 2018

LEELA SHIP RECYCLING PRIVATE LIMITED

-VERSUS-

SOHOM SHIPPING PRIVATE LIMITED AND OTHERS

**With**

APO No. 133 of 2019  
GA No.2179 of 2019  
GA No.2065 of 2019  
in  
AS No. 3 of 2017

RIGVEDA MARITIME PTE LIMITED

-VERSUS-

SOHOM SHIPPING PRIVATE LIMITED AND OTHERS

**With**

APO No. 139 of 2019  
GA No. 2197 of 2019  
In  
AS No. 11 of 2018

GOLDEN FORTUNE LIMITED SA

-VERSUS-

SOHOM SHIPPING PRIVATE LIMITED AND OTHERS

For the Appellants:  
(In APO Nos.129-132 of 2019)

Mr S. N. Mookherjee, Sr Adv.,  
Mr Soumabho Ghose, Adv.,  
Mr Anujit Mookherji, Adv.

For the Appellant:  
(In APO No.133 of 2019)

Mr Ratnanko Banerji, Sr Adv.,  
Mr Sayantan Bose, Adv.,  
Mr Swatarup Banerjee, Adv.,  
Mr Subhajit Roy, Adv.

For the Appellant:  
(In APO No.139 of 2019)

Mr Reetobrata Mitra, Adv.,  
Mr Subhasis Sengupta, Adv.,  
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For the Port:

Mr Tilak Bose, Sr Adv.,  
Mr Ashok Kumar Jena, Adv.,  
Ms Meenakshi Manot, Adv.

For the Sharva Shipping Inc.: Mr Aniruddha Mitra, Adv.,  
Ms Khushboo Choudhury, Adv.

For the Defendant No.2 in  
AS No.3 of 2017: Ms Nilanjana Adhya, Adv.

For Sberbank: Mr Shounak Mitra, Adv.,  
Mr Rishav Dutt, Adv.,  
Mr Zulfiqar Ali Alquaderi, Adv.

Hearing concluded on: September 26, 2019.

Date: September 30, 2019.

**SANJIB BANERJEE, J. :-**

These six appeals arise out of the drama and excitement relating to the sale of the vessel *MV VSEVOLOD BELETSKIY*. The principal *dramatis personae* are the purchaser in whose favour the sale of the vessel has been confirmed, the Board of Trustees for the Port of Kolkata who are the unwilling hosts of the vessel at a working berth which has been rendered useless for nearly two years, the plaintiffs in the two admiralty suits brought against the vessel in which arrest orders have been obtained, a subsequent bidder for the vessel that had bid nearly 50 per cent more for the vessel but after the sale was confirmed in favour of the purchaser and, in these appeals, a Russian bank which claims to enjoy the vessel as a security for the credit facilities granted to the Russian owners of the vessel. There are other bit players in the fray, not the least of them being a quaintly-dressed gentleman who waltzed to the appellate court Nureyev-style,

claiming to be a director of the Russian company owning the vessel; and disappeared just as quickly.

2. The vessel arrived late in November, 2017 at Haldia from the port of Imbituba, Brazil under a voyage charter with the second defendant in AS 3 of 2017. On November 24, 2017, the plaintiff in AS 3 of 2017, Rigveda Maritime Private Limited, obtained an order for arrest of vessel by asserting a maritime claim in excess of US \$ 442,000. Such claim pertains to the alleged failure on the part of the vessel to comply with its obligations under a charter-party agreement of August 23, 2017. After passing the ex parte order, the Admiralty Bench had made the application for arrest returnable on November 27, 2017. The matter was, however, taken up only on November 30, 2017 and the order for arrest confirmed since no one claiming any interest in the vessel appeared or opposed the same.

3. A further order for arrest pertaining to the vessel was made in AS 5 of 2018, filed by Syed Safi on account of goods of value in excess of Rs.13 lakh allegedly supplied to the vessel, on July 2, 2018. Again, none appeared to contest the order for arrest when the matter was next taken up on August 23, 2018.

4. On December 6, 2018, the plaintiff in AS 11 of 2018 obtained a further order for arrest of the vessel on its claim in excess of Rs.71 lakh on account of alleged agency services rendered to the vessel. For the third time, none appeared to contest the order of arrest when the relevant application was taken up next on December 10, 2018.

5. The owners came to be represented for the first time before the Admiralty Bench on December 20, 2018. On such day, the Board of Trustees for the Port of Kolkata (hereinafter referred to as the 'Port') also made an appearance before the court, claiming that the port charges amounted to over Rs.8 crore for the vessel occupying a working berth at Haldia for more than a year. The Port also informed the court that the vessel had 13 members of crew. The second defendant in AS 3 of 2017 was also represented and submitted that it had a substantial claim against the vessel. Such party also demanded that the vessel be sold.

6. Certain applications in AS 3 of 2017 were next taken up by the Admiralty Bench on January 3, 2019. The owners of the vessel were in attendance and they claimed that the disputes between Rigveda and the owners were the subject-matter of on-going arbitration proceedings in London. Rigveda denied that it was a party to any arbitration proceedings being conducted in London and insisted on expeditious directions for the sale of the vessel since the owners had shown no interest therein despite the order for arrest having been passed on November 24, 2017. The Port referred to its substantial claim and that it had kept the vessel under detention till its dues were settled.

7. On January 18, 2019 the owners of the vessel moved an application before the Admiralty Bench under Section 45 of the Arbitration and Conciliation Act, 1996 for the disputes in AS 3 of 2017 to be referred to arbitration. In effect, such application implied a prayer for the virtual dismissal of the suit and the vacating of the order of arrest upon the disputes covered thereby being referred to arbitration in accordance with the perceived arbitration agreement between the owners of the vessel and the plaintiff. Directions were issued for filing affidavits

and not much happened in AS 3 of 2017 for a substantial period of time thereafter.

8. On January 22, 2019, the Port applied before the Admiralty Bench to intervene in AS 11 of 2018 to assert its right to sell the vessel and realise its claim. The Port was added in the party to AS 11 of 2018, but its prayer for sale of the vessel was deferred to receive the affidavits by the owners and others interested in the vessel.

9. On March 5, 2019, applications in five admiralty suits against the vessel, along with another apparently unconnected suit against vessel *MV HERMANN SCHEPERS*, were taken up by the Admiralty Bench and the submission of the Port was recorded that the owners of *MV VSEVOLOD BELETSKIY* had approached the court to negotiate a settlement and pay off the Port's dues by March 16, 2019. By such order, the Port was also added a party to AS 3 of 2017.

10. On March 19, 2019, applications in AS 3 of 2017 and AS 11 of 2018 were taken up by the Admiralty Bench when the owners of the vessel submitted that Rigveda had apparently agreed to reduce its claim but the Port stuck to it; in addition, the plaintiff in AS 11 of 2018, as agents of the vessel, also had a claim. It was further submitted on behalf of the owners that the owners had identified a buyer who was ready to secure all the three claims. The consignee of the goods under the voyage-charter that brought the vessel to Haldia, the second defendant in AS 3 of 2017, submitted that its claim was included in the claim of the plaintiff in the relevant suit, but such party desired to proceed in respect of its claim independently.

11. The applications in AS 11 of 2018 meandered through several ineffective hearings before the Admiralty Bench before an order for the sale of the vessel came to be made on May 7, 2019 on the Port's application at a time when there was a lawyers' cease-work in courts all over the State and an official of the Port appeared on its behalf. By such order of May 7, 2019, the Director, Marine Department of the Port, was appointed special officer without remuneration for the purpose of selling the vessel "in terms of ... regulations 5 and 6 (*of the Calcutta Port Trust (Distraint/Arrest and Sale of Vessels) Regulations, 1989*) on (*following further directions*) ... :

- i) Acceptance of offer shall be communicated to successful tenderer upon leave obtained from Court.
- ii) Entire consideration received on sale of the vessel shall be accounted for by Special Officer and deposited with Registrar, Original Side, for obtaining confirmation of sale from Court. The deposit will also include any monies forfeited but not hire charges for 30 days' period required by clause (2) in regulation 6.
- iii) While Special Officer will not demand from successful bidder, more than 30 days' deposit representing Port duties, fees and charges, the officer will ensure 30 days' time is given to successful bidder to remove the vessel, such time starting on and from date of deposit made by the Officer with Registrar, Original Side and confirmation of sale from Court obtained pursuant thereto."

The Port was directed to communicate the order, inter alia, to the plaintiff in the relevant suit and the owners and master of the vessel. Such order also provided that the Port's "claim against the vessel for dock charges is held to have ceased as on an upto 6<sup>th</sup> May, 2019."

12. Rigveda appealed against the order of May 7, 2019. The appellate court observed, in its order of May 15, 2019, that it was in the best interest of all the

parties for the vessel to be sold at the earliest and that “only after receipt of the sale proceeds ... the distribution of the sale proceeds can take place in accordance with Section 64 of the Major Port Trust Act, 1963.” On July 9, 2019, Rigveda was added as a party in AS 11 of 2018 instituted by Sohom Shipping and in which suit the order directing the sale of the vessel was made at the behest of the Port.

13. On July 25, 2019, the sale of the vessel was confirmed in favour of the highest bidder, Leela Ship Recycling Private Limited at Rs.24.15 crore, despite the court noticing that the vessel had been valued in the range of Rs.58 to 64 crore. It is necessary to notice such order of July 25, 2019 in greater detail, particularly since Rigveda has carried an appeal against such order and such appeal is one of the six appeals covered by this judgment and order.

14. Before considering the highest bid for the vessel, the court recorded in the order of July 25, 2019 that the Port, or the special officer, had the vessel valued and advertisements were published all over the country before the e-auction was conducted on July 18, 2019 and the highest offer received of Rs.24.15 crore with a security deposit of Rs.6.03 crore. The order also recorded Rigveda’s objection to the procedure adopted for the sale of the vessel and its submission that the highest bid then received was well below what the vessel was worth. The order also recorded Rigveda’s submission that it anticipated further claims to materialise against the vessel and the possibility of the then unborn claims to rank ahead of Rigveda’s in priority to altogether swamp and defeat Rigveda’s claim against the vessel. It appears that the court wanted to ascertain from Rigveda why it apprehended that there could be other claims against the vessel,

but Rigveda apparently skirted such question and submitted that no reserve price had been indicated by the special officer in the advertisements issued for sale of the vessel. The order noticed that it was Rigveda's assessment that the value of the vessel was in excess of US\$ 7.8 million, equivalent to Rs.54 crore, at the then prevailing rate of exchange. Sohom Shipping's submission was recorded in the order that the vessel be sold to the highest bid received, which sentiment appeared to have been echoed by the Port on the ground that a berth at the Haldia terminal lay idle for a considerable period of time and that the procedure for sale adopted by the special officer was unimpeachable.

15. An interesting feature of the relevant order of July 25, 2019 is that it recorded a representation on behalf of one Golden Fortune Limited SA, one of the appellants herein, which offered to buy the vessel at Rs.34.5 crore, but the court found that no such bid was made by it at the e-auction and such bidder had not tendered any earnest deposit in support of its bid. It also transpires that in response to Rigveda's objection to the sale being confirmed at what it perceived to be a lowly price of Rs.24.15 crore, the court enquired of Rigveda whether such party would deposit Rs.24 crore, the costs incurred for the sale and the berth charges from May 7, 2019 to avoid the confirmation of the sale in favour of the highest bidder at the e-auction. Upon Rigveda indicating that such terms offered by court were not acceptable, the sale was confirmed in favour of Leela Ship Recycling at Rs.24.15 crore with a direction on the special officer to execute the sale in terms of the Regulations of 1989. The order observed that on the successful bidder "not following through" its offer, the vessel would be resold. Earnest deposits from the unsuccessful bidders were directed to be returned. The

sale proceeds were directed to be deposited with the Registrar, Original Side and it was observed that “On achieving deposit of sale value, Court will apply it against the claims, to decree on proof of them.” The matter was next directed to appear on August 26, 2019.

