

SHIP AND SISTERSHIPS

Section 2 (1) (l) of the Admiralty Act (2017) defines 'vessel' and it includes 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. A vessel shall not be deemed to be a vessel for the purposes of this clause, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor.

The Admiralty Act (2017) shall apply to every vessel, irrespective of the place of residence or domicile of the owner but 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 and 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 word "vessel" was substituted for "ship" and is defined as including "any ship or boat, or any other description of vessel used in navigation," whilst "ship" includes any description of vessel used in navigation not propelled by oars. This latter definition does not exclude things not specified, so that it will include any vessel used in navigation not habitually propelled by oars, and will include a hopper barge not navigable without external assistance where it was held that a hopper barge with rudder and navigating lights but without means of propulsion, has been held to be a "ship". The expression "ship" includes

any description of vessel used in navigation not propelled by oars, and the statutory jurisdiction of the High Court over salvage claims for services rendered to a ship would therefore appear to be confined to services rendered to vessels not propelled by oars.

In *Steedman -v- Scofield* [1992] 2 Lloyd's Rep .163 (Sheen J.) Mr. Justice Sheen said, "To my mind the word "boat" conveys the concept of a structure, whether it be made of wood, steel or fiberglass, which by reason of its concave shape provides buoyancy for the carriage of persons or goods. Thus a lifeboat differs from a life raft in that the boat derives its buoyancy from its shape, whereas a raft obtains its buoyancy from some method of utilizing air receptacles." "a vessel is usually a hollow receptacle for carrying goods or people. In common parlance "vessel" is a word used to refer to craft larger than rowing boats and it includes every description of watercraft used or capable of being used as a means of transportation on water."

In *Steedman -v- Scofield* Mr. Justice Sheen considered what was meant by the phrase "used in navigation" and he said "Navigation is the nautical art or science of conducting a ship from one place to another. The navigator must be able to determine the ship's position and to determine the future course or courses to be steered to reach the intended destination. The word "navigation" is also used to describe the action of navigating or ordered movement of ships on water. Hence "navigable waters" means waters on which ships can be navigated. To my mind the phrase "used in navigation" conveys the concept of transporting persons or property by water to an intended destination. A fishing vessel may go to sea and return to the harbour from which she sailed, but that vessel will nevertheless be navigated to her fishing grounds and back again. "Navigation" is not synonymous with movement on water. Navigation is planned or ordered movement from one place to another."

Under the so called "Dead vessel" doctrine, a vessel permanently withdrawn from use for navigational purposes is not a vessel, in terms of admiralty jurisdiction. However, a vessel is not a "dead vessel" merely because it is not actively engaged in trade or commerce, where arrangements have been made to alter it to fit it for an intended maritime service. In addition, a ship may be a "live ship," not a "dead vessel," when it is in dry dock.

An action in rem lies in the English High Court in respect of matters regulated by the Supreme Court Act, 1981, and in relation to a number of claims the jurisdiction can be invoked not only against the offending ship in question but also against a "sistership" i.e., a ship in the same beneficial ownership as the ship in regard to which the claim arose.

In *m.v. Mariner IV -v- Videsh Sanchar Nigam Limited* decided on 15th December 1997 by the appeal court of the Bombay High Court observed that "In view of the decision of the in *m. v. Elizabeth*, we are of the clear view that the High Court does have jurisdiction to arrest a "sister ship" for securing any maritime claim."

The Appeal Court of the Bombay High Court in *m.v. Sea Success I -v- Liverpool and London Steamship Protection and Indemnity Association Ltd.*, are of the view that a subsidiary company and a parent company of the subsidiary company are two separate entity. The Appeal court has the following view, "In maritime law worldwide ownership of a ship is denoted by the concept of the owner of the shares in a ship..... Fundamentally each company incorporated in law is a distinct legal entity and mere incorporation of 100% subsidiary company by its parent Company cannot lead to the conclusion that the assets of the former belong to and are owned by parent company.The action in rem under admiralty jurisdiction has been initiated by the plaintiffs against the defendant no.1 vessel *Sea Success -I* on the basis of allegations of it being a sister ship i.e. a ship in the same beneficial ownership as the ships "*Sea Glory*" and "*Sea Ranger*" in regard to which the

claim arose. In case of *m.v. Mariner IV*, 1998 (1) Mah. L.J. 751, the Division Bench of this Court held, "The admiralty jurisdiction could be invoked not only against the offending ship in question but also against a sister ship in regard to which the claim arose". The ships are deemed to be in the same ownership when all the shares are owned by the same person or persons (Article 3(2) of 1952 Brussels Arrest Convention).

The Appeal Court further viewed that "...the defendant no. 1 vessel is a sister ship of the two vessels " Sea Glory" and " Sea Ranger" in view of the beneficial ownership, management and control of all three vessels having vested in defendant no. 2. The basis of this deduction by the plaintiff in the plaint is that the defendant no. 1 vessel is owned by defendant no. 2 through its 100% subsidiary S.S. Shipping Corporation Inc., Monrovia"....the law permits the plaintiff to arrest a ship which is beneficially owned by the defendant no. 2 then the plaintiff is required to plead the material facts which discloses the beneficial ownership of the defendant no. 2 over the ship which is to be arrested and an inference drawn by itself in the pleading about beneficial ownership which is legally unsustainable cannot be said to disclose a cause of action. It is true that while ascertaining whether the plaint discloses a cause of action or not, the court is not required to make any enquiry into doubtful or complicated questions of fact or law and that the court proceeds with the assumption that the facts stated therein true but then those facts as they stand must disclose plaintiffs right to sue".

