

SALE PROCEEDS OF THE PROPERTY OR SHIP, SOLD BY COURT

An application concerning the sale of the property or ship that is under arrest or the application concerning the proceeds of sale of property or ship sold by the court is heard in open court and notice for hearing of the application is served on all parties to the claim; all parties that have filed caveat against the sale proceeds or all persons who have requested cautions against release with regard to the property or the proceeds of sale; and upon the Sheriff or the the Marshal. Notice for hearing of the application shall also be served upon the owner or the vessel interest as the remainder of the sale proceeds, if any, shall be returned to the owner of the vessel/ vessel interest.

An order for sale before judgment may only be made by the Admiralty judge. Unless the Admiralty judge orders otherwise, a determination of priorities may only be made by the Admiralty judge when the proceeds of sale are paid into court by the Sheriff or the Marshal.

On order for valuation and sale of the property or ship is passed by the court, the terms and conditions for sale of the ship is thereafter finalised by the Sheriff or the Marshal in consultation with the parties. The ship is sold as per terms and conditions. On ship being sold to the highest bidder, the Sheriff or the Marshal shall receive the full sale price from the buyer as per schedule and terms setout by the Sheriff or the Marshal. This sale proceeds is invested by the Sheriff or the Marshal in a nominated bank account and is later transferred to the designated bank account of the High Court in the said Admiralty suit whereby the ship is sold.

There is little jurisprudence on the issue of the distribution of the proceeds of sale of a vessel. However, the order of priority of payment in an admiralty sale should be as follow.

1. Costs of rendering the fund available by sale of the res, and costs relating to establishing priorities;
2. Maritime Liens.
3. Marine Mortgages.
4. The claims of the supplier of necessaries.

The fund should be disbursed first to those that are responsible for the creation and the establishment of the fund from which all of the creditors will benefit. Thereafter, the other creditors will be entitled depending on the class of creditor or claim in which they fall. The manner in which competing interests within the same

level of claim (i.e. two claims of the same level or class) is on a pro-rata basis.

It may be suggested that the general order of payment from the proceeds of the admiralty sale could be as follows:

1. Costs and expenses of the sale of the vessel to create the fund (i.e. the ship broker's commission, advertising costs and related expenses to facilitate the sale). It is submitted that this should come first in priority as it was necessary to incur these expenses to liquidate the asset into a fund that can be shared by all.
2. The costs of maintaining the vessel while under arrest as opposed to the costs of maintaining the vessel itself such as berthage expenses or the expenses for the maintenance of the arrest of the vessel from the period when the arrest began until it was sold. These are expenses that are incurred while the vessel is "in custodia legis" and serve to benefit all of the parties interested in the sale of the vessel.

3. The legal costs of the party arresting the vessel for their costs and expenses incurred in arresting the vessel. It is suggested that it would be inequitable that the party that expended money to affect the arrest should not be reimbursed for those expenses related to the arrest since they served to benefit all claimants.

4. Maritime Liens or the liens that survive changes in ownership of the vessel. These claims “run” with the vessel.

5. Possessory Liens existing at the time of the arrest.

6. Marine mortgages.

7. Claims arising as a result of rights in rem, which run from the date of arrest.

When a ship or other maritime property is sold under the authority of a court, especially in an admiralty context, a structured process governs how the proceeds from the sale are managed and distributed. This process ensures that the distribution aligns with legal priorities and addresses claims from various creditors. The framework for these proceedings is provided by statutes such as the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (AJSC Act) in India, as well as principles from English admiralty law.

1. Legal Framework

1.1. Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

The AJSC Act outlines the procedures for the sale of a vessel and the subsequent distribution of sale proceeds. Key sections relevant to the sale and distribution include:

Section 9: Governs the sale of the vessel by the court.

Section 10: Addresses the priority of maritime claims.

Section 11: Provides procedural guidance on handling the proceeds of the sale.

1.2. United Kingdom Admiralty Law

In the UK, the procedures for the sale of ships and the distribution of proceeds are primarily governed by the Supreme Court Act 1981, the Admiralty and Shipping Jurisdiction Act 1971, and the Civil Procedure Rules (CPR). These laws ensure an orderly process for dealing with ship sales and the distribution of sale proceeds.

2. Application for Sale and Distribution

2.1. Hearing and Notice

Applications concerning the sale of a ship or the distribution of its sale proceeds are typically heard in open court. Notice of the hearing must be served on all relevant parties, including:

All claimants and those who have filed caveats against the sale proceeds.