16. As usual, just as the real contest begins in a suit after the decree is passed, the fun and drama in this case commenced in right earnest after the confirmation of the sale. On July 30, 2019, Sharva Shipping Inc, an entity registered in the Marshall Islands, applied in AS 11 of 2018 to assert an agreement of April 29, 2019 that Sharva Shipping had allegedly made with the owners of the vessel. Sharva Shipping’s application was for the vessel to be sold to it and, to show its bona fides, it made over a demand draft for Rs.7 crore favouring the Registrar, Original Side to the court on July 30, 2019 and promised to put in the balance sum of Rs.17 crore by August 6, 2019. Sharva Shipping even offered to remove the vessel within seven days of the sale thereof being confirmed in its favour and undertook to pay the additional Port charges that would be incurred before the vessel was pronounced seaworthy. The order dated July 30, 2019 observed that by reason of the tender of the substantial amount of Rs.7 crore by Sharva Shipping, the “Court is inclined to view applicant as an interested person who wants to buy the vessel.” In the same breath, the court continued, “Court is also conscious that highest bidder participated in due process and got sale confirmed in its favour. The situation thus emerging is of two bidders for the vessel. Time schedule given to successful bidder is in place and running.” Sharva Shipping’s application was next directed to appear on

August 6, 2019 and the sentence containing such direction, and the observation thereafter, make interesting reading:

“List this application on 6<sup>th</sup> August, 2019 for contesting bids, if any. This adjournment will, in no way, affect highest bidder’s right to purchase, in event competing bid is not received from applicant on adjourned date. The demand draft tendered by applicant be encashed by Registrar, Original Side and deposited in short term interest bearing deposit account to be opened with a nationalised bank. It is made clear that, any time overrun and monetary consequences thereof, arising by reason of adjudication of this application, will be deducted from this deposit along with Registrar’s commission. It is further made clear that on adjourned date, applicant must be ready to deposit difference between money already deposited and its accepted bid. Highest bidder, on the other hand, if successful, will be bound by time schedule of sale directed by order dated 25<sup>th</sup> July, 2019.”

The order also required parties who had maritime claims in the suits filed against the vessel to participate in the proceedings on the adjourned date “for appropriate orders being made in this suit.”

17. The matter was taken up by the Admiralty Bench on August 9, 2019 when applications in five admiralty suits, including the theretofore dormant AS 1 of 2019, were listed. Sharva Shipping submitted on such date that it was ready with the consideration for purchasing the vessel. The court recorded that the application of Sharva Shipping could not be taken up earlier in view of the other pressing business of the court. The order recorded that Sberbank of Russia claimed that the vessel was mortgaged to such bank and it also had a maritime claim against the vessel. The court fixed all matters pertaining to the suits in respect of the vessel on August 13, 2019.

18. The pending applications in the five admiralty suits, including in AS 1 of 2019, were taken up next on August 13, 2019 when a banker's cheque for Rs.17 crore was presented in court on behalf of Sharva Shipping. Though the cheque was recorded in the order to have been immediately returned, Sharva Shipping submitted before the Admiralty Bench on such date that the sale already conducted ought to be set aside and Sharva Shipping be allowed to bid for the vessel. It was at such stage, as evident from the relevant order, that a robust argument was made on behalf of Leela Ship Recycling, in whose favour the sale had been confirmed on July 25, 2017, that since a right had vested in such successful purchaser, that there was no question of the sale being set aside or any other bids for the vessel being considered. Nonetheless, the court recorded that the matter could not be fully heard because of paucity of time and Sharva Shipping was asked to indicate whether it would put in Rs.35 crore for purchase of the vessel. The order dated August 13, 2019 signed off by fixing the matter next on August 21, 2019 and recording as follows:

“In event, on adjourned date, applicant puts in bid of Rs.35 crores by way of instrument duly issued, Court will invite successful bidder to also bid, depending on first adjudication of successful bidder's contentions recorded above. Till then, status quo in respect of the vessel be maintained.”

19. On August 21, 2019, the pending applications in the five admiralty suits were next taken up and the contours of the hearing were indicated in the opening sentence of the order: “whether there would be bidding for the vessel, between agreement holder with the owners and successful bidder.” Sharva Shipping was unable to carry the balance of Rs.35 crore (it had already deposited Rs.7 crore) to court and sought time. However, it is at such stage that Golden Fortune Limited

SA of Singapore emerged from the wings to present its credentials as another bidder for the vessel with a bank draft in favour of the Registrar, Original Side for a substantial sum in American dollars (though the figure in the order indicates US\$ 1,100,000, it, probably, ought to be US\$ 110,000) and another banker's cheque for Rs.1.95 crore. The dollar instrument was returned to such party but the banker's cheque in Indian currency was taken in deposit for the Registrar to encash the same and retain it. Interestingly, such deposit was directed to be used for the purpose of paying Sharva Shipping after deducting the Registrar's commission. The order then went on to say that if Golden Fortune "does not bring a bid, by instrument tendered and to be tendered, of aggregate value of Rs.36 crores, on 11<sup>th</sup> September, 2019, time between 30<sup>th</sup> July, 2019 and 11<sup>th</sup> September, 2019 will be time against which penal charges have to be paid and will be appropriated from Rs.1.95 crores tendered by instrument today."

20. It may be noticed straightaway, that the two sets of directions, to pay Sharva Shipping and the penal charges may not have been possible out of the amount of Rs.1.95 crore.

21. To return to the order of August 21, 2019, after the observation quoted above as to the deposit made by Golden Fortune was recorded, Sharva Shipping declined to take back its deposit and it submitted that it wanted to avail of the opportunity to bid when the matter was fixed next. In view of such submission, status quo in respect of Sharva Shipping's deposit was directed to be maintained till September 11, 2019 when the matter was directed to be taken up next.

22. On September 11, 2019, Golden Fortune carried two drafts aggregating US\$ 5,100,000 in favour of the Registrar, Original Side and submitted though the aggregate value of such drafts together with the deposit already made in court would be to the tune of Rs.38 crore, its bid was for Rs.36 crore and, in the light of such substantially higher bid, the sale confirmed in favour of Leela Ship Recycling at Rs.24.15 crore should be set aside. However, the Single Bench appears to have been overawed by what it perceived to be the overwhelming weight of binding precedents cited on behalf of Leela Ship Recycling in its spirited defence of the confirmation of the sale in its favour and a *coup de grace* to brush aside higher bids for the vessel, including of a perceived pretender that apparently sprang out of nowhere on September 11, 2019. Upon the court agreeing with the confirmed purchaser that a confirmed sale could be set aside only if there was fraud and that there was no discretion available to court after a sale was confirmed, the order dated September 11, 2019 held that the confirmed sale could not be reopened.

23. Of the six appeals, four are by Leela Ship Recycling against the orders dated July 7, August 9, August 13 and August 21, 2019; one by Rigveda against the order of confirmation of sale of July 25, 2019; and, the last by Golden Fortune against the effective final order on the sale passed on September 11, 2019. An intervention application has been filed by Sberbank and such apparent non-party has been heard.

24. Rigveda is scathing in its criticism of the order of July 25, 2019 that it has challenged and also against the order of September 11, 2019 it has not challenged, as it perceives it unnecessary to challenge such subsequent order

since it has challenged the parent order confirming the sale and the subsequent order of September 11, 2019 is but a mere re-confirmation thereof. Rigveda asserts that the Admiralty Bench should not have issued the directions that it did for sale of the vessel on May 7, 2019 when it noticed that for reasons beyond the control of the other parties interested in the sale, they could not be represented in court. Rigveda suggests that notwithstanding the Port's overbearing attitude, the court ought to have guarded against proceeding with the sale in a tearing hurry, particularly since the highest bid that was received did not cover even half the worth of the vessel. Rigveda submits that when there were promises of substantially better bids and the asset had fetched a highest bid that did not match even half of its valuation, the court may, at the very least, have made a conditional order of confirmation by which the confirmation would have fallen into place if the condition given to other bidders to bring in the money in support of their higher bids were not met by a specified date. Rigveda suggests that the court failed to notice that the special officer issued a corrigendum to the sale notice on July 13, 2018 and set the date for the e-auction on July 18, 2019. Rigveda questions the conduct of the Port and the special officer and submits that the failure in the sale notice to indicate a reserve price was a material irregularity that the court could not and should not have condoned to effect the sale on July 25, 2019. Rigveda refers to a judgment reported at (2000) 6 SCC 79 (*Lica (P) Limited v. Official Liquidator*) that instructs that "Unless the court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion." Leela Ship Recycling is quick to point out that the judgment in *Lica (P) Limited* was rendered in a company court

sale where the considerations are substantially different from any other sale conducted by a court.

25. At this stage, it must be noticed that at the initial stage in these matters before this bench, it was the Port which was the more belligerent and vociferous in trying to put a lid on the sale so that its blocked berth was opened up and its bad dream that is *MV VSEVOLOD BELETSKIY* relegated to a distant memory as quickly as possible. Indeed, on an initial query from this bench whether the vessel could be removed to elsewhere within the Port's control but away from the berth to unclog such working station, the Port's submission may best be described as virtual intimidation; just as an errant medical practitioner puts the fear of death in a patient seeking his expert help for a minor ailment or a modern day lawyer advising a client to obtain anticipatory bail and guard against myriad criminal complaints when all that the client seeks is to pursue a small, admitted claim against a person. The Port warns the court that the vessel is not seaworthy, that its permits had expired and even if it was attempted to be tugged away to a possible anchoring spot (which was a mere distance of tens of nautical miles from Haldia Port and, though within the Port's jurisdiction, beyond its effective control) there was every possibility of the vessel capsizing and the lives of the six remaining crew on board could then be in jeopardy. Upon the court not appearing to be overly perturbed by such submission and, possibly, following a dose of judicial intimidation, the Port's tune has softened and it has left the matter to the court as to whether the circumstances justify the sale as conducted or there ought to be a re-sale and has assured the court to wholeheartedly assist in the process of re-sale, if directed. The Port has, however, emphasised on the

urgency and its substantial claim which, under Section 64 of the Major Port Trusts Act, 1963 has to be regarded as a paramount charge. In fact, the Port has offered to incur the expenditure for the re-sale, if any, on condition that the just expenses incurred for sale or re-sale come out first from the sale proceeds.

26. In addition, the Port submits that the claims of Rigveda and Sohom Shipping may be imaginary or highly inflated while Sharva Shipping and Golden Fortune may have been propped up by the owners to stall the process. The Port also maintains that the owners may have no further effective rights in the vessel upon obtaining credit facilities from Sberbank and such bank having reached the court to assert its claim as the unpaid mortgagee of the vessel. After having climbed down from the high horse that it once occupied to assert that no interference is called for at this stage and Leela Ship Recycling of Gujarat should be allowed to exercise its rights as the purchaser of the vessel, the Port refers to its claim to the tune of about Rs.14 crore, including the charges from July 30, 2019 till date and the expenses already incurred for the sale of about Rs.79.95 lakh. Though the Port has not carried any appeal, it refers to the prejudice that it has suffered by the order of May 7, 2019 providing that “its claim against the vessel for dock charges is held to have ceased as on and upto 6<sup>th</sup> May, 2019.”