The Supreme Court of India in the matter of *m.v. Sea Success I* has stated that "...we do not intend to delve deep into the questions as to whether the two ships named hereinabove are the sister ships of the respondent No. 1 Vessel or whether the requirement of law as regard ownership of a ship in the Respondent No. 1 as beneficial owner has been fulfilled or not. Such issues must be considered at an appropriate stage".

Beneficial owner means, one recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for whom property is held in trust.- also termed equitable owner. Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement. The defining characteristic of the beneficial owner of an asset is that he holds a degree of control over the asset that allows him to benefit from it. Whether he is the legal owner (that is, holds legal title to it) is irrelevant. The essence of beneficial ownership is precisely not ownership in the ordinary sense of the word—but rather control. Control and legal title often will lie in the same hands.

Beneficial ownership is a concept that is relatively straightforward in theory but difficult to apply in practice. The essence is to identify the person who ultimately controls a corporate vehicle. This identification always will be a highly context-dependent, *de facto* judgment; beneficial ownership cannot be reduced to a legal definition.

“Sister-Ship” is a ship which is under the same beneficial ownership or in simple terms, owned in majority by the same owner or class of owners. More importantly, apart from arresting an offending ship in order to secure a maritime claim, a claimant may also arrest a sister ship of the offending ship in order to secure his claim. The International Convention Relating to the Arrest of Sea-Going Ships, Brussels, 1952 (the “Brussels Convention”) and the International Convention on the Arrest of Ships, Geneva, 1999 (the “Geneva Convention”) are very clear regarding the position of the arrest of a sister ship for maritime claims. Both the Conventions provide for the arrests of the sister ships for securing maritime claims.

In order to evade the arrest of a sister ship, in some instances, the (beneficial) owners of the said sister ships register the ships under different companies. This makes it difficult to trace it back to the beneficial owners and becomes an obstacle in arresting the “sister-ship” since it is not registered to the same beneficial owner. Such ships are known as “Associated Ships”. The associated ship arrest provision was introduced into South African legislation as an extension of the English sister ship provisions which was incorporated into Nigerian Admiralty Law. This legislation works by way of following the principle of “Piercing the corporate veil” and provides for the arrest of a ship owned by a different company than the one owning the offending vessel on the grounds that the two companies are commonly controlled or owned.

In *Euroceanica (UK) Ltd. Vs Gem of Safaga*, the Federal Court of Australia did not allow the Plaintiff to arrest the vessel “Gem of Safaga” as a ‘surrogate ship’ for securing the maritime claims against the vessels “JBU Opal” and “JBU Onyx”. In the present case, West Asia Maritime Limited, owned 9 out of the 10 shares of the vessel “Gem of Safaga” and the 10th share was owned by Four M Maritime Limited, a company controlled by or associated with West Asia Maritime Limited’s Managing Director, Abdul Qadir. A subsidiary of West Asia Maritime Limited, viz West Asia Maritime Singapore Pte Ltd, had chartered the said vessels “JBU Opal” and “JBU Onyx”, in respect of whom the maritime claims arose from the plaintiff, Euroceanica (UK) Ltd. The plaintiff, Euroceanica (UK) Ltd., sought to arrest the vessel “Gem of Safaga” stating that, notwithstanding the terms of the contract, which stated that West Asia Singapore Pte Ltd. were the charterers of the vessels “JBU Opal” and “JBU Onyx”, the parent company of the said chartering company, i.e West Asia Maritime Limited were ultimately the charterers of the vessel “JBU Opal” and “JBU Onyx”. The Court held that West Asia Maritime Limited was the owner of “Gem of Safaga” at the time of commencement of proceedings and that it was in control of the vessels “JBU Opal” and “JBU Onyx” when the maritime claim arose with respect to the said vessels. The Court however held that, the vessel, “Gem of Safaga” cannot be arrested to

secure the said maritime claims because West Asia Maritime Limited was not the sole owner of the vessel “Gem of Safaga” and notwithstanding the fact that the other co-owner of “Gem of Safaga” owned only 1 out of the 10 shares of the vessel, arresting the said vessel would impair the rights of Four M Maritime Limited.

Jurisdictions all over the world allow the arrest of sister ships in order to secure a maritime claim, either directly or at times, when the circumstances call for it, by piercing the corporate veil. However, arrests of associate ships are not well known in all jurisdictions. One of the leading pioneers of associate ship arrests is the South African Admiralty Jurisdiction. South African provisions are so extensive that they permit piercing of the corporate veil. In this respect a vessel owned by a different company from the company which owns the ship concerned is susceptible to arrest simply by virtue of the fact that the two companies are commonly controlled or owned. This was buttressed in the case of Belfry Marine Ltd Vs Palm Base Maritime. It therefore goes without saying that ships are associated so long as there is common shareholding in the owning companies and any arrest affected on any such ship is valid in South Africa.

The Bombay High Court division bench hearing appeal, in the matter of Lufeng Shipping Company Ltd -vs- m.v. Rainbow Ace & Anr has handed down a decision that lifting of corporate veil will arise if there is fraud and evidence thereof.

A ship can be arrested under beneficial ownership for a maritime claim supported with evidence of the beneficial ownership of the ship sought to be arrested is the same as the one who is responsible and liable for the claim, and not merely on suspicion.

Indian Courts are encouraging when it comes to the arrest of sister ships, the same cannot be said for the arrest of associate ships or surrogate ships as well as ships that are in the same beneficial ownership. Indian Courts do not lift

the corporate veil where it is not evident that the ships are not sister ships or that they are in the same beneficial ownership as the concerned vessel.