

SHIP ARREST IN INDIA



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

(i) The Admiralty jurisdiction is exercised by the Coastal States in India under the Colonial Courts of Admiralty (India) Act, 1891. There is no domestic legislation touching the subject of maritime claim in India and therefore the Supreme Court of India in the case of *m. v. Elizabeth*(1) and in the case of *m. v. Sea Success*(2) held that Arrest Convention, 1952 as well as Arrest Convention, 1999 could be looked into for the purpose of ascertaining whether a particular claim is a maritime claim for the purpose of arresting a ship.

(ii) Application seeking arrest of the ship is generally made ex-parte. 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"(3). The ship would be released provided the amount towards security is either deposited in the Registry or Bank Guarantee is furnished.

(iii) If the security is not furnished the Claimant is entitled to take steps to sell the ship. The Court would order sale of the vessel through public action after the ship is valued by a professional surveyor. Once the ship is sold, the sale proceeds are deposited in Court. If the sale proceeds are insufficient to satisfy the claim of all Claimants, the Court would decide the priorities in which the sale proceeds would be distributed. The statutory dues would have the first priority followed by wages of the crew and Master, salvage, mortgage and all other claims would thereafter rank *pari passu*.

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

International Convention relating to Arrest of Seagoing Ships, 1952, and International Convention of Arrest of Ships, 1999 would be considered by the Admiralty Courts for the purpose of granting arrest of a ship in respect of a maritime claim.

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

Ship could also be arrested, by the Claimant in execution of decree passed by any High Court in India or that of any Superior Court of any reciprocating territory of a foreign country against the Owner of the ship.

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

There is no separate freezing order other than arrest of a ship in an Admiralty proceeding or in an execution proceeding to enforce a decree obtained in India or a decree obtained from a Superior Court of foreign country of reciprocating territory.

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

A ship could be arrested for the following claims:

- Loss or damage caused by the operation of the ship.
- Loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship.
- Any claim towards salvage.
- Damage or threat of damage caused by the ship to the environment, coastline, measures taken to prevent, minimize, or remove such damage including compensation for such damage.
- Costs or expenses relating to the raising, removal, recovery, destruction of a ship which is sunk,

(1) *m.v.Elizabeth & Ors. v/s. Harwan Investment and Trading Pvt. Ltd.* 1993 Supp (2) SC433

(2) *Liverpool & London S. P & I Association Ltd. v/s. m. v. Sea Success* JT 2003 [(9) SC 218

(3) *Videsh Sanchar Nigam Ltd. v/s. m. v. Kapitan Kud* (1996) 7 SCC 127

wrecked, stranded or abandoned.

f. Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise.

g. Any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise.

h. Loss or damage to or in connection with goods (including luggage) carried on board the ship.

i. General Average

j. Towage

k. Pilotage

l. Goods or materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance.

m. Construction, reconstruction, repair, converting or equipping of the ship,

n. Port, canal, dock, harbour and other waterway dues and charges.

o. Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf.

p. Disbursements incurred on behalf of the ship or its owners.

q. Insurance premiums (including mutual insurance calls) in respect of the ship payable by or on behalf of the shipowner or demise charterer.

r. Any commissions, brokerage or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer.

s. Any dispute as to ownership or possession of the ship

t. Any dispute between co-owners of the ship as to the employment or earnings of the ship.

u. A mortgage or a "*hypothèque*" or a charge of the same nature on the ship.

v. Any dispute arising out of a contract for the sale of the ship.

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

Ship could be arrested irrespective of any flag.

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

As long as the claim arises or founded on a purely contractual and commercial dealings between the parties, even if the ship belongs to Government or a Foreign State the ship would be arrested.

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

A sister ship i. e. any ship of the same owner could be arrested. However, if the ownership of two ships are owned by two independent companies even if shareholders and ultimate owners are the same; the maritime claim against one ship would not entitle the Claimant to arrest the other ship which is owned by an independent company.

