

MARITIME CLAIMS AND ANALYSIS

Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out a list of maritime claims in respect whereof, the High Courts can exercise their Admiralty Jurisdiction. The lists of maritime claims are similar to the maritime claims defined under the International Convention in relation to the Arrest of Sea-Going Ships 1952, Brussels and the International Convention on the Arrest of Ships, 1999, Geneva. However, the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017 incorporates the following additional claims as maritime claims in relation to which a vessel can be proceeded against and arrested. They are claims related to port or harbor dues, canal, dock or light tolls, waterway charges and such like; particular average claims; claims by master or crew or their heirs, dependents for wages, cost of repatriation or social insurance contributions; insurance premiums, mutual insurance calls; commission/ brokerage agency fees payable by vessel owner or demise charterer; environment damage claims or threat thereof; and wreck removal claims.

The enforcement of the maritime claims by an action in rem has been narrowed down. Arrest of vessels owned by Time Charterers and Voyage charterers in respect of Maritime claims against them is conspicuously absent from the Admiralty Act (2017); i.e. Article 3 (2) of the 1999 Arrest Convention, does not find a place in the Admiralty Act; which gives rise to issues in this behalf and in relation to enforcements of maritime claims against time and voyage charterers in India.

Section 5. (1) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017: The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime

claim which is the subject of an admiralty proceeding, where the court has reason to believe that—

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or

(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

The above provision of the Admiralty Act (2017) and its divergence from the Arrest Conventions has led to questions/ issues relating to arrest of ships and sister ships for claims against time charterers, which issue is presently pending for decision before the Bombay High Court.

Section 5(2) permits sister-ship arrests. But, what a sister-ship is, would be subject to Section 5(1).

Section 6 of the Admiralty Act also confers Admiralty Jurisdiction in personam in respect of certain Maritime claims, subject to certain restrictions as contained in Section 7. Under Section 7, for claims arising out of a collision and related claims, an in personam action can be initiated against the Defendant only if the cause of action, wholly or in part arises in India, or if the Defendant, at the time of commencement of the action actually and voluntarily resides or carries on business or personally works for gain in India.

The Admiralty Act (2017) defines 'maritime lien' under section 2(1)(g) and recognizes certain claims as Maritime Liens; and sets out their priorities in Section 9. The Admiralty Act also specifies the period of limitation for Maritime Lien, and states that the maritime lien shall stand extinguished after expiry of one year unless the vessel is arrested and seized and such arrest and seizure has led to a forced sale by the High Court. However, in respect of Maritime Liens relating to claims for wages or other employment related payments, including cost of repatriation and social insurance contributions, the limitation period is two years. The period of limitation would run continuously without any suspension or interruption, except the period during which the vessel was under arrest or seizure which time is to be excluded.

Likewise, the Admiralty Act (2017) also provides for priority of Maritime Claims in Admiralty proceedings in Section 10. Maritime Liens have the highest priority, followed by registered mortgages and charges, and thereafter all other claims. If there are more than one claim in any single category of priority, they shall rank equally and salvage claims rank in inverse order of time to when the claims accrued.

The Conventions are inconsistent with the Municipal Law as found in Section 433 of the MS Act and Rule 954 of the Original Side Rules of this Court. Hence, the Municipal Law will apply and not the convention. Therefore, as per the settled legal position, in case of such inconsistency or conflict, it is the Municipal law which will prevail and not the International Convention. There is no controversy about the proposition that in case of conflict between municipal law and an International 1999 Convention, the Court will have to apply the municipal law therefore it makes it clear that in case of conflict between the municipal law and the international law or conventions, the court will have to apply the municipal law. However, when there is no conflict between the two then all just principles of international law or conventions

could be legitimately applied unless either they are in conflict with any statute or are prohibited by any municipal law.

The observation of the Supreme Court (*m.v. Sea Success*) clearly suggest that unless there is any prohibition by the municipal laws the principles of transnational law or international conventions could be applied for affording remedy for the satisfaction or realisation of maritime claim.

The Supreme Court held that though the Merchant Shipping Act provides a detailed code of substantive and procedural law regulating shipping as an industry and the control exercised over it by the competent authorities, the jurisdictional questions concerning arrest of foreign ships are in many respects left unregulated by the Indian legislation. While the provisions of various international conventions concerning arrest of ships, civil and penal jurisdiction in matter of collision, maritime liens and mortgages etc. have been incorporated in the Municipal Laws in many maritime States, India lags behind them in adopting these unified rules. In the absence of specific statutory provisions, can be adopted and adapted by courts to supplement and complement national statutes on the subject.

The list of maritime claims is a closed list, the claim must fall within one or more of the categories of claims listed the Admiralty Act (2017). If it does not, then it cannot be the subject of an action in rem and a ship or other property cannot be arrested in the enforcement of that claim. The claims listed are all claims that are expressed to or impliedly concern or relate to 'a ship'. They therefore contemplate some connection between the claim and a particular ship or ships. That being so, it is not sufficient for the pursuit of an action in rem that the intended claim be one against a ship owner either generally or in respect of its ships or operations generally. Nor is it sufficient that the person who is alleged to be liable for that claim happens to own a ship. It is therefore not possible to pursue as an action in rem against a ship in a claim that is not related to or concerns that ship, or in the case of sister ship

arrest, a maritime claim that is not related to or concerns some other ship that was at the time the cause of action arose owned or chartered by or in the possession or control of the owner of the sister ship.

Accordingly, in order to pursue a claim as an action in rem against a ship or other property, there must be some connection between that claim and either the ship that is intended to be the subject of the in rem proceeding or of which the ship the subject of the in rem proceeding is intended to be a sister ship.