

**ARRESTING SHIP TO OBTAIN SECURITY FOR ARBITRAL  
AWARD OR COURT JUDGMENT**

A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

2. Maritime Claims and Arrest

The principle that a ship can be arrested to secure a maritime claim, even if the underlying dispute is subject to arbitration or foreign jurisdiction, has been consistently upheld. The claimant retains the right to seek the arrest of a vessel to ensure that security is provided for the eventual satisfaction of an arbitral award or court judgment.

3. Admiralty Suit and Arbitration

Notwithstanding the pendency of the arbitration proceedings and any award that may be passed, the claimant is entitled to file an admiralty suit seeking the arrest of a ship as security for the claimant's claim in the suit. This allows for the protection of the claimant's interests while the arbitration proceedings are ongoing.

4. Decree Against Defendant Vessel

The claimant is also entitled to seek a decree against the defendant vessel and obtain security for its claim in the suit. This ensures that the claimant can

secure a maritime claim even if the dispute is subject to arbitration or foreign adjudication.

#### 5. Security for Arbitration Proceedings

The ship can be retained as security for the arbitration proceedings that have been commenced. This provision ensures that the claimant's potential award is safeguarded by the security provided through the arrest of the vessel.

#### 6. Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

Under the new Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, the Act does not provide for security in foreign arbitrations, a provision which was previously available under Article VII of the International Convention on Arrest of Ships, 1999. This change has significant implications for claimants seeking security for foreign arbitration proceedings.

#### 7. Exclusion of Article VII Provision

As the Admiralty Act (2017) has excluded a provision similar to Article VII, suits for security pending arbitration are not maintainable under the new legislative framework. This legislative change requires claimants to seek alternative legal avenues for obtaining security in the context of foreign arbitrations.

#### 8. Application of Section 5(2) of the Admiralty Act, 2017

Applying the provisions of Section 5(2) read with Section 5(1)(b) of the Admiralty Act, 2017, a ship is liable to be arrested for the purpose of providing security in respect of a maritime claim. This statutory provision underscores the court's authority to arrest vessels for securing maritime claims.

## 9. Case Law Supporting Ship Arrest

Several landmark cases have supported the arrest of ships for obtaining security for maritime claims. The case of *M.V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd.* (1993 Supp (2) SCC 433) established that Indian courts have the jurisdiction to arrest ships for securing claims, even when arbitration or foreign jurisdiction clauses are present.

## 10. Enforceability of Arbitration Awards

The enforceability of arbitration awards and the necessity for security is highlighted in the case of *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012 9 SCC 552). This case affirmed the principle that parties could seek interim relief, including the arrest of ships, to secure the enforcement of arbitral awards.

## 11. Interim Measures by Courts

Courts have the inherent power to grant interim measures, including the arrest of ships, to prevent the dissipation of assets that could frustrate the enforcement of eventual judgments or arbitral awards. This principle was reaffirmed in *Adhigam Trading Pvt. Ltd. v. M.V. Vaigai River* (AIR 1999 SC 3156).

## 12. International Jurisprudence

International jurisprudence, such as the English case of *Mareva Compania Naviera SA v. International Bulkcarriers SA* (1975 2 Lloyd's Rep 509), has influenced Indian courts in recognizing the necessity of arresting ships to secure maritime claims.

## 13. Full and Frank Disclosure

When seeking an arrest order, the claimant must provide full and frank disclosure of all material facts to the court. Failure to do so can result in the vacating of the arrest order, as established in *The Kommunar* (1997 1 Lloyd's Rep 22).

#### 14. Balancing Interests

Courts balance the interests of both the claimant and the defendant when granting arrest orders. This includes considering the impact on the defendant's commercial operations and the necessity of security for the claimant's claim.

#### 15. Security for Costs

The provision of security for costs is another aspect considered by courts, ensuring that the defendant is not unduly prejudiced by the arrest order. This principle was articulated in *Videsh Sanchar Nigam Ltd. v. MV Kapitan Kud* (AIR 1996 SC 516).

#### 16. Releasing the Arrested Vessel

A ship arrested for security can be released upon the provision of adequate security, such as a bank guarantee or a P&I club letter of undertaking. This allows for the continuation of the vessel's commercial activities while securing the claimant's interests.

#### 17. Enforcement of Foreign Awards

Indian courts recognize and enforce foreign arbitral awards under the New York Convention, as exemplified in *Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.* (2003 5 SCC 705). The arrest of ships ensures that security is available for such enforcement.

#### 18. Judicial Discretion

Judicial discretion plays a critical role in the arrest of ships. Courts exercise their discretion based on the merits of each case, ensuring that the arrest order is just and equitable.

#### 19. Provisional Remedies

Provisional remedies, including the arrest of ships, are essential in admiralty law to protect maritime claims. The case of *MV APL Jeddah v. Shailesh Shipping Pvt. Ltd.* (2014 4 SCC 112) illustrates the application of provisional remedies in securing maritime claims.

#### 20. Impact of Legislative Changes

Legislative changes, such as the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, have significant implications for the arrest of ships. Claimants must navigate these changes to effectively secure their maritime claims.

#### 21. Comparative Analysis

A comparative analysis of international admiralty laws shows that the arrest of ships for security is a common practice. Jurisdictions like Singapore and Hong Kong have robust legal frameworks supporting ship arrests for securing maritime claims.

#### 22. Practical Considerations

Practical considerations, such as the location of the vessel and the timing of the arrest application, are crucial for the successful arrest of ships. Claimants must act promptly and strategically to secure their claims.

#### 23. Role of P&I Clubs

P&I clubs play a significant role in providing security for the release of arrested vessels. Their involvement ensures that the claimant's interests are protected while allowing the vessel to continue its operations.

#### 24. Future Developments

Future developments in admiralty law, including potential amendments to the Admiralty Act, 2017, may further impact the arrest of ships for security. Stakeholders must stay informed of these changes to effectively manage maritime claims.

The arrest of ships for obtaining security for arbitral awards or court judgments is a vital legal remedy in admiralty law. Despite legislative changes, Indian courts continue to uphold the principle of providing security for maritime claims, balancing the interests of claimants and defendants to ensure justice and equity in maritime disputes.

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Section 5(2) read with Section 5(1)(b) of the Admiralty Act, 2017, a ship is liable to be arrested for the purpose of providing security in respect of the maritime claim.