27. Golden Fortune and Sharva Shipping have submitted almost in unison, straggling both boats of requiring the sale to be reopened and, in the event it is not, of their monies to be refunded without any deductions. They first assert that they had come to court within a reasonable time of the apparent confirmation of sale and, given the value of their belated bids, the Admiralty Bench ought to have

reopened the sale since that would have enured to the benefit of the parties interested in the vessel and the claimants queuing up with their claims.

28. It is thus that Leela Ship Recycling now stands alone on the proverbial deck when such platform of confirmation of sale is under fire from all directions. Such purchaser contends that a right has vested in it pursuant to the order of July 25, 2019 that cannot be undone since no case of fraud in the matter of the sale has been brought by any other. It emphasises that the sale in this case was of a movable property and asserts that the rules as to sales contained in the Code of Civil Procedure, 1908 that would apply to admiralty matters by virtue of the Commercial Courts Act, 2015 make it impermissible for the sale of the movable property concluded in its favour to be reopened.

29. Leela Ship Recycling says that in the wake of Rigveda's appeal from the order of May 7, 2019 effectively failing and the appellate court not interfering with the procedure charted out by the Admiralty Bench for the sale of the vessel, Rigveda's challenge to the perceived faulty procedure adopted for the sale cannot be countenanced. According to Leela Ship Recycling, it is too late in the day to suggest that the advertisements published by the special officer pursuant to the order dated May 7, 2019 were not circulated all over the country or in its most important commercial hub and the busiest Port in Mumbai. In fact, the confirmed purchaser says that the advertisements were circulated even in Mumbai and Rigveda's submission to the contrary is flawed. As to Rigveda's grievance that the advertisements were not published beyond the shores of this country, Leela Ship Recycling says that such ground cannot be urged by Rigveda upon its earlier appeal having failed. In respect of the perceived under-valued

sale, the purchaser says that it was the best that was available, the urgency of the sale could not be doubted and Rigveda's submission has to be seen in the context of such party not carrying its independent application for sale despite the vessel remaining arrested for merely 18 months at Rigveda's instance before the Port's application for sale was taken up by the court.

30. Leela Ship Recycling says that though the orders impugned do not record such fact, but it was a specialised agency as MSTC Limited which conducted the e-auction and MSTC has considerable experience and expertise in such field. The purchaser refers to the sum of Rs. 2 crore that it claims to have deposited by way of earnest on July 12, 2019 and says that such sum remains deposited over and above the entire consideration money of Rs. 24.15 crore that it has tendered subsequently. Such confirmed buyer of the vessel says that not only has the sale been confirmed in its favour on July 25, 2019, but the delivery order has also been issued in its favour by the Port on August 7, 2019.

31. Leela Ship Recycling submits that the position has to be assessed and the propriety of the order confirming the sale of July 25, 2019 has to be assessed on the basis of what was before the court on such date. This appellant, which has assailed the four post-confirmation orders before the confirmation was reaffirmed, seeks to demonstrate that the total value of the claims before the court as on July 25, 2019 fell short of the price at which the vessel was sold; and the fact that subsequent claimants conveniently clambered out of the woodworks after the sale was confirmed, would not be a relevant consideration to adjudicate on the validity of the order of confirmation or the relevant considerations that ought to have weighed with the court on such date.

32. As to the valuation of the vessel, Leela Ship Recycling submits that it has not been favoured with a copy thereof for it to accept or discredit the same, if such exercise was necessary at all. Such party insinuates that upon the Port or the special officer not indicating a reserve price in the sale notice despite obtaining a valuation of the vessel, it has to be implied that the Port and the special officer may not have agreed with the valuation or perceived the indication of any reserve price based on the valuation to not be conducive to receiving bids therefor. The purchaser says that the global publication of notices for sale of the vessel was not mandatory nor is such a procedure contemplated under the 1989 Regulations of the Port.

33. Leela Ship Recycling refers to, inter alia, Rules 78, 90 and 92 of Order XXI of the Code and the definition of movable property in Section 2(13) thereof before relying on several high authorities to contend that the sale of the vessel was now a *fait accompli* and there is no legal ground for such sale to be reopened.

34. Leela Ship Recycling first relies on a judgment reported at (1970) 2 SCC 405 (*Shri Radhey Shyam v. Shyam Behari Singh*) to emphasise on the right of a purchaser who has succeeded in an auction sale in court. Paragraphs 7 to 10 of the report have been placed to demonstrate that once the sale is confirmed, it “becomes absolute and the rights of ownership in the property so sold become vested in” the purchaser. It is submitted by the purchaser that Order XXI Rule 90 as it stands requires a ground of irregularity or fraud in the sale being published or conducted being established and the satisfaction of the court that the applicant for setting aside the sale has sustained substantial injury by

reason of such irregularity or fraud. The purchaser points out that the exalted test of Order XXI Rule 90 is not required in respect of immovable assets as in this case.

35. The next case cited by Leela Ship Recycling is one reported at AIR 1927 All 41 (*Nanak Chand v. Chheda Lal*). Paragraph 7 of the report in such case reiterates what is reflected in Order XXI Rule 78 of the Code: “that a sale of immovable property, however irregular, cannot be set aside; but any person sustaining an injury by reason of the same at the hand of any other person is entitled to sue the latter for compensation or if such person is the purchaser, for the recovery of the specific property and for compensation in default of such recovery.”

