

Chapter 16

SALVAGE

Salvor has a maritime lien on the salvaged property. A successful salvage claim requires three proofs: (1) marine peril; (2) voluntary service rendered when not required as an existing duty or from a special contract; and (3) success in whole or in part, or contribution to the success of the operation.

Section 4 (1) (i) of the Admiralty Act (2017) deals with salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment.

Admiralty action lies for any claim in the nature of salvage services rendered to a ship, whether such ship or vessel may have been within India or the high seas at the time when its services were rendered in respect of which the claim is made.

Salvage signifies the services rendered by a salvor, or, in its primary meaning, the reward to which he becomes entitled by reason of such services. All services rendered at sea to a vessel in danger or distress are salvage services, but the expression salvage services is especially used to indicate a voluntary personal services successfully rendered to property in danger at sea. Salvage in its simple character is the services which those who recover property from loss or danger at sea render to the owner, with the responsibility of making restitution and with a lien for their reward. This service entitles a salvor to a reward in a court exercising admiralty jurisdiction.

Subject to the broad discretionary approach of the court to do what is just in each case, all liens rank *pari passu*, except in relation to salvage, where the last in time may take priority on the justification that the ship is saved by the last salvor for the benefit of all other claimants. Claims for various salvages shall

rank in inverse order of time when the claims thereto accrue. Such an approach serves also to encourage salvors to save maritime property. It must be the latest in time of creation as compared with all other liens (including all other salvage and damage liens) in order to take priority. As regards wages, no distinction is made between wages earned before or after salvage; the salvage claim takes priority over wages. In relation to the ranking of claims it is interesting to note that salvage has priority over (a) earlier salvage, (b) earlier damage, (c) earlier wages, (d) earlier claims to forfeiture by the crown, (e) subsequent possessory liens, (f) necessities, and (g) mortgages. A salvors lien ranks first (and in reverse order of time if there is more than one salvor -ie., later before earlier) simply because without the emergency services he renders there would be no funds preserved out of which anybody could be satisfied.

Section 402 of the (Indian) Merchant Shipping Act 1958 provided as follows:

"(1) Where services are rendered: -

(a) wholly or in part within the territorial waters of India in saving life from any vessel or elsewhere in saving life from a vessel registered in India; or

(b) in assisting a vessel or saving the cargo or equipment of a vessel which is wrecked, stranded or in distress at any place on or near the coasts of India; or

(c) by any person other than the receiver of wreck in saving any wreck; there shall be payable to the salvor by the owner of the vessel cargo, equipment or wreck, a reasonable sum for salvage having regard to all the circumstances of the case.

(2) salvage in respect of the preservation of life when payable by the owner of the vessel shall be payable in priority to all other claims for salvage.

(3) where salvage services are rendered by or on behalf of the Government or by a vessel of the Indian Navy or the commander or crew of any such vessel, the Government, the commander or the crew, as the case may be, shall be entitled to salvage and shall have the same rights and remedies in respect of those services as any other salvor.

(4) any dispute arising concerning the amount due under this section shall be determined upon application made by either of the disputing parties -

(a) to a Judicial Magistrate of the first class or Metropolitan Magistrate as the case may be where the amount claimed does not exceed ten thousand rupees; or

(b) to the High Court, where the amount claimed exceeds ten thousand rupees.

(5) where there is any dispute as to the persons who are entitled to the salvage amount under this section, the Judicial Magistrate of the first class or the Metropolitan Magistrate or the High Court as the case may be shall decide the dispute and if there are more persons than one entitled to such amount, such Magistrate or the High Court shall apportion the amount thereof among such persons.

(6) The costs of and incidental to all proceedings before a Judicial Magistrate of the first class or Metropolitan Magistrate or the High Court under this section shall be in the discretion of such Magistrate or the High Court, and such Magistrate or the High Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid."

The section provides that any dispute as to salvage shall be determined by a magistrate where the amount does not exceed Rs.10,000 and by the High Court where the amount exceeds that sum. For the purpose of the said Act the term "High Court" has been defined by section 3(15) of the said Act in relation to a vessel to mean the High Court within the limits of whose appellate jurisdiction:

- (a) the port of registry of the vessel is situate; or
- (b) the vessel is for the time being; or
- (c) the cause of action wholly or in part arises.

One of the effects of the said section is that all the High Courts of littoral states will have jurisdiction to entertain a cause relating to salvage and not just the High Courts having Admiralty Jurisdiction. That part it is arguable that the Admiralty Jurisdiction exercised by the High Courts in relation to such a cause has been replaced and substituted by or must yield to the special jurisdiction conferred by the Act and that consequently a suit on such a cause is not maintainable in the Admiralty jurisdiction of the High Courts.