

FREQUENTLY ASKED QUESTIONS ON SHIP ARREST OR RELEASE (FAQ'S)

1. Is India a signatory to any of the International Conventions on ship arrest? If so, which one? Is there a legislature for ship arrest ?

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 was brought in force on April 1, 2018 repealing the obsolete Admiralty Courts Act of 1861 although the act had received the assent of the President on the 9th August, 2017. The jurisdiction with respect to maritime claims under the act vest with the respective High Courts and extends up to the territorial waters of their respective jurisdictions.

No, Although the Brussel convention has not been adopted by legislation, the principles incorporated in the International Convention relating to the Arrest of Seagoing Ships, Brussels, 10 May 1952 are part of the common law of India and applicable for the enforcement of maritime claims against foreign ships as is held by the Supreme Court of India in *m.v Elisabeth-v- Harwan Investment & Trading Pvt Ltd., Goa*. The Supreme Court of India in the matter of *m.v. Sea Success I* has also held that the principles underlying the 1999 Geneva Arrest Convention were applicable for ship arrest in India.

With the new act, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 coming in force, the act shall apply for ship arrest or release.

2. For what types of claims can you arrest a ship?

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 trans- national 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.

3. What is the procedure for an arrest?

a. Claimant executes a Power of Attorney normally to a person as may be suggested by the Claimants solicitor to act on behalf of the Claimant. A format of the said Power of Attorney is normally forwarded by the Claimants solicitor with the name of the Constituted attorney. The said Power of Attorney is properly executed, notarised and legalised/ apostiled and the original is couriered to the constituted attorney, normally they are employed by the solicitors. Since time is of essence the Power of Attorney when executed and notarized (pending legalization or apostilisation) is scanned and forwarded for further action. At the time of filing of the Plaint in the court solicitors give an undertaking to the court to produce the original when received from the Claimant. The Original Power of Attorney is required to be stamped under the laws of India.

b. Claimants solicitor takes search of the caveat book for caveats against arrest.

c. Notice is given to the Consul General as per High Court Rules, where required.

d. Claimants files the Complaint, Undertaking, draft Judges Order/ Interim Application, Draft Warrant of Arrest and its affidavit to the court under Admiralty jurisdiction. All the Exhibits and the documents relied are normally filed by way of a separate Compilation of Documents at the time of making an application for Arrest.

e. Urgent application for obtaining order of arrest is moved before the Admiralty Judge, at the time of making the said application Complaint and other pleadings including the draft Judges Order should be produced before the Judge. The Caveat book for caveat against arrest is also produced. Admiralty Judge passes an order in terms of the Judges Order given to court. In some cases Admiralty Judge dictates a separate order for arrest of a vessel. Sometimes Warrant of Arrest is dispensed with and also an order is obtained to complete service of the court order by fax or email to all concerned authorities.

f. If Warrant of Arrest is not dispensed with then the court issues the same signed by the Court.

g. The Bailiff effects or completes the service of the Warrant of Arrest or the Order of the court upon all the concerned authorities.

4. How is the Defendant named in an Admiralty Suit?

M. V. XXXXXXXXX, vessel flying a xxxxx)
flag together with her hull, tackle,)
engines, machinery, paraphernalia)
and all her appurtenant on board)
presently lying and being at stream/port)
and harbour/jetty of xxxx, xxxxx and all)
persons claiming to be interested)
in the vessel) ...DEFENDANT.

5. Is it necessary that the ship should be in Indian waters for filing of an Admiralty Suit?

Yes. It is not necessary that the vessel should take berth, the vessel can be anywhere in the Indian territorial waters within 12 nautical miles from the shore.

6. Can a ship be arrested if she is already beached for demolition?

Section 2 (l) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 defines vessel which 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.

Explanation.—A vessel shall not be deemed to be a vessel for the purposes of the 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 ship is no longer considered as a ship and therefore Admiralty action cannot be initiated.

7. Which are the High Courts in India that are vested with Admiralty jurisdiction and which court is most preferred for ship arrest?

The jurisdiction of the High Courts of Bombay, Calcutta, Madras, Gujarat, Hyderabad, Telangana, Karnataka, Kerala, and Odisha have Admiralty actions

8. Can a Indian flag vessel be arrested?

Ship flying any flag can be arrested.

9. Can a vessel be detained without going to Court?

Under section 443 (2) of the Indian Merchant Shipping Act a foreign ship can be detained that has occasioned damage. This is to temporarily detain the vessel from departing from Indian waters but an application should be made to the High Court obtaining order to that effect.

10. What is action in rem and action in personam?

Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out action in rem

5. (1) 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.

(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime

claim has been made under this Act, subject to the provisions of sub-section (1):

Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.

Section 6 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out action in personam

6. Subject to section 7, the High Court may exercise admiralty jurisdiction by action in personam in respect of any maritime claim referred to in clauses (a) to (w) of sub-section (1) of section 4.

Section 7 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out the restrictions on actions in personam in certain cases.

7. (1) Where any maritime claim arising in respect of a damage or loss of life or personal injury arising out of any—

(i) collision between vessels,

(ii) the carrying out of or omission to carry out, a manoeuvre in the case of one or more vessels,

(iii) non-compliance, on the part of one or more vessels, with the collision regulations made in pursuance of section 285 of the Merchant Shipping Act, 1958, the High Court shall not entertain any action under this section against any defendant unless—

(a) the cause of action, wholly or in part, arises in India; or

(b) the defendant, at the time of commencement of the action by the High Court, actually and voluntarily resides or carries on business or personally works for gain in India:

Provided that an action may be entertained in a case, where there are more defendants than one and where one of the defendants who does not actually and voluntarily reside or carry on business or personally work for gain in India is made a party to such action either with the leave of the court, or each of the defendants acquiesces in such action.

(2) The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside India against the same defendant in respect of the same incident or series of incidents have been discontinued or have otherwise come to an end.

(3) The provisions of sub-section (2) shall apply to counter-claims as they apply to actions except counter-claims in proceedings arising out of the same incident or series of incidents.

(4) A reference to the plaintiff and the defendant for the purpose of sub-section (3) shall be construed as reference to the plaintiff in the counter-claim and the defendant in the counter-claim respectively.

(5) The provisions of sub-sections (2) and (3) shall not apply to any action or counterclaim if the defendant submits or agrees to submit to the jurisdiction of the High Court.

