

SEAFARER'S RIGHTS ON UNPAID WAGES

A seafarer or a crew member can invoke admiralty jurisdiction and arrest a ship for unpaid wages. An order of arrest of the ship can be obtained from the court having admiralty jurisdiction, the seafarer may or may not be an Indian citizen to initiate action for arrest of a ship in India and also the ship may be registered anywhere in the world or maybe flying any flag.

Crew claim for unpaid wages should be initiated within the three year period from the due date and if the seaman has died while he was a serving seaman, the period from the date of his death to the date on which his next of kin were first informed of his death shall be excluded. The documents that needs to be produced in court are appointment letter and or the agreement or the employment contract; copy of the passport showing that sign on and the sign off dates; continuous discharge certificate (cdc) showing the capacity of the crew also the sign in and sign off dates; account of wages and or wage slips; correspondences exchanged demanding unpaid wages directly and or through the master of the ship; power of attorney/ letter of authority, this need to be notarised and apostilled at the location where the power of attorney is executed. Each crew claims are separate cause of action and should there be more than one crew wages that remains unpaid they cannot be clubbed and each crews will have to file separate suit under admiralty jurisdiction.

At the time of filing of the suit, there is a court fees payable depending on the total claim amount there are other expenses that are involved such as solicitors professional fees, photocopy charges and other misc expenses.

In most cases the owner of the ship or any person having ship interest settles the dispute out of court. If there is no out of court settlement the crew has a right to make an application to the court for auction sale of the ship pending

the suit but cannot withdraw or encash the sale proceeds at interim stage but would be entitled to withdraw or encash the sale proceeds of the ship after obtaining a decree from the court.

The crew has the following rights on unpaid wages

1. obtain order of arrest of the ship or a sister ship anywhere in the world subject to the ship being in territorial waters.
2. initiate a civil suit at appropriate jurisdiction
3. claim under section 19 of the Workmen's Compensation Act 1923 at appropriate jurisdiction
4. claim before the Magistrates Court at appropriate jurisdiction

In *Epoch Enterrepots v M.V. Won Fu* the Supreme Court of India has held that right to a part of property in the res and a privileged claim upon a ship, aircraft or other maritime property which remains attached to the property travelling with it through changes of ownership. It is also acknowledged that it detracts from the absolute title of the 'res' owners. The Supreme Court of India in the case of *O. Konavalov vs Commander, Coast Guard Region* held that 'the seamen's right to his wages have been put on a high pedestal. It is said that a seamen had a right to cling to the last plank of the ship in satisfaction of his wages or part of them as could be found. The right to wages for a seamen is the same as for any other wages of any employee is an integral part of the right to livelihood and is entitled to the protection under Article 21 of the Constitution of India.'.

A maritime lien for seafarers' wages, like any other maritime lien or maritime claims, can be enforced by invoking admiralty jurisdiction and obtaining an order of arrest from a High Court having admiralty jurisdiction.

Claims can also be filed in the magistrates Court under section 145 of the Merchant Shipping Act 1958 that reads as:

145. Summary proceedings for wages.—

1. A seaman or apprentice or a person duly authorised on his behalf may, as soon as any wages due to him become payable, apply to 1[any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be,] exercising jurisdiction in or near the place at which his service has terminated or at which he has been discharged or at which any person upon whom the claim is made is or resides, and 2[such Magistrate] shall try the case in a summary way and the order made by 2[such Magistrate] in the matter shall be final.

2. An application under sub-section (1) may also be made by any officer authorised by the Central Government in this behalf by general or special order.

Seafarers or the crew member can also initiate proceedings in the Office of Commissioner of Workmen's Compensation for compensation against an Indian manager and/or shipowner. Any amount deposited with the officer of the Workmen's Commissioner can be remitted to the dependants of the seafarer who are located in a country other than in India.

The International Conventions on Maritime Liens and Mortgages 1993 and 1967 have the force of law in India and under these conventions a maritime lien for wages includes wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf.

Section 139 in The Merchant Shipping Act, 1958 provides the Right to recover wages and salvage not to be forfeited.—A seaman shall not by any

agreement forfeit his lien on the ship or be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he would be entitled, and shall not by any agreement abandon his right to wages in case of loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and every stipulation in any agreement inconsistent with any provisions of this Act shall be void.

A seaman making a claim for unpaid wages should have worked on the ship. The rationale is that wage lien arises from the service rendered to the ship. Further, the Indian Merchant Shipping Act 1958 provides that a seaman shall not be entitled to wages for any period during which he is absent without leave from his ship or from his duty.

Maritime Liens for wages take priority over other maritime liens such as loss of life and personal injury or damage caused by the ship as per section 9(1) of the Admiralty Act (2017). It appears that the maritime lien for salvage takes priority over the maritime liens for wages, albeit there is no precedent on this point. Maritime liens set out in article 4 shall take priority over registered mortgages, 'hypothèques' and charges. A seafarer would have a maritime lien over the ship on which he was working irrespective of his contractual counterparty in his contract of employment.

The Maritime Liens and Mortgage's Convention 1993 provides that maritime liens may be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale. However, under the Indian Limitation Act 1963 the limitation period for a claim for wages is three years from the time of the end of the voyage during which the wages are earned. Indian courts have not dealt with a case in relation to the extinguishment of a maritime lien after a period of one year. It could be argued that a maritime lien for wages is recognized for a period of three years but under the Admiralty Act (2017) is two years.

A maritime lien is extinguished with the destruction of the vessel or property, or laches (undue delay in enforcement), or is discharged by payment or judicial act. A maritime lien would be extinguished when the intention of the owner of the vessel is no longer to deploy the vessel for navigation and the vessel has been imported into India for the purpose of demolition/ ship recycling.