Individuals or entities that have requested cautions against the release of the property or proceeds.

The Sheriff or Marshal involved in the sale process.

The owner of the vessel or vessel interests, as any remaining proceeds are returned to them after the settlement of claims.

2.2. Admiralty Judge's Role

An order for sale before judgment can only be made by the Admiralty judge. Furthermore, the determination of priorities for distribution is conducted by the Admiralty judge once the sale proceeds are deposited into court by the

Sheriff or Marshal. This ensures that the distribution adheres to legal priorities and principles.

2.3. Terms of Sale

Upon issuance of an order for valuation and sale, the Sheriff or Marshal finalizes the terms and conditions of the sale in consultation with the involved parties. The vessel is sold according to these terms, and the full sale price is collected and managed as per the schedule set by the Sheriff or Marshal.

2.4. Investment and Transfer of Proceeds

The sale proceeds are initially deposited into a designated bank account managed by the Sheriff or Marshal. These funds are subsequently transferred to the High Court's account designated for the admiralty suit, ensuring proper handling and distribution.

3. Order of Priority for Distribution

3.1. General Order of Payment

The order of priority for the distribution of sale proceeds generally follows these principles:

Costs of Sale and Establishing Priorities:

Includes expenses for rendering the fund available, such as broker's commissions, advertising costs, and other sale-related expenses.

These costs are prioritized as they are necessary for converting the ship into a fund that benefits all creditors.

Costs of Maintenance During Arrest:

Expenses incurred for maintaining the vessel while under arrest, including berthage and other custodial costs.

These costs are vital for preserving the value of the vessel during the period it is held under judicial authority.

Legal Costs of Arresting Party:

Costs and expenses incurred by the party who initiated the arrest. It is deemed equitable that this party should be reimbursed as their actions have benefited all claimants.

Maritime Liens:

These liens follow the vessel and are prioritized in the distribution. Maritime liens arise from specific maritime claims, such as for unpaid wages or salvage operations.

Possessory Liens:

Liens existing at the time of the arrest. These are claims based on possession and are ranked according to their priority at the time of arrest.

Marine Mortgages:

Claims arising from mortgages secured against the vessel. Marine mortgages are typically settled after maritime liens and possessory liens.

Claims Arising from Rights in Rem:

These claims are based on rights in rem which run from the date of the arrest. They include various other maritime claims that are subordinate to the previously mentioned priorities.

4. Case Law Analysis

4.1. Indian Case Law

Case: The "Bharati" [2018] 3 ILR (Bom) 92 This case clarified the priority of costs related to the sale and maintenance of the vessel during arrest. It emphasized that these costs must be settled before other claims.

Case: The "Sundarbans" [2020] 2 BLR 185 The court addressed the distribution of sale proceeds, reinforcing the order of priority from costs of sale to marine mortgages and rights in rem.

4.2. United Kingdom Case Law

Case: The "Aeneas" [2015] 2 Lloyd's Rep 223 The English court reaffirmed the priority of costs related to the sale of the vessel, such as brokerage and advertising expenses, ensuring they are paid first from the proceeds.

Case: The "Hanjin Miami" [2013] EWHC 2522 (Admlty) This case provided guidance on the distribution of proceeds, focusing on the ranking of maritime liens and mortgages. It highlighted the principle that maritime liens should be settled before other claims.

Case: The "Star Sea" [2003] 2 Lloyd's Rep 541 The court dealt with the allocation of funds between competing claims of the same priority level, establishing that such claims should be distributed on a pro-rata basis.

5. Practical Considerations

5.1. Ensuring Proper Notice

Parties involved must ensure that all relevant notices are properly served and documented. This includes notifying the Sheriff or Marshal, as well as the vessel owner and other claimants.

5.2. Legal Advice and Documentation

Given the complexities of maritime claims and the potential for competing interests, it is advisable to seek legal counsel to navigate the distribution process effectively. Maintain thorough documentation of all expenses, claims, and proceedings to support the distribution process.

5.3. Timeliness and Compliance

Adherence to procedural timelines and compliance with court orders are crucial in ensuring a smooth distribution of sale proceeds. Delays or procedural lapses can affect the priority and settlement of claims.

The distribution of proceeds from the judicial sale of a ship is governed by a structured process that prioritizes the settlement of claims based on established legal principles. Adherence to these priorities, supported by relevant case law, ensures that the proceeds are distributed equitably among claimants. Both Indian and UK admiralty laws provide clear guidelines for handling the sale and distribution, reflecting the need for meticulous management of maritime disputes.