(6) Subject to the provisions of sub-section (2), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified, in clauses (a) and (b) of sub-section (1) is satisfied and any law for the time being in force relating to the service of process outside the jurisdiction shall apply.

An action in rem is directed towards a ship rather than against a person (which is an in personam or personal action).

A personal action may be brought against the defendant if he is either present in the country or submits to the jurisdiction. If the foreign owner of an arrested ship appears before the court and deposits security as bail for the release of his ship against which proceedings in rem have been instituted, he submits himself to jurisdiction.

An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The ship is for this purpose treated as a person. Such an action may constitute an inducement to the owner to submit to the jurisdiction of the court, thereby making himself liable to be proceeded against by the plaintiff in personam. It is however, imperative in an action in rem that the ship should be within jurisdiction at the time the proceedings are started. A decree of the court in such an action binds not merely the parties to the writ but everybody in the world at large who might dispute the plaintiff's claim.

It is by means of an action in rem that the arrest of a particular ship is secured by the plaintiff. He does not sue the owner directly and by name; but the owner or any one interested in the proceedings may appear and defend. The writ is issued to the "owner and parties interested in the property proceeded against." A maritime lien is a privileged claim against the ship or a right to a part of the property in the ship, and it "travels" with the ship. Because the ship has to "pay for the wrong it has done", it can be compelled to do so by forced sale. In addition to maritime liens, a ship is liable to be arrested in enforcement of statutory rights in rem. If the owner does not submit to the jurisdiction and appear before the court to put in bail and release the ship, she is liable to be condemned and sold to satisfy the claims against her. If, however, the owner submits to jurisdiction and obtains the release of the ship by depositing security, he becomes personally liable to be proceeded against in personam in execution of the judgment if the amount decreed exceeds the amount of the bail. The arrest of the foreign ship by means of an action in rem is thus a means of assuming jurisdiction by the competent court.

The admiralty action in rem, is unknown to the civil law. In countries following the civil law, all proceedings are initiated by actions in personam. The Court having competence in the matter has the power to order an attachment of the ship if it is convinced that the plaintiff is likely to lose his security unless the ship is detained within the jurisdiction. Its hands are not fettered by the technicalities of an action in rem and the scopes of the proceedings are not limited to maritime liens or claims. According to the French law, arrest of a ship is allowed even in respect of non-maritime claims and whether or not the claimant is a secured or unsecured creditor. A vessel may be arrested either for the purpose of immobilising the vessel as security (Saisie Conservatoire) or in execution of judgment (Saisie Execution) whether or not the claim has any relation to the vessel. Arrest of the vessel has

the advantage of forcing the owner to furnish security to guarantee satisfaction of any decree that may be passed against him. On furnishing sufficient security with the Court, he is usually allowed to secure the release of the vessel.

The real purpose of arrest is to obtain security as a guarantee for satisfaction of the decree, although arrest is the basis of assumption of jurisdiction, unless the owner has submitted to jurisdiction. In any event, once the arrest is made and the owner has entered his appearance, the proceedings continue in personam. All actions in the civil law- whether maritime or not- are in personam, and arrest of a vessel is permitted under the provision of the act, and the vessel is treated as any other property of the owner, and its very presence within jurisdiction is sufficient to clothe a competent high court with admiralty jurisdiction over the owner in respect of any claim. Admiralty actions, whether in rem or in personam, are confined to well defined maritime liens or claims and directed against the res (ship, cargo and freight) which is the subject-matter of the dispute or any other ship in the same beneficial ownerships as the res in question.

Where statutes are silent and remedy has to be sought by recourse to basic principles, it is the duty of the court to devise procedural rules by analogy and expediency. Action in rem, as seen above, were resorted to by courts as a device to overcome the difficulty of personal service on the defendant by compelling him to enter appearance and accept service of summons with a view to furnish security for the release of the res; or, in his absence, proceed against the res itself, by attributing to it a personality for the purpose of entering a decree and executing the same by sale of the res. This is a practical procedural device developed by the courts with a view to rendering justice in accordance with substantive law not only in cases of collision and salvage, but also in cases of other maritime liens and claims arising by reason of breach

of contract for the hire of vessels or the carriage of goods or other maritime transactions, or tortious acts, such as conversion or negligence occurring in connection with the carriage of goods. Where substantive law demands justice for the party aggrieved, and the statute has not provided the remedy, it is the duty of the court to devise procedure by drawing analogy from other systems of law and practice. To the courts of the "civil law countries" in Europe and other places, like problems seldom arise, for all persons and things within their territories (including their waters) fall within their competence to deal with. They do not have to draw any distinction between an action in rem and an action in personam.

It is likewise within the competence of the appropriate Indian Courts to deal, in accordance with the general principles of maritime law and the applicability of provisions of statutory law, with all persons and things found within their jurisdiction. The power of the court is plenary and unlimited unless it is expressly or by necessary implication curtailed. In the absence of such curtailment of jurisdiction, all remedies, which are available to the courts to administer justice, are available to a claimant against a foreign ship and its owner found within the jurisdiction of the concerned High Court. This power of the court to render justice must necessarily include the power to make interlocutory orders for arrest and attachment before judgment.

The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own power.

A person who, maliciously and without reasonable and probable cause procures the arrest of a ship by Admiralty proceedings is liable to pay damages to the person aggrieved. A separate suit has to be filed for wrongful arrest proving malicious cause. Wrongful arrest may result in the condemnation of the claimant for damages only where the court is satisfied that the arrest was motivated by mala fides (bad faith) or crassa negligentia (gross negligence). Merely unjustified (i.e. erroneous) arrest would not normally entitle the defendant to claim damages, although he might then be able to recover costs.

The safeguarding of ownership/private property rights when ships are arrested in rem by the Admiralty Court are built into the rules of the High Court having admiralty jurisdiction for ship arrest. For example, a party wishing to prevent the arrest of property in an action in rem may, by filing a praecipe in the prescribed form, obtain the entry of a caveat against arrest in the caveat book kept in the Admiralty Registry/ Prothonotary & Senior Master of the High Court. Although the entry of the caveat does not prevent arrest of the res, the caveator, on a subsequent motion after arrest, may obtain the discharge of the arrest warrant and the condemnation of the arresting party in damages, if the latter is unable to show "good and sufficient reason" for having arrested.

Where a foreign ship registered in a port of a country having a consulate in jurisdiction of the High Court where arrest application is sought /is to be arrested in India in an action in rem for wages, prior notice of the arrest must be given to the consul concerned.

In the decision of the Supreme Court in *Videsh Sanchar Nigam Limited -vs- m.v. Kapitan Kud* (1986) the court observed that the admiralty action is an action in rem and that there is strong triable case. The ship is a foreign ship and if it leaves the shores of Indian territorial

waters it is difficult to get hold of it and it may not return to the jurisdiction of Indian courts. The claim thereby, even if successful, would remain unexecutable or land in trouble in private international law in its enforcement. Under these circumstances, we are of the firm opinion that the vessel may be released on the certain conditions..., viz., [i] the respondent shall deposit a sum of Rs.10 crores; [ii] the Ukrainian Government shall give an undertaking through its accredited authority, more particularly may be its Ambassador attached to its Embassy in India in writing duly undertaking that in the event of the suit being decreed they would comply with the decree without reference to the execution; [iv] the undertaking should be for balance amount of Rs.18 crores and towards costs and other expenses roughly put at Rs.25 crores. It would be open to them to comply with these directions at any time. We are not fixing any time limit because it would be open to them to comply with it at any time and until then the ship shall remain arrested and shall not leave the shores of the Indian territorial waters. On deposit of Rs.10 crores and on furnishing of undertakings to the satisfaction of the Division Bench of the High Court, as stated above, the High Court would give appropriate direction for releasing the vessel in accordance with law.

In *m.v. Kapitan Kud* the Supreme court also observed that whether the appellant (VSNL) has made out *prima facie* case. Rules on Admiralty Jurisdiction in Part III were framed by Bombay High Court to regulate the procedure and practice thereof on the original side of the Bombay High Court. Equally, Original Side Rule 941 is relevant in this regard which provides that party applying under this rule in a suit *in rem* for arrest of the property shall give an undertaking in writing or through advocate to pay such sum by way of damages as the court may award as compensation in the event of a party affected sustaining prejudice by such order. In *Mahadeo Savlaram Shelke & Ors. v. Pune Municipal Corporation & Anr.* [(1995) 3 SCC 33], even in case of civil court,

exercising its power under order 39 Rule 1, this Court held that while granting interim injunction, the Civil Court or Appellate Court is enjoined to impose as a condition that in the event of the plaintiff failing to prove the case set up and if damages are caused to the defendant due to the injunction granted by the court, the court would first ascertain whether the plaintiff would adequately be compensated by damages if injunction is not granted. Equally the court should also impose condition for payment of damages caused to the defendant in the same proceeding without relegating the parties for a separate suit. The plaintiff should give such an undertaking as a part of the order itself. Rule 954 of Admiralty Rules provides that subject to the provisions of Rule 952 [caveat property not to be released unless notice is given to the caveator], property arrested under a warrant may be ordered to be released - [i] at the request of the plaintiff, before an appearance in person or a vakalatnama is filed by the defendant; or [ii] on the defendant paying into Court the amount claimed in the suit; or [iii] on the defendant giving such security for the amount claimed in the suit as the Court may direct; or [iv] on any other ground that the Court may deem just. Thus a ship arrested under warrant maybe released on fulfillment of any of the conditions mentioned hereinbefore. This could be done on the plaintiff showing prima facie best case.

Action in rem is an action against a thing, good or against certain property (ship or cargo) rather than a person. By proceeding against a res a plaintiff obtains security for his claim, the res may be arrested by the court and sold to satisfy a judgment in rem against it. An action may be brought in rem provided the property proceeded against (the res) is within the jurisdiction.

The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam.

An action in personam is an ordinary action as in common law courts.

In Halsbury's Laws of England, the nature of action in rem and the nature of action in personam at para 310 is stated to be as -Nature of actions in rem and actions in personam. - An action in rem is an action against the ship itself but the view that if the owners of the vessel do not enter an appearance in the suit in order to defend their property no personal liability can be established against them has recently been questioned. It has been stated that, if the defendant enters an appearance, an action in rem becomes, or continues also as, an action in personam; but the Admiralty jurisdiction of the High Court may now in all cases be invoked by an action in personam, although this is subject to certain restrictions in the case of collision and similar cases, except where the defendant submits or agrees to submit to the jurisdiction of the Court.

The foundation of an action in rem is the lien resulting from the personal liability of the owner of the res. Thus an action in rem cannot be brought to recover damages for injury caused to a ship by the malicious act of the master of the defendant's ship, or for damage done at a time when the ship was in the control of third parties by reason of compulsory requisition. On the other hand, in several cases, ships allowed by their owners to be in the possession and control of charterers have been successfully proceeded against to enforce liens which arose whilst the ships were in control of such third parties.

The defendant in an Admiralty action in personam is liable, as in other actions in the High Court, for the full amount of the plaintiff's proved claim. Equally in an action in rem a defendant who appears is now liable for the full amount of the judgment even though it exceeds the value of the res or of the bail provided. The right to recover damages

may however be affected by the right of the defendant to the benefit of statutory provisions relating to limitation of liability."

11. What is maritime lien?

A maritime lien is a species of charge that attaches to property and follows the property – most commonly a ship – to secure certain types of claims. It is inchoate from the time of the events giving rise to it, attaching to the ship, travelling with the ship into anyone's possession even a bona fide purchaser for value without notice, except a purchaser at an admiralty court sale and perfected by legal process. Only a limited class of maritime liens are recognised under section 9 (1) of the Admiralty Act (2017).

Maritime lien means a maritime claim as recognised under section 4 (1) (w) of the Admiralty Act (2017) against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section;

Maritime lien and its characteristics are:—

(a) claims for 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;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for salvage services including special compensation relating thereto;

(d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;

(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

The maritime lien shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court. Provided that for a claim for wages and other sum due to the master, officers and other members of the vessel, the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

In admiralty law, a maritime lien is a privileged claim upon sea-connected property, such as a ship, for services rendered to, or the injuries caused by that property. In common law, a lien is the right of the creditor to retain the properties of his debtor until the debt is paid.

It is a proprietary lien where interest is about the property. It should be understood that “res” may be the vessel including its appurtenances and equipment, the cargo, the freight or even the proceeds of sale. The rights include jus in re (right on the property) and jus in rem (right against the property). The doctrine of maritime lien is that a ship will be treated as a wrongdoer, not the owner, that the loss, damage or harm is caused by the maritime property, itself, and it has to make good for the loss. The attachment of maritime lien will start when the cause of action arises and will not be eliminated even by change of ownership in a good faith purchase.

Two significant differences between maritime liens, which only exist in admiralty law, and the right to keep that exist in general civil law are that in general civil law, "Prior in time is prior in right", i.e., the rights of the lien holder with the earliest lien are superior to those of later lien holders, whereas in maritime law the rights of the most recent lien holder are superior, and all maritime liens are superior to all non-maritime liens.

12. What do you mean by a ship and sistership?

Section 2 (l) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 defines vessel which 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.

Explanation.—A vessel shall not be deemed to be a vessel for the purposes of the 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 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".

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.

Sistership is 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".

13. What is the limit of Indian territorial waters?

Under section 3 (2) of The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, the limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

Territorial waters shall have the same meaning as assigned to it in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;

14. What do you mean by necessaries supplied on ship?

Section 4 (1) (l) maritime claim includes 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.

"Necessaries" is not defined but falls within the purview of this section.

15. What do you mean by one-ship company?

It has long been the practice in the shipping business to arrange for several ships which are financed by a common source and managed or operated as a fleet, to be registered in the names of separate companies whose only asset is the particular ship registered in its name. Often such companies will be registered in a country where the identification of shareholders in companies is not a matter of public record. This arrangement has become known colloquially as the "one-ship-company" and has been a source of irritation to cargo interests and others who consider that they are thereby deprived of the benefit of

the sister ship provisions. However, it is clear that the courts have recognised that the "one-ship company" is a legitimate business arrangement, and in the absence of evidence of fraud it is not permissible to lift the corporate veil in order to look behind the "one-ship company" structure for the purposes of identifying the beneficial owner of the company and say that the beneficial owner of the company is the beneficial owner of the ship. In law the beneficial owner of the ship is the company, which is a separate and distinct legal entity or person from the beneficial owner of the company."

16. Can an Admiralty court pass an order of arrest even if the vessel is outside that state jurisdiction but within Indian territorial waters?

Yes, High Court having admiralty jurisdiction has reservations that the ship should be in their respective jurisdiction to file an Admiralty suit.

17. What is the Effect of arrest of ship?

The effect of arrest is that it constitutes the ship or other property as security in the hands of the court for the claim in the action and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.

Once the warrant for arrest has been executed, the property is arrested and is in the custody of the Sheriff/ Marshall on behalf of the court. Interference by any party with the arrest process such as removing the property to be arrested with knowledge that an arrest has been issued is a contempt of court, this includes any interference with the custody of the property after arrest such as moving the property within the jurisdiction without authority, or removing it from the jurisdiction, as

was held in *The "Jarlinn"* [1965] 1 W.L.R. 1098 and also in *The "Abodi Mendi"* [1939] 178.

The arrest of a ship is a defining moment in its life. Immediately upon arrest the ship becomes security in the custody of the court to abide the result of the proceedings giving rise to the arrest. Once arrested, the ship remains in the custody of the court until released upon the provision of alternative security or sale by the court. As Sheen J explained in *The Falcon*:

A ship is usually arrested in order to provide security for the plaintiffs claim. The extent of that security is measured by the net proceeds of the sale of the vessel. The amount of the net proceeds of sale is arrived at by deducting from the gross proceeds of sale the expenses of that sale and other expenses incurred by the Sheriff/ Marshal and the necessary costs of the plaintiff in whose action the ship was arrested up to the moment of arrest and all subsequent expenses of maintaining the arrest up to and including the completion of the sale of the ship.

A warrant of arrest on a ship covers everything belonging to it as part of its equipment, even items which are physically detached from it, but not items which do not belong to the ship owner such as the personal property of the master and crew or the luggage of a passenger.

A ship may be arrested but the cargo on board her is not under arrest, or cargo is arrested but the ship in which it is laden is not. If a ship is to be arrested while she is in the course of discharging her cargo, the Sheriff/ Marshal will not stop the discharge operations unless the arrest is in respect of the cargo. When cargo is arrested the ship owners can request the Sheriff/ Marshal to take the appropriate steps to enable the ship to be discharged.

When arrest of a ship in a port causes considerable and continuing disruption to the operation of the port and the port authority had to turn away other ships so harming its reputation and causing its financial loss in such circumstances the court has inherent jurisdiction to allow a party to intervene if the effect of an arrest is to cause that party serious hardship or difficulty or danger. The court may pass directions to remove the ship to a safe berth in such other place as he shall think appropriate.

A ship is arrested by the Sheriff/ Marshal acting as an officer of the court. The ship comes into the custody, but not the possession, of the Sheriff/ Marshal. The position was described by Lord Atkin in *Government of the Republic of Spain v SS "Arantzazu Mendi"*.

The ship arrested does not by the mere fact of arrest pass from the possession of its then possessors to a new possession of the Sheriff/ Marshal. His right is not possession but custody. Any interference with his custody will be properly punished as a contempt of the Court which ordered arrest, but, subject to his complete control of the custody, all the possessory rights which previously existed continue to exist, including all remedies which are based on possession.

Once arrested, a ship cannot be moved from the place of arrest without the authority of the Sheriff/ Marshal. To move the ship without such authority, whether to another place within the jurisdiction or to flee the jurisdiction, constitutes contempt of court. Similarly, any interference with the ship while under arrest, whether or not it involves any movement or attempted movement of the ship, will constitute contempt.

The duty of the Sheriff/ Marshal is to ensure the safe custody and preservation of the ship.

The Sheriff/ Marshal shall, unless the court otherwise orders, take all appropriate steps to retain safe custody of, and to preserve, the ship or property, including removing from the ship, or storing, cargo that is under arrest; removing cargo from a ship that is under arrest and storing it; removing, storing or disposing of perishable goods that are under arrest or are in a ship that is under arrest; and moving the ship that is under arrest.

The Sheriff/ Marshal owes no duty to the crew on board as such.

18. How quickly can an arrest be effected?

If court passes an order allowing that service can be effected by fax or email then in such case all concerned authorities such as ports and customs are notified the same day by fax or email depending on availability of the order passed by the Judge, but the authenticated copy of the order of arrest should be hand-delivered by the Bailiff of the court with a cover letter. Normally a junior lawyer or an office clerk is accompanied by the Bailiff for service on all concerned authorities and on the vessel.

19. What expenses are incurred?

Court fees: variable but the maximum in the Bombay High Court is ` (INR) 3,00,000 (approx USD 4300) exact amount can be calculated using the link

<http://bruschambers.com/info/calculator.htm>

The Court has a discretionary power to accept or reject legal expenses incurred prior to filing of the claim; it is therefore advisable to add approx USD 8000 - 10000 to the Particulars of Claim.

Lawyers fees: variable

There are expenses/disbursements such as institution fees, photocopying, transport, travel and stay (if required), expenses at the department, port and bailiff and other miscellaneous expenses.

20. How do you obtain a ships release?

- i. at the request of the claimant, before an appearance in person or a vakalatnama (appearance) is filed by the opponent; or
- ii. on the opponent paying into Court the amount claimed in the suit; or
- iii. on the opponent giving such security for the amount claimed in the suit as the Court may direct; or
- iv. on any other ground that the Court may deem just.

A release can usually be obtained promptly provided the requirements for release are satisfied. If the matter is settled out of court without opponents appearance then in such case depending on the Claimants instruction to Claimants Solicitor, search of the caveat book for caveats against release will have to be taken and produced before the Judge at the time of obtaining order of release of the vessel. Normally Release Instrument is dispensed with by the court; if the same is not dispensed with then the Release Instrument will have to be issued by the court. Poundage is payable at 1% of the claim amount or the settled amount, whichever is less before the vessel is released.

21. Can you arrest a ship to obtain security for both court judgments and arbitral awards?

Yes

22. Can bareboat-chartered ships be arrested?

Yes, Whether a bareboat-chartered ship can be arrested depends upon the type of claim being brought.

23. Can time-chartered ships be arrested?

Yes, Whether a time-chartered ship can be arrested also depends upon the type of claim being brought.

24. Can legal sister ships be arrested?

Yes, An action in rem lies 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."

25. Is counter-security required? If so, in what form and how much?

No, But the court has discretionary power to pass order for counter security if required.

26. Effect of Arbitration clause (if any) on arrest?

The Supreme Court of India in *State Trading Corporation of India Ltd & Anr* has held that there is no good ground or acceptable reason why the intention of the parties to incorporate the arbitration clause in the

Charter Party Agreement in the Bill of Lading should not be given effect to.

A claim which is brought in the Admiralty Court by an action in rem is subject to an arbitration agreement so that if an action were commenced the court would stay the proceedings to arbitration upon the application of the defendant.

The claimant can arrest a vessel for security in arbitration.

27. What maritime liens are recognised?

Maritime lien means a maritime claim as recognised under section 4 (1) (w) of the Admiralty Act (2017) against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section;

Maritime lien and its characteristics are:—

(a) claims for 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;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for salvage services including special compensation relating thereto;

(d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;

(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

The maritime lien shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court. Provided that for a claim for wages and other sum due to the master, officers and other members of the vessel, the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

28.. How soon after the arrest is effected will the claimant have to take action on the merits?

There is no delay between the arrest and the action on the merits.

29. Will the courts that ordered the arrest accept jurisdiction over the substantive claim?

In general, yes, unless there is a valid jurisdiction or arbitration agreement between the parties to the contrary.

30. Do the courts acknowledge wrongful arrest? If so, what is the test?

Yes. The ship-owner must prove that the action was so unwarrantedly brought as to imply malice or gross negligence on the part of the Plaintiff and must show and establish malice and willful conduct.

31. Do the courts acknowledge the piercing and lifting of the corporate veil?

Yes, but the courts will only lift the corporate veil in limited circumstances e.g. where the corporate structure is used to evade an existing legal obligation or to defraud.

In *Great Pacific Navigation (Holdings) Corporation Ltd -vs- m.v. Tongli Yantai*, the Bombay High Court on October 14, 2011 in appeal pierced the corporate veil to establish beneficial ownership.

32. Is it possible to have a ship sold prior to obtaining a judgment? If so, how long does such a sale take?

Yes, but the court will only make an order for auction sale if there is a good reason e.g. where the costs of maintaining the arrest may exceed the value of the claim, thereby diminishing the value of the claimants security, depreciation of vessel or there is a danger for the vessel to sink or cause casualty. Interim application will have to be taken out for sale of the vessel, normally advertisement is given in two Indian newspaper in *Lloyds List* and *Tradewinds*.

33. Can you arrest foreign State owned vessel?

If the ship belongs to Government of Foreign State, in that event consent of the Central Government in India would be required to proceed against the vessel and its owners.

34. What is the difference in respect to arresting a ship for a maritime claim and a maritime lien?

A maritime lien is a species of charge that attaches to property and follows the property – most commonly a ship – to secure certain types of claims. It is inchoate from the time of the events giving rise to it, attaching to the ship, travelling with the ship into anyone's possession

even a bona fide purchaser for value without notice, except a purchaser at an admiralty court sale and perfected by legal process. Only a limited class of maritime liens are recognised under section 9 (1) of the Admiralty Act (2017).

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.

35. Does India recognise maritime liens?

Yes, under section 4 (1) (w) of The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

36. What are the duties and responsibilities of the Sheriff/ Marshal towards crew on board after arrest of ship?

The Sheriff/ Marshal owes no duty to the crew on board as such. The relationship of the Sheriff/ Marshal to the crew will depend upon the circumstances as they affect the discharge of the Sheriff/ Marshals duty to retain custody of, and to preserve the ship.

The arrest of a ship does not operate to determine the employer/employee relationship between the owners or demise charterers and the master and crew. Nor does it follow that the issue of a writ/ warrant against the ship by the master or crew to recover outstanding wages automatically determines the employment relationship. It will be a question of fact in each case whether or not there is conduct on the part of the owner amounting to repudiation of the employment contract, for example, failure to pay wages and allowances which are owing, which is accepted by the crew as terminating the relationship.