36. Another Allahabad judgment reported at AIR 2005 All 270 (*Habib Sheikh v. State of UP*) is next brought by the purchaser. The court observed in that case that when an immovable property was sold by public auction, on payment of the purchase money a receipt ought to be granted and the sale becomes absolute. Such decision was based on Order XXI Rule 77 of the Code. In the judgment reported at (2015) 10 SCC 94 (*Vedica Procon Private Limited v. Balleshwar Greens Private Limited*) next brought by the successful bidder, the matter before the Supreme Court pertained to the sale of an immovable property of a company in liquidation by the court. Such judgment is cited since it deals with the principle enunciated in two earlier judgments of the Supreme Court on the finality of orders for sale by a court. Paragraph 33 of the report noticed the dictum in *Valji Khimji and Co.* [(2008) 9 SCC 299] where properties of a company in liquidation were put to sale and the auction was concluded in favour of the highest bid of

Rs.3.51 crore. The auction-purchaser was permitted to pay the consideration in installments. More than two months later, a third party wrote to the official liquidator offering Rs.3.75 crore for the same assets and another year later another party offered an amount of Rs.5 crore therefor. Such subsequent bidders then approached the company judge for recalling the order of confirmation of sale. The application was allowed and the intra-court appeal was dismissed. The auction-purchaser took the matter to the Supreme Court, which observed that “entertaining objections after the sale is confirmed should not ordinarily be allowed, except on very limited grounds like fraud, otherwise no auction sale will ever be complete.” Two other prominent previous judgments on such aspect were noticed in *Vedica Procon (P) Limited: Navalkha & Sons* [(1969) 3 SCC 537], which has also been cited by the purchaser here, and *Valji Khimji*. The dicta in both *Valji Khimji* and *Navalkha & Sons* were accepted in *Vedica Procon (P) Limited* with the observation that in *Navalkha & Sons* the Supreme Court “only recognised the existence of the discretion in the Company Court either to accept or reject the highest bid before an order of confirmation of the sale is made” and that “it is equally a well-settled principle that once the Company Court recorded its conclusion that the price is adequate, subsequent higher offer cannot be a ground for refusing confirmation.”

37. In *Navalkha & Sons* the court observed as follows at paragraph 6 of the report:

“6. ... The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the

Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. ... That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion. ... It is well to bear in mind the other principle which is equally well-settled namely that once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received.”

Needless to say the judgment in *Navalkha & Sons* pertained to a company court sale governed by Rule 273 of the Companies Court Rules, 1959. It must also be noticed that in that case the confirmed sale was set aside by the Division Bench of the High Court on the ground of lack of adequate publicity and the Supreme Court accepted the finding on such score. Further, on the day of the sale before the company judge a bidder came with a higher offer than the highest bid received till then and cited lack of adequate publicity to justify the delay on his part. He deposited the earnest money, whereupon the company court decided to have an open bid as between such bidder and the highest of the bids received within time. The Supreme Court agreed with the Division Bench of the High Court that holding such an auction, without it being made known to the general public, was irregular.

38. There is no doubt that the duty of a company court while conducting a sale under Rule 273 of the said Rules is a more onerous task than an ordinary sale conducted by court in execution of a decree. In a company court sale, the court holds a fiduciary position qua the creditors of the company, particularly the workmen thereof who may not have been paid. In such a situation it is the duty

of the court to ensure that the best price is obtained for any asset of the company.

39. In sales in execution of a decree, the sale is scarcely held without notice to the judgment-debtor. In such a situation, when an application is made to set aside such a sale, it has to be founded on serious grounds. Grounds which were available at the time of the sale being conducted would no longer be available in a subsequent application to set aside the sale. It is also noted that under the Code, there is a distinction between the sale of a movable property and that of an immovable property: and the window that is left open to challenge the sale in case of an immovable property is not available in respect of the sale of a movable property.

40. Ordinarily, admiralty suits are actions *in rem*. Unlike in a civil suit where the sale in execution enures exclusively to the benefit of the decree-holder in the usual case; and the sale of a vessel in an admiralty suit is not comparable. To begin with, it is doubtful as to the extent to which Order XXI of the Code would apply to a sale of the present kind which is not, strictly speaking, in execution of any decree. None of the suits in which the order for sale has been passed has been concluded or has culminated in a decree. Even if the order confirming the sale passed on July 25, 2019 is restricted to AS 11 of 2018 in which it was recorded, nothing had been decided in the suit except that the application for arrest was disposed of in the absence of anyone coming to contest the claim. At any rate, the suit had not been decreed for Order XXI of the Code to become applicable to the sale to the pre-decree sale that was the order of July 25, 2019. The practice for selling a vessel as an interlocutory measure in an admiralty

action is primarily as a measure of mitigation of damages. When a vessel is arrested, it is generally berthed in a port and, whether or not the vessel is moved to a disused or unused part of the port, port charges continue to mount and it is advisable to sell the vessel rather than allow further demurrage and like charges to mount or wait till the vessel, out of long disuse, becomes completely unseaworthy.

41. At a sale as in the present case, the claims of the plaintiff shift to the sale proceeds and the Admiralty Court has then to invite further claims against the vessel and decide the priorities between the rival claimants before the sale proceeds are disbursed. There may be charges and even *inter se* qualitative difference between the rights of charge-holders. In conducting such a sale as in the present case, the Admiralty Court needs to proceed not only on the basis of the claims before it but also keep in mind that there could be future claims in respect of the vessel which would fasten to the sale proceeds after the vessel is sold.

42. In any event, in every case of court sale, there is an obligation on the court to ensure that the sale fetches a reasonable price. It is for such purpose that an asset proposed to be sold by the court is valued. The valuation, if proper, is a benchmark for the court to go by; and, more often than not, unless there are special reasons which ought to be recorded, the court should attempt to cross such valuation before confirming the sale. Again, if the valuation is old or the circumstances are greatly varied, the court may discard it or make give less weightage to it; but if the valuation is contemporaneous as the sale; unless there are special reasons for going through the sale immediately, a court should not

allow the sale at a price much lower than the valuation or, at any rate, at a price which is less than 50 per cent of the valuation. Indeed, court sales are not concluded on the first day reserved therefor since it is well known that ordinary purchasers do not like to approach the court or purchase litigated properties or spend the requisite time in court that a court sale demands. Experience shows that depressed prices are obtained at court sales and the duty of the court becomes even more pronounced to ensure that someone's property is not sold for a fraction of its value for want of effort on the part of the court. Such principle will apply even in a sale of a movable property.

