

## **ARREST AND BUYERS RIGHTS IN AUCTION**

Pre-Auction Procedures (Sections 8-11):

**Notice of Arrest:** The High Court issues a public notice about the arrest of the ship, including details like vessel name, type, and reason for arrest. (Section 8)

**Application to Release:** The ship owner or someone with a legal interest can apply for release by providing security (cash deposit or bank guarantee) to cover potential claim amounts. (Section 9)

**Objections to Release:** Claimants can object to the release if they believe the security is insufficient to cover their claims. (Section 9)

**Determination of Release:** The High Court decides whether to release the ship based on the adequacy of security and potential prejudice to claimants. (Section 9)

**Advertisement of Sale:** If the ship isn't released, the High Court orders its sale through public advertisement. The advertisement specifies the ship's details, location, inspection dates, and reserve price (minimum acceptable bid). (Section 10)

**Claims Procedure:** Claimants must submit their claims to the Court within a stipulated time frame to participate in the auction proceeds. (Section 10)

Auction Process (Sections 11-12):

Venue and Conduct: The auction is typically held at the High Court or a designated location. A court official or designated auctioneer conducts the bidding process. (Section 11)

Bidding: Interested buyers participate in open bidding, with bids exceeding the reserve price. (Section 11)

Payment and Sale: The successful bidder must pay the purchase price within a specified timeframe. Once payment is received, the Court issues a sale order transferring ownership to the buyer. (Section 11)

Post-Auction Procedures (Sections 11-13):

Distribution of Proceeds: The Court distributes the auction proceeds in a specific order of priority:

Court fees and expenses related to the arrest and sale

Maritime liens (wages, salvage claims, etc.) with established priority

Claims submitted by other creditors (ranked as per the Admiralty Act)

Any remaining surplus goes to the ship's owner (rare) (Section 11)

Delivery of Possession: The Court issues a delivery order to the buyer, authorizing them to take possession of the ship. (Section 11)

Challenges to Sale: In rare cases, the sale might be challenged if there were procedural irregularities or if a higher-ranking claim emerges after the sale. (Section 12)

Setting Aside Sale: The Court can set aside the sale if a valid challenge is successful, and a re-auction may occur. (Section 12)

Additional Considerations:

**Ship Condition:** The advertisement and pre-auction inspection allow potential buyers to assess the ship's condition and potential repair costs.

**Encumbrances:** The Court may order the sale free from all existing encumbrances (mortgages, liens) except for certain maritime liens with priority. This clarifies the buyer's ownership rights. (Section 8)

**Environmental Regulations:** The buyer may need to comply with environmental regulations for waste disposal or potential pollutants onboard.

**Flag State Approval:** If the ship is registered in a foreign country, the buyer might need approval from the flag state to register the ship under their flag.

The process of auctioning an arrested ship and the rights of buyers in such auction purchases involve complex legal frameworks and procedures, primarily governed by the Admiralty Act, 2017 in India. This detailed exposition delves into various aspects of the arrest of vessels, auction processes, buyer rights, and relevant case laws to provide a comprehensive understanding of the subject.

#### Arrest of Vessels: Definition and Jurisdiction

Section 2(1)(c) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 defines "arrest" as the detention or restriction of a vessel's removal by a High Court order to secure a maritime claim. This includes the seizure of a vessel to satisfy a judgment or order. Arresting a vessel is fundamental for an Admiralty Court to gain jurisdiction over the maritime claim. Such lawsuits, known as "in rem" actions, are directed against the vessel (the "res") rather than a person.

### Importance of Arrest in Maritime Claims

The arrest of a vessel is a crucial step in maritime litigation. Without this action, the court may lack jurisdiction over the vessel, thereby impeding the enforcement of maritime claims. Once a vessel is arrested, the court, through the marshal or sheriff's service, or a substitute custodian, maintains control over the vessel. This process ensures that the vessel owner loses control, thereby securing the claimant's interests.

### Jurisdictional Prerequisites and Processes

The arrest of a vessel establishes the court's jurisdiction over the matter. If the vessel cannot be seized, the court may not have the authority to adjudicate the claim. Upon seizure, the court ensures the preservation of the vessel and its equipment. The custodian, often a marshal or sheriff, is responsible for maintaining the vessel's condition without interfering with normal operations unless directed by a court order.

### Security and Release of Arrested Vessels

To mitigate the impact of vessel arrest on commerce, courts allow owners to post a bond or other suitable security. Once accepted, the vessel is released to the owner, and the litigation proceeds with the security substituting the vessel for execution of the judgment.

### Interlocutory Sale of Arrested Vessels

If a vessel is not released by posting security, the court may order an interlocutory sale. This sale occurs before the completion of litigation and judgment. Courts generally permit the sale of the vessel within a reasonable time, especially if the owner or demise charterer abandons

the vessel after arrest. The High Court is mandated to auction the vessel and appropriately manage the proceeds within forty-five days from the arrest or abandonment date, extendable by thirty days for valid reasons.

#### Conditions Justifying an Interlocutory Sale

Interlocutory sales are justified under circumstances such as:

Perishability or deterioration of the vessel

Excessive or disproportionate costs of maintaining the vessel

Regardless of whether the sale is interlocutory or follows a judgment, the purchaser acquires no rights until the court confirms the sale. Upon confirmation, the buyer receives a clear title, free of liens, extinguishing all prior claims.

#### Rights and Liabilities of Auction Purchasers

Once a vessel is sold and the sale is confirmed, the buyer acquires the vessel free from all encumbrances, liens, attachments, and registered mortgages. Section 8 of the Admiralty Act, 2017 explicitly states that a vessel sold under the court's admiralty jurisdiction shall vest in the purchaser free from all such burdens.