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

If the ship is on bareboat charter and if the Claimant asserts maritime claim against the disponent owner, the ship could be arrested nevertheless to enforce the maritime claim. So also if the Claimant asserts maritime claim against the registered owner, ship could be arrested even if it is on time charter.

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

Countersecurity is not required to be furnished at the time when the Court orders the arrest of a ship. However, when an application is filed by the ship owner claiming that the arrest is wrongful and malafide and that the owner is in a position to establish *prime facie* that as a result of the order of arrest the owner has suffered monetary loss the Court may direct the Claimant to furnish countersecurity as the Court may deem fit and proper.

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

The Supreme Court of India has held that the maritime lien extends only to the following five heads of claim. They are:

a. Damage done by a ship

b. Salvage

- c. Seamen's wages
- d. Master's wages and disbursements
- e. Bottomary and Respondentia

If the Claimant's claim is a maritime lien, the claim survives notwithstanding the change in ownership of a ship. If the claim is a maritime claim and not a maritime lien the ship cannot be arrested if at the time of execution of the arrest the ownership of the ship has changed.

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

There is no domestic statute dealing with the concept of maritime lien. However, only those claims mentioned hereinabove have been recognized judicially.

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

Order of arrest of a ship could be obtained within 24 hours on receipt of all documents in support of the maritime claim including a Power of Attorney in favour of any person in India who is not a lawyer dealing with the subject matter and such Power of Attorney has to be executed by the client and the same has to be either notarized or attested before the Indian Consulate.

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

Original Power of Attorney duly executed by the clients would be required and the same has to be either notarized or attested before the Indian Consulate.

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

Original Power of Attorney duly executed by the clients which has to be either notarized or attested before the Indian Consulate. All documents either in original or in photocopies in support of the maritime claim including exchange of correspondence if any between the parties. Original documents would be required at the time of trial or if so ordered by the Court at the earlier stage itself. Court Fees is required to be paid based on the value of the claim at the time of filing of the Admiralty suit.

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

Once the Court orders 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 Admiralty Court shall also vacate the order of arrest in case the agreement under which the dispute arose provides for reference of disputes to Arbitration in a foreign country. The Court in such a case may or may not retain the security furnished by the owners of the ship.

17. Which 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 the disputes on merits.

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

The Courts do acknowledge the concept of wrongful arrest. However, in order to claim damages for wrongful arrest the ship owner must establish malice and willful conduct on the part of the Claimants in seeking arrest of the ship.

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

The Court does acknowledge the principles of piercing and lifting of the corporate veil. In order to obtain arrest by piercing the corporate veil, one needs to establish that it is a deliberate attempt on the part of the ship owner to create different entities to avoid legal liabilities. If independent legal entities have been established in the normal course of business the Court would be reluctant to pierce the corporate veil for the purpose of issuing an order or arrest.

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

Ship can be sold *pendente lite*. The process of sale could be completed within 6 to 9 months from

the date of the order of arrest. It could take longer period if any aggrieved party challenges either the order of arrest or the order of sale before the same Court or before the superior Court.



** V. K. Ramabhadran has been practicing in Maritime and Commercial law in the High Court of Bombay since the year 1983. Over a period of these years he has successfully handled many noteworthy Admiralty and Commercial cases. He was exclusive Correspondent in India for a Law Magazine titled "International Trade Law Quarterly" published by Lloyds of London. His paper on "Law of Arbitration in India" was published in International Trade Law Quarterly. He was appointed as the Legal Consultant by the Global Ballast Project under the aegis of International Maritime Organization (IMO) for suggesting legal frame work to implement the Convention of Ballast Water. He has submitted a comprehensive Report to International Maritime Organization on the existing frame work of India specially with reference to pollution caused by the discharge of ballast water at sea. He has presented papers on Arbitration and Maritime matters in the seminars conducted by Shiparrested.com.*