If the employment relationship is terminated, then crew members may seek to recover wages up until the termination and thereafter damages for breach of contract calculated by reference to the wages lost, the cost of sustenance for a reasonable time at the place of termination pending repatriation to their home port, and the cost of repatriation. Such a claim ranks after the Sheriff/ Marshals claim against the ship, substitute security, or proceeds of sale for the Sheriff/ Marshals charges and expenses, the plaintiffs costs of the action, and other claims having priority.

If the crew continue in employment after arrest, the ongoing liability for wages reduces the value of the ship or proceeds of sale to satisfy claims which have lesser priority than the claims of the master and crew. Although the continued engagement by the owner of the crew

will give them a right to wages and entitlements, accommodation on board and the right to sustenance, those rights are not enforceable against the Sheriff/ Marshal. However, the Sheriff/ Marshal may, if the Sheriff/ Marshal considers it is necessary to the safety of the ship or to preserve it, pay wages and provide accommodation and sustenance to the crew on board for such time following arrest of the ship as the Sheriff/ Marshal considers is necessary. With leave of the court the Sheriff/ Marshal may also provide minimal sustenance in order to avoid hardship to the crew.

The presence of the crew on board is justifiable only for so long as it does not interfere with the ship or the Sheriff/ Marshals custody of it and does not increase the Sheriff/ Marshals costs of maintaining custody of the ship and preserving it. For example, if a ship can conveniently be laid up as a dead ship pending trial or the provision of security, a crew will not be permitted to remain on board where that would involve unnecessary expense in providing power or access to the ship to enable the crew to live on board.

What happens if the crew refuse to leave or prevent the Sheriff/ Marshal from laying up the ship if that is the appropriate course to follow in the circumstances? Such conduct is prima facie contempt of court for interfering with the Sheriff/Marshals custody of the ship. However, the cases do not suggest that crew members are lightly dealt with for contempt.

A refusal by the master or crew to leave a ship is not uncommon. This is particularly so when a ship needs to be moved within the port or to another port or where the ship is to be sold *pendente lite*. In both cases, there is an attempt to force the Sheriff/ Marshal or some other party to pay the outstanding claims for the master and crew and their costs of repatriation. In the case of a sale *pendente lite*, there is often

the hope that a purchaser will re-engage the crew and thus will provide them with continuity of employment. How the issue of an obdurate crew is resolved can have significant consequences upon the fund ultimately available to satisfy the plaintiffs costs and claim and the claims of others against the ship.

37. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Order could be obtained within 24-48 hours (excluding Public Holidays) on receipt of all the documents/papers including a Power of Attorney. The Power of Attorney has to be executed in favour of any person in India who is not the lawyer dealing with the subject matter. The order of arrest could also be obtained even if the Court is not working.

38. Is counter security required from the arresting party?

No, but an undertaking should be filed along with the Plaint to pay damages if the vessel is wrongly arrested.

39. Will the Court accept a Club LOU to release a vessel under arrest?

No, the court normally accepts either cash deposits, bank guarantee as security for release of the vessel.

40. Can Charterers' bunkers on board a third-party's vessel be arrested or attached to secure or enforce a claim against Charterers?

Yes, assuming Charterer's ownership of the bunkers can be clearly shown, the Charterers' bunkers on board a third-party's vessel can be attached to secure a claim against the said Charterer but there is no precedence in India till date.

41. Can arbitrator pass an interim or final award arresting a ship as security in arbitration?

No, Arrest of a ship can only be effected by a Court Order, a ship may only be arrested under the authority of a court. Arrests cannot be ordered by an arbitration tribunal. Also, arrests should not be confused with restrictions, seizures or detentions imposed by administrative authorities, such as Port, Customs or other authorities, for violations of certain rules concerning, for example, safety issues, cargo stowage, accommodation and transport of passengers, load lines, seaworthiness certificates, or marine pollution.

The court's decision ordering the arrest of a ship is not a "judgment" in the correct legal sense of the term. The term "judgment" implies a full and absolute determination of the matter in dispute following a complete examination and evaluation of the evidence adduced.

ABOUT THE AUTHORS

Shrikant Pareshnath Hathi (Dr)
BCom, LL.B., LL.M., Solicitor (India & United Kingdom), Ph.D
Advocate Bombay High Court
Solicitor, Bombay Incorporated Law Society (Practising)
Advocate, Supreme Court of India
Advocate on Record, Supreme Court of India
Solicitor, England and Wales (Practising)

EMAIL : shrikant@brus.in
MOBILE : +91-9769946865
MOBILE : +91 976 9946866

OFFICE : Mumbai, INDIA
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- + Shipping Arbitration

For over two decades, Dr. Shrikant Hathi has maintained an eminent stature in India's legal landscape, particularly within shipping law and international arbitration, and has been consistently recognized as one of the finest strategists in the field. His unparalleled expertise in admiralty and maritime law, complemented by his comprehensive experience in project work spanning infrastructure, energy, oil and gas, mining, and construction, makes him a preeminent advisor to both domestic and international clients. Honored as a Hall of Fame member by Legal500 for the past seven consecutive years and recognized by Euromoney Expert Guides and Who's Who Worldlawyers since 2005 as one of the World's Leading Lawyers in Shipping, Maritime, Energy, and Natural Resource sectors, Dr. Hathi's legal acumen is widely acknowledged among his peers and clientele alike.

Dr. Hathi's profound experience covers all facets of admiralty and shipping law, with an acute focus on both wet and dry shipping matters. His capability to seamlessly handle complex shipping arbitrations and commercial litigations has earned him accolades for his adeptness in dispute resolution. Dr. Hathi represents a wide array of stakeholders, including vessel owners, charterers, cargo owners, financial institutions, P&I clubs, and international banks. In his arbitration practice, he leverages his strategic insight to navigate and resolve intricate shipping disputes across multiple jurisdictions, specializing in complex contractual, financial, and operational maritime issues. His

reputation as a problem-solver is cemented by his consistent success in high-stakes cases involving ship arrests, vessel casualties, and cross-border arbitration proceedings.

A substantial portion of Dr. Hathi's practice is devoted to maritime claims, such as ship arrests and various types of admiralty disputes. His in-depth knowledge in admiralty litigation allows him to advise on a comprehensive range of disputes—spanning from casualties, collisions, and cargo claims to charter party issues, jurisdictional conflicts, and the carriage of goods. As a prominent figure in ship finance, he also handles ship sale and purchase transactions, financing, and registration procedures with exceptional proficiency. His transactional capabilities are further evidenced by his adeptness in drafting and negotiating contracts, whether for the sale and purchase of vessels, ship construction agreements, or standard terms of trade for commodity transactions.

In addition to his extensive maritime practice, Dr. Hathi is also widely respected for his work in energy and infrastructure projects. He advises major players in the upstream oil and gas sector, covering exploration, production, and regulatory compliance. His project portfolio spans key infrastructure initiatives in energy and mining, where he provides guidance on bidding, negotiations, and contract execution, ensuring that his clients' interests are safeguarded at every phase. His legal insights and foresight have positioned him as a pivotal advisor in India's project development space, particularly for ventures with substantial regulatory, financial, and environmental considerations.

As a thought leader and author, Dr. Hathi has co-authored significant legal texts, including *Maritime Practice in India* and *Ship Arrest in India and Admiralty Laws of India*, both serving as crucial resources for legal practitioners and maritime professionals globally. These works, available at maritimepractice.com and admiraltypractice.com, underscore his authority in the field and his commitment to advancing maritime legal scholarship.

In the realm of shipping litigation, Dr. Hathi's expertise extends to disputes involving unpaid dues, limitation of liability claims, liens, bill of lading issues, freight forwarder liabilities, insurance and reinsurance claims, and multimodal transport conflicts. His comprehensive approach to litigation involves crafting meticulous legal strategies that account for all angles of maritime and shipping law, ensuring his clients' interests are robustly defended. His knowledge of international trade is evident in his advice on financing through letters of credit, bills of exchange, and similar instruments, where he provides critical insight into the trade of commodities and negotiates terms of contracts that are favorable to his clients.

Dr. Shrikant Hathi is a leading authority in admiralty and shipping law, with a distinctive capability in shipping arbitration and an unmatched reputation in

the industry. His prowess in handling both contentious and non-contentious matters in maritime, infrastructure, and energy sectors makes him a sought-after advisor for complex legal matters, cementing his standing as a top-tier legal strategist in India and beyond. His work exemplifies a rare combination of technical expertise, strategic acumen, and an unwavering commitment to his clients' success in the global maritime and project development arenas.

Career & Education

LL.B from Government Law College, Mumbai;

LL.M from Government Law College, Mumbai;

Admitted as Advocate with the Bar Council of Maharashtra & Goa (1992);

Admitted as Solicitor with the Bombay Incorporated Law Society, (2002);

Admitted as Advocate on Record (AOR) with the Supreme Court of India (2004);

Admitted as Solicitor with the Solicitors Regulation Authority, United Kingdom (2010);

Advocate Bombay High Court and Supreme Court of India;

Solicitor, England and Wales (Practising);

Graduated in Doctorate Program with major in Law Enforcement

Successfully completed solicitors examination through Oxford Institute of Legal Practice (OXILP) (Oxford University and Oxford Brookes University) and is enrolled with the Solicitors Regulation Authority (SRA), United Kingdom as a solicitor. Since he is practicing law in India, he is a non-practicing solicitor in United Kingdom.

Successfully completed 'Justice & Contract', a course of study offered by Harvard University under the guidance of Prof. Michael J. Sandel, Professor of Government at Harvard University, where he teaches political philosophy and under the guidance of Prof. Charles Fried, the Beneficial Professor of Law at Harvard University since 1961. He was Solicitor General of the United States and an Associate Justice of the Supreme Judicial Court of Massachusetts, respectively.

Successfully completed 'The Arbitration of International Disputes and Courts & Tribunals in the Hague', a course of study offered by Leiden University, Netherlands under the guidance of Prof Dr. Eric De Brabandere and Prof. Dr. Giulia Pinzauti. and by Prof. Larissa van den Herik; Prof Cecily Rose and Prof. Yannick Radi, respectively.

Successfully completed 'Globalisation', a course of study offered by University of Texas at Austin under the guidance of Dr. John Hoberman, he is a Professor of Germanic languages within the Department of Germanic Studies at the University of Texas at Austin, he has taught courses on sport and politics at Harvard University and at the University of Chicago.

Successfully completed 'Energy Subsidy Reform' a course conducted by International Monetary Fund under the guidance of Dr. Nooman Rebei (Economist at IMF's Institute for Capacity Development); Dr Samah Mazraani (Economist at IMF); Dr. Kangni Roland Kpodar (Economist in the IMF); Dr. Luc Moers (Economist at IMF) and Dr. Masahiro Nozaki (Economist at IMF).

Article ship for Solicitor with Little & Co, Solicitors;
Solicitor Assistant with Little & Co, Solicitors;
Partner with Brus Chambers, Solicitors;

Co-author of the book 'Ship Arrest in India and Admiralty Laws of India';
Co-author of the book 'Upstream exploration of Oil';
Co-author of the book 'Doing business in India';

Languages

English, Hindi, Marathi, Bengali and French.

Member

Admitted as Advocate with the Bar Council of Maharashtra & Goa;
Admitted as Solicitor with the Bombay Incorporated Law Society,;
Admitted as Advocate on Record (AOR) with the Supreme Court of India;
Admitted as Solicitor with the Solicitors Regulation Authority, United Kingdom.

Professional Achievements

2023/24: Ranked by Legal500 in Hall of Fame and as Leading Individual for shipping work in India

2023/24: Ranked as Best Shipping lawyer in India by Who's Who Worldlawyers

2023/24: President of Shippinglawyers.NET

2023/24: Ranked by Euromoney Expert Guides as World Leading Lawyer for oil and natural resources

2023/24: Ranked by Euromoney Expert Guides as World Leading Lawyer for shipping and maritime

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2005/06: Recommended by Shippinglawyers.NET for shipping work
2005/06: Ranked by Euromoney Expert Guides as World Leading Lawyer for shipping and maritime
2005/06: Ranked by Euromoney Expert Guides as World Leading Lawyer for oil and natural resources

Shrikant Hathi is Honored in the Hall of Fame by Legal 500 for shipping work in India since 2017

Shrikant Hathi is listed in the elite "Leading lawyers" list as "Leading Individual", by Legal 500 for shipping work in India since 2004