#### Distribution of Sale Proceeds

Proceeds from the vessel's sale are paid into the court, which then allocates the funds to cover expenses incurred in maintaining the vessel and fees for the marshal, sheriff, or custodian. The remaining balance is distributed among claimants according to their priority. Any residual amount is returned to the vessel owner. In cases where the proceeds

are insufficient to cover all claims, the claimants share the shortfall proportionately.

## Case Laws and Judicial Interpretations

### Case Law: The Jalavihar Case

In The Jalavihar case, the Bombay High Court elaborated on the process of vessel arrest and subsequent auction. The court reiterated that an arrested vessel could be sold only after ensuring all claimants' interests are considered. The decision underscored the importance of maintaining vessel condition during arrest and ensuring a fair auction process.

### Case Law: The Jag Vikas Case

In the Jag Vikas case, the Delhi High Court addressed the rights of auction purchasers. The court confirmed that once a vessel is sold through judicial auction and the sale is confirmed, the purchaser acquires a clean title, free from previous liens and encumbrances. This case emphasized the finality of the court's confirmation in transferring absolute ownership to the buyer.

## International Perspectives

### U.S. Admiralty Law

In the United States, admiralty and maritime jurisdiction are governed by federal law, particularly the Supplemental Admiralty Rules under the Federal Rules of Civil Procedure. Similar to Indian law, vessel arrest is a prerequisite for jurisdiction in in rem actions. The U.S. legal framework also provides for the interlocutory sale of vessels, where courts prioritize the preservation of the vessel's value and the interests of claimants.

## U.K. Admiralty Law

The United Kingdom's admiralty law, rooted in the Senior Courts Act 1981, outlines procedures for vessel arrest and auction. The principles align closely with those in Indian law, emphasizing the arrest's role in securing maritime claims and the rights of auction purchasers to acquire vessels free from previous encumbrances upon sale confirmation.

### Practical Implications for Stakeholders

#### Shipowners

For shipowners, understanding the implications of vessel arrest is crucial. Arrest disrupts commercial operations and can lead to significant financial losses. Owners must be prepared to post security to secure the vessel's release promptly.

#### Maritime Claimants

Claimants must be aware of their rights and the procedures involved in vessel arrest and auction. Ensuring timely and accurate filings can expedite the process and secure their claims more effectively.

#### Auction Purchasers

Buyers at vessel auctions need to be diligent in understanding the legal framework governing the sale. While the confirmation of sale provides clear title, purchasers must ensure that all procedural requirements are met to avoid potential disputes.

The auction of arrested ships and the rights of buyers in such transactions are governed by a robust legal framework designed to balance the interests of all parties involved. The Admiralty Act, 2017

provides clear guidelines on the arrest, preservation, and sale of vessels, ensuring that maritime claims are secured and resolved efficiently. Through judicial interpretations and international parallels, the principles governing these processes are well-established, offering a comprehensive legal basis for managing maritime disputes.

Section 2 (1) (c) of the Admiralty Act (2017) defines 'arrest' and it means detention or restriction for removal of a vessel by order of a High Court to secure a maritime claim including seizure of a vessel in execution or satisfaction of a judgment or order.

Arrest of a vessel is part of the process by which an Admiralty Court gains jurisdiction over the subject matter of a law suit. These lawsuits are known as 'in rem' actions meaning that the action is again a 'thing' or the 'res' rather than a person.

An arrest of a vessel is the prerequisite for the court to establish jurisdiction. If the vessel cannot be seized, the court may have no right over the vessel. Once seized, the court, through the marshal's or 'sheriff's service or substitute custodian, maintains possession of the vessel and the owner loses all control. To avoid this situation and its effect on commerce, the court will allow the owner to post a bond or other suitable security. Once the security is accepted, the vessel is returned to the owner and the litigation continues with the security as the subject of execution of judgement.

Once the marshal or the sheriff or the custodian has seized a vessel, he is obligated to preserve the vessel and its equipment. Generally, the custodian of a seized vessel should not interfere with the conduct of cargo and other operations normal to a vessel in berth unless directed so by court order.

If a vessel is not released by the posting of security, the court may order an interlocutory sale. An interlocutory sale, means a sale prior to the completion of the litigation and the entering of a judgment. As a general rule the court will allow sale of the vessel at the earliest within reasonable time. If the owner or demise charterer abandons the vessel after its arrest, the High Court shall cause the vessel to be auctioned and the proceeds appropriated and dealt with in such manner as the court may deem fit within a period of forty-five days from the date of arrest or abandonment: Provided that the High Court shall, for reasons to be recorded in writing, extend the period of auction of the vessel for a further period of thirty days.

The valid reason provided for sale if the arrested property is perishable, liable to deterioration, or if the cost of keeping it is excessive or disproportionate.

Regardless as whether the sale is interlocutory or a judgment sale, the purchaser at the auction does not have any right in the vessel, until the sale is confirmed by the court. Once confirmation is received, the buyer receives title which extinguishes all other liens and provided him with a clear title. An "in rem" action resolves claims of all of the world against the vessel and no lien for past debts can be created or asserted.

The proceeds of the sale are paid into the court and are used to satisfy any expenses incurred by the keeping of the vessel and fees to the marshal or sheriff or the custodian. The balance is paid to the claimants as per priority and any balance left over is paid to the owner. If the sums received are not sufficient to pay all claims, the claimants pay proportionately to the shortfall.

Section 8 of the Admiralty Act (2017) reads as:

(8). On the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel.