

SHIP ARREST IN INDIA

By V. K. Ramabhadran, Senior Advocate*
admlaw@vsnl.com
902, Dalamal Tower, Free Press Journal Marg,
Nariman Point, Mumbai-400 02, India
Tel: +91 22 2282 6575
(D): +91 40026575



1. Please give an overview of ship arrest practice in your country.

(i) The High Courts of Bombay, Calcutta, Hyderabad, Karnataka, Kerala, Madras, Orissa and Telangana exercise Admiralty jurisdiction under The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2016. The statute has codified the heads of maritime claims for which a ship could be arrested.

(ii) Application for arrest of a ship is made ex-parte, unless Caveat is filed against a arrest. If the Court is prima facie satisfied, ship would be ordered to be arrested and generally the quantum of security would be based on the best arguable case of the Claimant.

(iii) The ship would be released from arrest provided security in the form of a Bank Guarantee or cash deposit is made with the Registry. Ship could also be released from arrest if on an application made on behalf of the ship; the Court holds that the arrest is not maintainable.

(iv) If security is not furnished, the High Court is empowered to auction the vessel within 45 days from the date of the arrest. If the sale proceeds are insufficient to satisfy claim of the all Claimants, the Court would decide the priority as laid down in The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2016.

2. Which International Convention applies to arrest of ships in your country?

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2016 codifies maritime claim and maritime lien under which ships could be arrested.

3. Is there any other way to arrest a ship in your jurisdiction?

Claimant could seek arrest of a ship in execution of decree passed by any Superior Court of any reciprocating territory of a foreign country against the Owner of the ship; subject however the original claim was a maritime claim.

4. Are these alternatives e. g. saisie conservatoire or freezing order?

There is no separate freezing order other than arrest of a ship.

5. For which types of claims can you arrest a ship?

A ship could be arrested for the following claims:

- a. Dispute regarding the possession or ownership of a vessel or the ownership of any share therein;.
- b. Dispute between the co-owners of a vessel as to the employment or earnings of the vessel;
- c. Mortgage or a charge of the same nature on a vessel;
- d. Loss or damage caused by the operation of a vessel;
- e. Loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of vessel;
- f. Loss or damage to or in connection with any goods;
- g. Agreement relating to the carriage of goods or passengers on board a vessel; whether contained in a charter party or otherwise;.
- h. Agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;.
- i. Salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;
- j. Towage;
- k. Pilotage;

- l. 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;
- m) Construction, reconstruction, repair, converting or equipping of the vessel;
- n) Dues in connection with any port, harbor, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;
- o) Claim by a Master of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew management relating to a vessel, notwithstanding anything contained in the provisions of section 150 and 151 of the Merchant Shipping Act, 1958;
- p) Disbursements incurred on behalf of the vessel or its owners;
- q) Particular average or general average;
- r) Dispute arising out of a contract for the sale of the vessel;
- s) Insurance premium (including mutual insurance calls) in respect of the vessel payable by or on behalf of the vessel owners or demise charterer;
- t) Commission, brokerage or agency fees payable in respect of the vessel by or in behalf of the vessel owner or demise charterer;
- u) Damage or threat of damage caused by the vessel to the environment, coastline or related interests, measures taken to prevent, minimize or remove such damage, compensation for such damage, costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken, loss incurred or likely to be incurred by third parties in connection with such damage, or any other damage, costs, or loss of a similar nature to those identified in this clause;
- v) Costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew;
- (w) Maritime lien.

6. Can you arrest a ship irrespective of her flag?

Yes.

7. Can you arrest a ship irrespective of the debtor?

As long as the maritime claim arises from commercial dealings between the parties, the ship could be arrested even if it belongs to the Government or a Foreign State.

8. What is the position as regards sister ships and ships in associated ownership?

A sister ship, that is any ship of the same owner, could be arrested. Ships in associated ownership cannot be arrested.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Bareboat chartered vessel could be arrested if the Court has reason to believe that the bareboat charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the bareboat charterer or the owner of the vessel when the arrest is effected. Similarly if the Claimant asserts maritime claim against registered owner or the demise charterer, the vessel could be arrested even if it is on time charter.

10. Do your Courts require counter-security in order to arrest a ship?

The High Court may, as a condition of the arrest of a ship or for permitting an arrest already effected to be maintained, impose upon the Claimant an obligation to provide an unconditional undertaking to pay such sums of money as damages or such security of a kind for an amount and upon such terms as may be determined by the High Court, for any loss or damage which may be incurred by the defendant as a result of arrest.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Yes. Maritime lien continues to exist on the vessel notwithstanding any change of ownership or of registration or of flag.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. It is codified under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2016. Maritime lien means a maritime claim against the Owner, Demise charterer, Manager or Operator of the vessel in respect of any of the following claims:

- 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.

Maritime lien shall extinguish after expiry of a period of one year unless prior to expiry, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court. However, in regard to claim for wages including costs of repatriation and social insurance contribution, the period shall be two years from the date on which wage or sum, cost of repatriation or social insurance contribution fell due or became payable.

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

Upon receipt of all documents (which includes the agreement/contract, all correspondence, invoices, etc.), the draft of the proposed Complaint to be filed would be sent by e-mail within 24 hours. The Complaint has to be signed and verified by the person who is personally acquainted with the facts of the case which needs to be attested before the Indian Consulate or Embassy.

14. Do you need to provide a POA or any other documents of the claim to the Court?

POA, Complaint, all documents in support of the claim, affidavit in support of the arrest and affidavit of undertaking to pay damages, have to be filed in the Court.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

POA in original, Complaint and all original documents in support of the claim or photocopies (if originals are not in the possession of the clients) would have to be filed in the Court. Along with the Complaint a list of all documents and photocopies of all documents irrespective of whether the same is in support of or adverse to the Claimants case would also have to be filed.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Once the Court orders the arrest of a ship, it retains jurisdiction to adjudicate the substantive claim unless the order of arrest itself is vacated upon the Court being satisfied on an application made on behalf of the owner of the ship that the arrest is not maintainable. The Court would stay the suit if there exists a valid arbitration agreement between the parties in which event the security may or may not be retained.

17. What is the procedure to release a ship from arrest?

Security in the form of Bank Guarantee or cash deposit needs to be made and the order for release from the Court needs to be obtained thereafter. The original order of the Court releasing the ship needs to be served upon the Port and Customs authorities.

18. What type of security needs to be placed for the release?

Bank Guarantee or Pay Order issued by a nationalized bank in favour of the Registry or cash deposit.

19. Does security need to cover interest and costs?

Yes, if the order so directs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are not accepted unless consented by the Claimants.

21. How long does it take to release the ship?

Once security is furnished, an order for release of the ship could be obtained during Court working hours.

22. Is there a procedure to contest the arrest?

An order of arrest could be contested by filing a written application supported by an affidavit stating the grounds for such contest.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

It could take anywhere between two to four years to adjudicate a dispute on its merits.

24. Do the Courts of your country acknowledge wrongful arrest?

Yes. If arrest is held to be wrongful or it is found Claimant has obtained excessive security and the same has been provided, in such an event, Claimant would be held liable for damages.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes. In order to pierce corporate veil, one needs to establish that the shipowner has created multiple entities for the sole purpose of avoiding legal liabilities.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

If the Owner or a Bareboat charterer abandons the vessel after its arrest the High Court is empowered to auction the vessel within the period of 45 days from the date of arrest or abandonment. The High Court however, for reasons to be recorded in writing extend the period of auction of the vessel for a further period of 30 days. However, the period could take longer if either the order of the arrest or the order of sale is contested before the same Court or the Appellate Court.

***V. K. Ramabhadran** is a designated Senior Advocate (equivalent of Q.C. in UK) by the High Court of Bombay. He has been practicing in Maritime and Commercial law since 1983. He has successfully handled noteworthy Admiralty and Commercial cases and many of which have been reported in the well known Law Reports. His paper on "Law of Arbitration in India" was published in the International Trade Law Quarterly. As a legal consultant appointed by the International Maritime Organization (IMO), he submitted a comprehensive report to IMO suggesting legal frame work to implement the Convention on Ballast Water in India. He has presented papers on Arbitration and Maritime matters in the Seminars conducted by Shiparrested.com.