

SPECIFIC JURISDICTION AND JURISDICTION IN ADMIRALTY

The starting point for ship arrest in maritime law is the subject of admiralty jurisdiction. Admiralty jurisdiction is founded on the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, section 3, provides: "subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and are the courts of specific jurisdiction and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act: ".

Admiralty jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior court of record administering justice in relation to persons and things within its jurisdiction. Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them.

The Indian Courts possessing Admiralty jurisdiction have jurisdiction over the following claims herein under to hear and determine any questions with regard thereto the claims as set out in Section 4 (1) of the Act. The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any:

- (a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;
- (b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;

- (c) mortgage or a charge of the same nature on a vessel;
- (d) loss or damage caused by the operation of a vessel;
- (e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;
- (f) loss or damage to or in connection with any goods;
- (g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;
- (h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;
- (i) 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;
- (j) towage;
- (k) pilotage;
- (l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;
- (m) construction, reconstruction, repair, converting or equipping of the vessel;
- (n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;

(o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958;

(p) disbursements incurred on behalf of the vessel or its owners;

(q) particular average or general average;

(r) dispute arising out of a contract for the sale of the vessel;

(s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;

(t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;

(u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;

(v) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and

(w) maritime lien.

The jurisdiction applies to every vessel, irrespective of the place of residence or domicile of the owner provided that the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 shall not apply to an inland vessel defined in clause (a) of sub-section (1) of section 2 of the Inland Vessels Act, 1917, or a vessel under construction that has not been launched unless it is notified by the Central Government to be a vessel for the purposes of the Act provided further that the Act shall not apply to a warship, naval auxiliary or other vessel owned or operated by the Central or a State Government and used for any non-commercial purpose, and, shall also not apply to a foreign vessel which is used for any non-commercial purpose as may be notified by the Central Government.

The jurisdiction applies in relation to all ships, whether Indian or not and whether registered or not and wherever the residence or domicile of their owners may be; in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.

A vessel would mean to include any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel but a vessel shall

not be deemed to be a vessel, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor, filing of bill of entry of the vessel will have no relevance for this purpose.