43. It is true that there ought to be a distinction between movable properties and immovable properties in sales in execution of decrees, but when the sale is of a vessel, no less, which is valued close to Rs.60 crore, it may be injudicious to compare movable property of such value with growing crops or any ordinary movable thing or even a car for that matter. Again, as observed above, Section 16 of the Commercial Courts Act, 2015 and the applicability of the Code to an admiralty suit which is a commercial suit may not make Order XXI of the Code applicable in the present scenario of a sale which is not in execution of any decree. At any rate, Section 16(1) of the Act of 2015 does not cover the present situation; and Section 16(2) of such Act requires the provisions of the Code, as amended by such Act, to be followed "in the trial of a suit in respect of a commercial dispute of a specified value."

44. Further, the fundamental premise on which Leela Ship Recycling has proceeded in this appeal is flawed. Such purchaser addresses the issue as if it has only to ward off applications in the nature of setting aside the sale confirmed

in its favour, apparently completely unmindful of the fact that the very order confirming the sale of the vessel in its favour is under challenge in one of the appeals. Clearly, the considerations that are relevant in an application for setting aside a confirmed sale are not the same considerations that ought to weigh with the appellate court in an appeal from the very order confirming the sale.

45. Equally, the important principle in this case would be the doctrine that is recognised in the maxim, *actus curiae neminem gravabit*, which loosely means that nobody should suffer for the wrong done by court. At the time that the sale was confirmed in favour of Leela Ship Recycling, Rigveda had pointed out that there could be other claimants whose subsequent intervention and right to receive payments out of the sale proceeds might leave Rigveda with nothing to satisfy its claim. If such submission was made despite there being a bid which matched the valuation of the asset, the relevant order may not have been regarded as irregular. However, the court noticed the valuation of the vessel to be in the range of Rs.58 to 64 crore and yet it accepted the highest bid of Rs.24.15 crore without requiring further time or greater publicity being given to the sale. As instructed by the judgment in *Navalkha & Sons*, in every case it is the duty of the court to satisfy itself that, having regard to the market value of the property, the price offered is reasonable. Nothing in the order dated July 25, 2019 indicates such consideration having weighed with the court. The judgment in *Navalkha & Sons* further mandates that unless the court is satisfied about the adequacy of the price, the act of confirmation of sale would not be a proper exercise of judicial discretion. In the order dated July 25, 2019 not a line is expended as to whether the highest bid was adequate; on the contrary, it appears

that the order proceeded on the basis that whatever was the highest bid ought to be accepted without any thought as to its adequacy or reasonableness. Such order of July 25, 2019 falls short of what was judicially required of it and, as such, cannot be sustained.

46. It was evident to the court on the basis of the material before it on such day that a corrigendum to the sale notice was published on July 13, 2019 when the sale itself was fixed for July 18, 2019. The court should, in such circumstances, have appreciated that a condition for a bid to be regarded as valid was the deposit of earnest money. A bona fide bidder had to arrange for substantial funds to deposit the earnest which may not have been possible in five days. If a bid matching the valuation of the vessel was to be made, it had to be accompanied by an earnest deposit in excess of Rs.10 crore. Apart from the fact that foreign bidders who may have noticed the advertisements or come to be aware thereof had little time to make the bid by July 18, 2019 since July 13, 2019 was a Saturday, the amended notice gave bidders only three effective days to arrange the earnest deposit and make a valid bid. At the very least, the court ought to have made a conditional order on July 25, 2019, leaving it open for other bidders to come in and bid, before the lowly bid of Leela Ship Recycling would stand confirmed. The confirmation of the sale at such a low price without noticing the shortness of the period afforded to the bidders to organise a valid bid makes the order of July 25, 2019 unconscionable and irregular.

47. Indeed, the court appears to have perceived the inadequacy of the consideration – which was plain to see – as the tenor of its subsequent orders of July 30, 2019, August 9, 2019, August 13, 2019 and August 21, 2019 reveals.

The court ought to have corrected itself at such stage when the opportunity presented itself in the form of a substantially better bid. Yet, the court retreated upon perceiving the authorities cited by Leela Ship Recycling to instruct that the confirmed sale could not be reopened, even though the orders made between July 25, 2019 and September 11, 2019 had willy-nilly reopened the sale.

48. By the time the order dated September 11, 2019 came to be made, Sberbank was before the court with its claim in excess of Rs.27 crore that made the total value of the claims before the court well in excess of the price at which the sale was confirmed. The subsequent discovery of such a large claim would have eminently justified the court invoking its inherent authority to cancel the sale and undertake a fresh exercise therefor.

49. In such a scenario, if the matter was beyond the control of the court – which it was not – the court may have said it was powerless to do anything; but when the vessel remained berthed and had not moved an inch, the matter cried to be reopened.

50. That is not to say that no rights had vested in Leela Ship Recycling as a consequence of the order of July 25, 2019; but when such order ought to have appeared to be irregular and when Leela Ship Recycling could have been adequately compensated for its monies being blocked and the inconvenience caused to it, the court ought to have opted for such course of action. Clearly, in a sale of a vessel in an admiralty action *in rem* before the decree is passed in the suit and all the claimants or persons interested in the vessel are not before the court, the principles of Order XXI of the Code would not apply; or, at the very least, would not be strictly applicable.

51. For the reasons aforesaid, the appeal against the order dated July 25, 2019 is allowed and such order stands set aside. As a consequence, it is irrelevant to discuss the other appeals in any greater detail than has already been done since, upon the order of July 25, 2019 being set aside, the other orders cannot stand.