Shrikant Hathi is 'smart, quick, and delivers outstanding results'
- Legal500

Shrikant Hathi 'stand-out' for shipping work
- Legal500

Shrikant Hathi 'best of the best' for shipping work
- Shippinglawyers.NET

Shrikant Hathi- Leading Shipping & Maritime Lawyer in India
- Asia Law Profiles

Shrikant Hathi- World's Leading Lawyer (Shipping & Maritime) since 2004
- Euromoney Expert Guides

Shrikant Hathi- World's Leading Lawyer (International Trade and Shipping-
Shipping & Maritime)
- Euromoney Expert Guides

Shrikant Hathi- World's Leading Lawyer (Emerging Market Practitioner-
Shipping & Maritime)
- Euromoney Expert Guides

Shrikant Hathi- World's Leading Lawyer (Energy & Natural Resources
Lawyers)
- Euromoney Expert Guides

Shrikant Hathi- Leading Energy & Natural Resources Lawyer in India
- Asia Law Profiles

Shrikant Hathi- World's Leading Lawyer (Energy & Natural Resources) since
2007
- Euromoney Expert Guides

Shrikant Hathi is strong in shipping with clarity of mind and professional
expertise
- Lloyds List

Brus Chambers, Advocates & Solicitors has been recommended as a 'Top
Tier Law Firm' in Shipping practice area by Legal500 since 2010

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'pragmatic, resourceful and professional team.'
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'solid shipping practice'
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'..is a dominant force within Indian admiralty, maritime and shipping market'
-The Asia Pacific Legal 500

'..has distinguished strengths in shipping claims'
-The Asia Pacific Legal 500

'..the firm has a dedicated shipping practice that covers disputes, transactional matters and finance'
-The Asia Pacific Legal 500

'..is widely respected for its wet and dry shipping expertise'
-The Asia Pacific Legal 500

'extremely good for shipping work'
-The Asia Pacific Legal 500

'Shrikant Hathi gives effective assistance to shipping industry'
-Trade Winds

Binita Shrikant Hathi (Ms)
BCom, LL.B., LL.M., Solicitor (India)
Advocate Bombay High Court
Solicitor, Bombay Incorporated Law Society
Advocate, Supreme Court of India
Advocate on Record, Supreme Court of India

EMAIL : binita@bruschambers.com
MOBILE : +91 976 9946864

OFFICE : Mumbai, INDIA
PRACTISING SINCE 1994

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+ Projects and Infrastructure
+ Insurance and P & I Clubs

Binita Hathi practices shipping law, specialising in dispute resolution, marine insurance, shipping and admiralty, has extensive experience in resolving international and domestic client disputes through litigation and arbitration and is also known for negotiating amicable settlement between parties and contractual skills for projects on ports, dredging and shipping. She has 'sound knowledge' and offers 'practical solutions' to clients, and has notable expertise in commercial-related litigation and arbitration matters, the latter being a major focus, and is praised for her multi jurisdictional reach. Her strength in shipping, projects, and commercial dispute are leveraged in settling-related disputes. She excels in admiralty ship arrest and other shipping work.

Binita Hathi heads dispute resolution practice, has extensive experience in resolving international and domestic client disputes through litigation and arbitration and is also known for negotiating amicable settlement between the parties, enforcing foreign arbitral awards, enforcement of foreign court judgment and decree. She is also known for her contractual skills for projects on ports, dredging, shipping, oil, gas, infrastructure, construction and energy.

International Arbitration and Disputes has always been her forte, analysing the dispute, understanding the strong and weak points in the dispute, strategising the dispute. She masters all procedural techniques used in international arbitration in combination with her legal analytical mind on law and the procedure. She is street smart does her best to achieve results for client.

International arbitration, ad-hoc or institutional with seat in India or overseas are represented by Brus Chambers on behalf of their client.

She has acted in several institutional international arbitrations under the rules of the International Chamber of Commerce (ICC), UNCITRAL, London Court of International Arbitration, Stockholm Chamber of Commerce, American Arbitration Association (AAA), ICSID, UNCITRAL, SCC, DIAC, SIAC, CICA, PCA, CIArb, AFA, OHADA (CCJA), ICJ and ad hoc cases. Brus Chambers specialisation in arbitration has led to close relationships with arbitration specialists in other countries when the law or procedure of some other jurisdiction becomes pertinent. For all these reasons, Brus Chambers has been frequently engaged to handle all aspects of complex international disputes or to serve as lead or co-counsel in international arbitration proceedings, where seat of arbitration is in India or outside India. Brus Chambers attorneys are well versed in the many different ADR areas. Thus, the firm can respond quickly and effectively to client needs in complex and foreign business disputes. Very often, just knowing the array of choices may shorten the time and energy required to bring the matter to an early resolution.

She is co-author of the book International Arbitration, Maritime Practice in India and Ship Arrest in India and Admiralty Laws of India. Binita Hathi has

sound knowledge and offers practical solutions to clients and has notable expertise in commercial related litigation and arbitration matters. She is praised for her multi-jurisdictional reach.

Career & Education

LL.B from Government Law College, Mumbai;
LL.M from Government Law College, Mumbai;
Admitted as Advocate with the Bar Council of Maharashtra & Goa;
Admitted as Solicitor with the Bombay Incorporated Law Society;
Admitted as Advocate on Record (AOR) with the Supreme Court of India;
Advocate Bombay High Court and Supreme Court of India;

Legal assistant Desai & Dewanji,
Advocate Assistant at Hariani & Co,
Advocate Assistant at Bhatt & Saldanha,
Solicitor Assistant at Mulla & Mulla, Craigie, Blunt & Caroe (1994-98).
Partner with Brus Chambers, Solicitors;

Co-author of the book International Arbitration;
Co-author of the book Ship Arrest in India and Admiralty Laws of India;
Co-author of the book Maritime Practice in India;

Successfully completed Justice, a course of study offered by Harvard University under the guidance of Prof. Michael J. Sandel, Professor of Government at Harvard University, where he teaches political philosophy.

Languages

English, Hindi, Marathi and Bengali.

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Brus Chambers, is praised for its prompt responses, knowledge, efficiency, understanding of the industry, application of law, and innovative ideas used at the right time and place. Binita Hathi is the key name

- Legal500

'Stands-out for litigation and arbitration'

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'First class for International arbitration'

- Shippinglawyers.NET

'track record to negotiate and settle cases out of court'

-Economic Times

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'processed enforcement of foreign arbitral award in India promptly'

-KEV Shipping