

**IN THE SUPREME COURT OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for to leave to appeal under and in terms of Article 128 of the Constitution read with Section 5 (c) (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

**SC / HCLA / 15 / 2022**

**HC (civil): 49 / 2016 (CO)**

**Green Lanka Shipping Ltd,**

Green Lanka Tower,

46/46,

Nawam Mawatha,

Colombo 02.

**AND**

In the matter of an application under Section 270(e) read with Section 534 of the Companies Act No.07 of 2007 to wind up Green Lanka Shipping Ltd by court.

**Evergreen Marine Corporation**

**(Taiwan) Ltd,**

No.166, Sec 2, Mingsheng East Road,

Taipei 104, Taiwan,

Republic of China.

**PETITIONER**

-Vs-

**G.J. David,**

SJMS Associates,

Chartered Accountants,

Level 03, No.11 Castle Lane,

Colombo 04.

**LIQUIDATOR**

**AND NOW BETWEEN**

**G.J. David,**

SJMS Associates,

Chartered Accountants,

Level 03, No.11 Castle Lane,

Colombo 04.

**LIQUIDATOR – PETITIONER**

-Vs-

**Evergreen Marine Corporation**

**(Taiwan) Ltd,**

No.166, Sec 2, Mingsheng East Road,

Taipei 104, Taiwan,

Republic of China.

**PETITIONER – RESPONDENT**

**BEFORE** : **S. THURAIRAJA, PC, J.**  
**A. H. M. D. NAWAZ, J. &**  
**SAMPATH B. ABAYAKOON, J.**

**COUNSEL** : Nihal Fernando, PC with Rohan Dunuwile and Lakdev Unamboowe instructed by Tharika Pussewela for the Liquidator - Petitioner.  
Suren de Silva for the Petitioner - Respondent.

**ARGUED &**

**DECIDED ON** : **11.09.2025**

**A. H. M. D. NAWAZ, J.**

We have heard the submission of both Counsel.

Leave to Appeal is granted.

Both Counsel inform the Court that they will not be filing written submissions and move the Court to pronounce judgment under the proviso to Rule No. 16(1) of the Supreme Court Rules.

This Court has perused the order of the learned High Court Judge of the Commercial High Court dated 03.02.2022 on an application made under section 270 (e) read with section 534 of the Companies Act, No. 7 of 2007 to wind up a company known as Green Lanka Shipping Limited by Court. The winding up order was made as far back as September 2016. A provisional liquidator was appointed and it is quite clear that this liquidator has been functioning since 23.09.2016.

The liquidator sought an order in the course of this winding up proceedings for the following reliefs:

1. He is entitled to remuneration as provided under section 289 (2) of the Companies Act read with Rule 119 of the winding up rules.
2. He is also entitled to the cost and expenses of the liquidation *inter-alia*;
3. He is also entitled to the liquidators remuneration at the rate of 5% from the gross realization of the assets of the company and 3% on the disbursement made by the liquidator.

There were several interim reports that the liquidator submitted and in those interim reports, the liquidator brought to light that his staff had been carrying out the functions as officers of Court, incurring cost and expenses for almost five years since September 2016 but they had not received any remuneration for the services thus rendered.

It has to be brought to the notice of this Court that the said liquidator has realized a sum of Rs 527 million by way of disposal of the only immovable property that this company had namely, a container yard. That statement is found at “X4” - a document which is drawn to the attention of this Court as well.

The learned High Court Judge has concluded that the liquidation process has not yet been completed. The liquidation remains pending, and the liquidator has yet to discharge and conclude his duties and functions. The learned High Court Judge further observed that Section 289(2) of the Companies Act does not provide for the payment of interim remuneration to a liquidator.

The learned High Court Judge takes the view that the liquidator would be entitled to his fees and reasonable remuneration for his expenses only when the liquidation process has been completed.

In this connection, Rule 119 pertaining to winding up is quite clear in that it states that the remuneration of a liquidator, unless the Court otherwise orders, shall be fixed by the committee of inspection and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realized, after deducting the sums if any, paid to secured creditors other than debenture holders, out of the proceeds of their securities, and the other part of the amount distributed as dividends.

The learned Commercial High Court Judge takes the view that, since the liquidation process has not yet been finalized, the full extent of the expenses attendant upon the liquidation has not yet been ascertained. In that context, the payment of remuneration to the liquidator at this stage, it is reasoned, would occasion prejudice to those creditors and stakeholders whose claims fall to be satisfied upon the final distribution at the conclusion of the liquidation process

The 9<sup>th</sup> schedule to the Companies Act makes it quite clear as to the preferential claims that have to be settled in a liquidation proceeding. On top of that range of creditors who have to be paid, lies the liquidator whose fees and expenses properly incurred by him in carrying out his duties and powers have to be met with as a priority.

Mr. Nihal Fernando the learned President's Counsel contends that though the liquidator has expended his energy and money in regard to this liquidation process, it is quite unfair that any payment that is withheld would cause prejudice to such a liquidator.

Mr. Suren de Silva the learned Counsel contends that if the liquidator is paid the quantum of money that he has submitted, it would reduce the amount of the quantum of money that would be available at end of the proceeding for defraying the other creditors who are queuing up for their lawful claims. These contending claims have also been made before the learned High Court Judge. The learned Commercial High Court Judge has looked at the amount that has been put forth before him as professional fees and expenses but takes the view that it is quite disproportionate. At this stage, this Court takes into account the case of *In re H.L. Pope, Liquidator*<sup>1</sup>.

In this case Arthur Wijeyewardene, J. declared that the District Court has power to fix the remuneration of the liquidator of a company, by way of salary or on a percentage basis, after notice to the creditors.

This Court takes the view that the original Court that has the power to fix the remuneration has to be guided by his adjudicatory powers of ascertaining the veracity of such a quantum. The Supreme Court has also stated in the aforesaid case that the Court has also power to make such interim payment as may be prudently made that is in accordance with the English practice. Any payment so made will be subject to the

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<sup>1</sup> (1938) 41 NLR 428

condition that the whole or part of such amount may have to be repaid if it is found to be regular, at a later stage, on an audit of the liquidator's accounts. As such, it is quite evident that even a claim which is made to the liquidator can be reclaimed later on an audit of the accounts.

In the circumstances, having taken into account the statutory provisions and the case law we think it appropriate that the professional fees of the liquidator has to be met by way of a payment to be decided up to an amount of Rs. 3 million by way of an interim payment.

This Court leaves the decision making of the quantum of professional fees to be paid to the learned Commercial High Court Judge. As regards the expenses which the liquidator incurred, this Court takes the view that it has to be computed and paid when the assets, if any, that are to be marshaled in the future are brought into the pool and then decided when preferential claims are decided.

The learned Commercial High Court Judge is directed to expedite the conclusion of this case within 06 months. To the extent of the variation of the order of the learned High Court Judge, we set aside this order and we remit this case back to the Commercial High Court to proceed with the remaining proceedings and bring this matter to a close within the time limit we have specified.

The learned Counsel Mr. Suren de Silva who appears for the original Petitioner – Respondent brings to the notice of this Court that the learned High Court Judge has also taken cognizance of the entitlement of the Petitioner for his reasonable expenses and that it should be considered after their professionals fees are paid. The learned Commercial High Court Judge is directed to apply the preferential claims list in accordance with the law and decide this matter as expeditiously as possible.

**Judge of the Supreme Court**

**S. Thurairaja, PC, J**

**Judge of the Supreme Court**

I agree.

**Sampath B. Abayakoon. J**

**Judge of the Supreme Court**

I agree.