52. Despite the requests by several of the appearing parties for the fresh sale to be conducted by the appellate court in course of these appeals, such proposal does not appear to be appropriate. If not for anything else, if there is any material irregularity in the conduct of the fresh sale, it may be inconvenient to any aggrieved party to have it corrected. It is, thus, that the appeals are disposed of and the relevant application or applications for sale of the vessel are restored to the board of the Admiralty Bench for the confirmation of sale and other matters connected therewith to be taken up by such bench, subject to the following directions:

- i. The special officer appointed earlier is appointed again, without remuneration, for the purpose of taking steps to conduct a fresh sale of the vessel. Such sale will be subject to confirmation by the Admiralty Bench.
- ii. The special officer will cause advertisements to be published in such newspapers in which advertisements were published for the previous sale of the vessel. If necessary, the special officer will publish advertisements in additional newspapers so that the notice for sale gets wide publicity all over the country, particularly in the Port cities. The notice for sale will be published on the

website of the Port and such notice on the website will indicate that offers are invited even from foreign parties. The special officer will request all major ports to put up such notice on their websites and such authorities should comply with such request unless there are special grounds not to do so. Subject to an expense specifically in such regard being limited to Rs.5 lakh plus GST, advertisements will be published in any international web-based maritime journal or like websites accessible to possible foreign bidders, if such websites do not agree to carry the notice for sale free. The special officer will use his 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 bidders have sufficient time to arrange for earnest deposits to support their bids.

- iii. The sale may be conducted in the same manner as before, through MSTC Limited and by e-auction upon due receipt of earnest deposits. Such sale will, however, be subject to confirmation by court as already indicated.
- iv. Subject to the additional conditions as provided for herein, the other conditions for sale will be as per clauses (i), (ii) and (iii) of the order dated May 7, 2019.

- v. The sale notice shall indicate the reserve price to be Rs.24.15 crore, which is the figure that was quoted at the previous sale by Leela Ship Recycling.
- vi. The sale notice should indicate that the e-auction would be conducted by MSTC Limited on either November 1, 2019 or, upon such date being inconvenient to MSTC Limited, on November 4, 2019.
- vii. The sale notice should be published by October 15, 2019. The matter for confirmation of sale will appear before the Admiralty Bench on November 8, 2019 or, in the unlikely event that the court does not sit or function on such date, on November 11, 2019.
- viii. The directions contained in this order should be put up on the website of the Port. In the event such exercise is not possible, the Port's website should direct anyone interested in ascertaining the directions to the website of this court by indicating the date of this order, the lead matter number and the composition of this bench.
- ix. Since there may not have been any fault on the part of Leela Ship Recycling, such confirmed purchaser, the sale in whose favour is undone by this order, will be at liberty to take back all monies deposited, together with any accretion thereto, without prejudice its rights to

participate in the fresh sale. If, however, Leela Ship Recycling chooses not to withdraw its monies and remain in the fray for the fresh sale, at every stage at the e-auction it is the bid of Leela Ship Recycling which has to be bettered by any rival.

- x. In the event Leela Ship Recycling remains in the fray for the fresh exercise for sale without withdrawing its monies but is not the highest bidder at the end of such fresh exercise, Leela Ship Recycling will be entitled to such compensation as may be directed to be paid by the Admiralty Bench for its monies remaining blocked. If no higher bid than the present highest bid is received, the sale will stand confirmed in favour of Leela Ship Recycling; and Leela Ship Recycling will also be entitled to such compensation as may be awarded to it by the Admiralty Bench.
- xi. The Port charges on account of the vessel blocking the berth will continue regardless of any previous direction that may have been issued by the Admiralty Bench, subject to the assessment of the reasonableness thereof by the Admiralty Bench, including whether it was possible to move the vessel elsewhere within the Port's jurisdiction for the Port to have use of the relevant berth.

- xii. From out of the sale proceeds obtained upon the fresh exercise being completed, the audited costs for the cancelled sale will be first paid out; next, the audited costs for the second sale will be paid out; thereafter, the compensation as adjudged to be due to Leela Ship Recycling, if any, will be paid out. All such payments, which will be considered to be expenses for the sale of the vessel, will come out first from the sale proceeds. The Port's reasonable charges would thereafter be paid out of the sale consideration before the other priorities are decided and disbursements are made in accordance with law.
- xiii. Subject to the discretion that may be exercised by the Admiralty Bench, the monies deposited by Sharva Shipping and Golden Fortune will neither be refunded to them nor permitted to be adjusted against their bids, if any, except to the extent that the deposit in each case is more than Rs.1.5 crore. In other words, prior to the fresh exercise of sale being completed, Sharva Shipping and Golden Fortune may withdraw the deposits made upon leaving behind Rs.1.5 crore each. If the present bid is not bettered in the fresh exercise, the costs of the sales and the compensation to Leela Ship Recycling will come out of such combined amount.

- xiv. The earnest deposits made by the other bidders at the fresh sale will not be refunded without the leave of the Admiralty Bench and, preferably, the earnest deposits of the second-highest and third-highest bidders will not be refunded before the entire consideration is received from the highest bidder.
- xv. The Admiralty Bench should persuade the highest bidder and the other bidders to raise their bids so that they may cross the lower mark of valuation of the vessel of Rs.58 crore, or reach so close to such figure as may be practicable.

53. The above directions have been issued not to undermine the Admiralty Bench or to usurp its authority; but only to ensure that appropriate urgent steps are immediately taken for the fresh sale during the puja vacation which begins on October 2, 2019. If directions were to be issued at this stage by the Admiralty Bench, the period of the vacation would have been wasted.

54. APO 129 of 2019, APO 130 of 2019, APO 131 of 2019, APO 132 of 2019, APO 133 of 2019 and APO 139 of 2019 along with GA 2042 of 2019, GA 2046 of 2019, GA 2047 of 2019, GA 2043 of 2019, GA 2179 of 2019, GA 2065 of 2019 and GA 2197 of 2019 are disposed of on the above terms.

55. There will be no order as to costs.

56. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

**(Sanjib Banerjee, J.)**

I agree.

**(Suvra Ghosh, J.)**

**Later:**

A stay of the operation of the order is prayed for by the Leela Ship Recycling Private Limited, which is considered and declined.

**(Sanjib Banerjee, J.)**

I agree.

**(Suvra Ghosh, J.)**