

SHIP ARREST IN *BANGLADESH*

By A.B.M. Shamsud Doulah*

Doulah & Doulah

info@doulah.com

www.doulah.net

Plot 153/2, Road 2/2, Mirpur-12A,

Dhaka, Bangladesh

T: +88 01911482175

F: +88 028016442



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

Arrest of ships in Bangladesh is regulated by the Bangladesh Admiralty Court Act, 2000 (BACA) and the Bangladesh Admiralty Rules, 1912 (BAR). As per BACA the Admiralty Court of Bangladesh (COURT) has been established as an original jurisdiction of the High Court Division of the Supreme Court of Bangladesh.

The BACA allows arrest of ships against in rem claims and also against certain in personam claims under specific circumstances. To arrest a ship, an arrest petition is required to be filed with the COURT under affidavit from the petitioner. Upon admission of the admiralty suit the COURT tries the admiralty suit as per the procedure laid under the Bangladesh Code of Civil Procedure. If there is no existing caveat filed against the arrest of the ship, the COURT may upon hearing the petitioner (ex-parte hearing also allowed) order for the arrest of the ship if it is prima facie satisfied that arrest of the ship is essential to preserve the subject matter and/or secure the claim of the petitioner. In case of a preexisting caveat, the COURT gives a time bound opportunity to the defendant to contest the arrest application but in any case may order for the arrest if it deems it appropriate and essential.

Upon order of arrest, the ship is required to be served with the arrest order with the cooperation of the relevant port marshal. The ship is required to be kept under arrest until the adjudication of the claim. However, the ship may be released from arrest against a security in the form of a Bank guarantee or cash deposit is made with the COURT Registry to secure the claim of the claimant.

After hearing the parties and adjudication of the suit, any sum payable ordered in favour of the claimant may be realized by way of auctioning the ship as per BAR or from the security deposited by the defendant. Otherwise the ship or security is released if the COURT holds that the claim is not maintainable. Appeal lies with the appellate division of the Supreme Court of Bangladesh and is required to be filed within thirty days from the date of issuance of the adjudication judgment.

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

Bangladesh is not a signatory to any International Convention such as International Convention relating to Arrest of Seagoing Ship 1952 or the International Convention of the Arrest of Ships 1999 that applies to arrest of ships in Bangladesh.

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

Other than through application of COURT a ship may also be arrested in execution of decree passed by any Superior Court of any reciprocating territory (currently England and India) of a foreign country against the owner of the ship. Other than ships under voyage and/or in territorial jurisdiction of ports ships being assets are also subject to foreclosure, attachment and confiscation under CPC under generic enforcement claims or injunctive reliefs against its owners residents in Bangladesh.

Several other authorities also possess the power to detain ships pertaining to non-compliance to operational regulations and non-payment of fees. Examples include port authorities for unpaid fees or disturbance within port area, customs authorities, Mercantile Marine Department under Merchant Shipping Ordinance, 1983 (MSO) and so on.

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

Except the above there is no other alternative to arrest a ship.

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

As per BACA the COURT has the power to order for arrest of a ship on the following grounds:

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein or for recovery of documents of title and ownership of a ship, including registration certificate, log book and such certificates as may be necessary for the operation or navigation of the ship;
- (b) any question arising between the co-owners of a ship as to possession, employment or income of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage done by a ship;
- (e) any claim for damage received by a ship;
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterer or persons in possession or control of a ship or of the master or crew thereof or any other persons for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (i) any claim in the nature of salvage of life from a ship or cargo or any property on board a ship or the ship itself or its apparel, whether services were rendered on the high sea or within territorial waters or inland waters or in a port, including any claim arising by virtue of the application by or under section 12 of the Civil Aviation Ordinance, 1960 of the law relation to salvage to aircraft and their apparel and cargo;
- (j) any claim in respect of towage of a ship or an aircraft;
- (k) any claim in respect of pilotage of a ship or an aircraft;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (m) any claim in respect of construction, repair or equipment of a ship or dock charges or dues;
- (n) any claim for wages by a master or member of the crew of a ship or any claim for any money or property recoverable as wages of master or member of the crew under the MSO, or in the Court;
- (o) any claim for disbursements made on account of or for the purpose of a ship by the Master, shipper, charterer or agent of the ship;
- (p) any claim arising out of an act which is or is claimed to be a general average act;
- (q) any claim arising out of bottomry or respondentia;
- (r) any claim for forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty together with any other jurisdiction to grant reliefs as are provided under the provisions of MSO and any other jurisdiction as to any matter in connection with ships or aircraft which has by custom been exercised by the High Court Division as a court of admiralty.

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

A ship can be arrested irrespective of her flag.

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

As long as the admiralty / 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?

Claims (d) to (q) as referred to in question 5 above is regarded as claims in personam which is recoverable from the owner (defendant) of the subject ship and such claim is also recoverable by action in rem against any other ship on which such defendant has any beneficial ownership interest. This restriction is not applicable in case of maritime liens which are recoverable as claim in rem anyway attached to the subject ship.

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

Bareboat vessels are not treated separately. For time-chartered vessel, in personam claims as referred to in 8 above cannot be exercised in rem against the ship unless such defendant has any beneficial ownership interest over such ship.

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

A counter security to arrest a ship is not a mandatory or essential requirement. As per CPC where, at any stage of the suit, it appears to the Court that the plaintiffs are residing out of Bangladesh, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within Bangladesh other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

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

Maritime lien is exercisable as in rem claim and continues to exist on the vessel notwithstanding any change of ownership or of registration or of flag. Maritime claim is in fact in personam claim which is exercisable in rem against ships which are fully or partially owned by the defendant.

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

Bangladesh does not recognize any maritime lien under any International Convention. It has its own stricti juris definition under MSO which includes to the Seaman's wages and the Master's wages respectively. In addition, there are certain authority liens granted on ships for unpaid dues / fees under authority statutes such as The Chittagong Port Authority Ordinance, 1976.

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 along with power of attorney, two workdays are required to obtain an arrest order.

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

A POA from the claimant is required to obtain an arrest order. For initial admission of suit and procurement of arrest order the executed POA shall be sufficient. However, thereafter the POA duly notarized and consulate legalization by Bangladesh Embassy is required to be stamped, verified by the Ministry of Foreign Affairs and then lodged with 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, approved plaint and all original documents in support of the claim or photocopies duly notarized (if originals are not in the possession of the clients) would have to be filed in the Court. Along with the Plaint, 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 or any security filed in pursuance thereof 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. In case of a valid arbitration agreement between the parties the Court may maintain the arrest order to preserve the subject matter and stays the substantive suit.

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. Otherwise the alleged defendant needs to contest the matter to prove that the claim is not eligible to be realized to procure an order for release. The original order of the Court releasing the ship needs to be served upon the port authorities.

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

To release a vessel, a Bank Guarantee is required to be issued by a local Bank as security. This in turn requires a counter guarantee from another bank from the residing country of the defendant in case it is a non-resident.

19. Does security need to cover interest and costs?

The Bank Guarantee is required to cover the entire claim including reasonable interest, court fees and costs at the discretion of the Court.

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

P&I LOUs are not considered as valid securities and thus are not accepted as sufficient to lift the arrest.

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

Once the security is issued in form of a Bank Guarantee from a bank, it takes one workday to procure order of release of the ship.

22. Is there a procedure to contest the arrest?

To contest an anticipated arrest, a caveat is required to be filed with the Court as per BAR. However, if the defendant is not able to justify clearly why the arrest shall be unlawful in a first few hearings, the court may anyhow issue the order for arrest. In any case it is possible to prevent arrest or obtain an order of release upon furnishing adequate security.

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 if both the Claimant and the Defendant contest the matter.

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

Bangladesh Courts do not acknowledge wrongful arrest for the purpose of granting any counter security. In case of wrongful arrest, the Court will annul the order of arrest and award costs of the suit against the losing party. For fraudulent suits further damage may be awarded in favor of the defendants.

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

Bangladesh Courts acknowledge the principles of piercing and lifting of the corporate veil under common law principles if it can be established that it was a deliberate attempt on the part of the ship owner to create different entities to defraud its payment obligations.

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

A pendente lite sale is possible only if allowed by the Court which may consider to seek security and / or claimants approval before allowing such sale.

**A.B.M. Shamsud Doulah is a Senior Advocate of the Supreme Court of Bangladesh. He has been practicing in Maritime and Commercial law since 1972. He has successfully handled noteworthy Admiralty and Commercial cases and many of which have been reported in the well-known Law Reports. He is also a leading personality for arbitration matters in Bangladesh and has acted in a number of cross border arbitrations, including maritime arbitrations.*