

CLAIMS PAYABLE IN FOREIGN CURRENCY

In *Renusagar Power Co. Ltd. v. General Electric Co.*, the Supreme Court has discussed all these principles at page 905 in para 120. After referring to the practice which ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and decreed by the court, has been thus indicated:

...the plaintiff, who has not received the amount due to him in a foreign currency and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency. For this purpose, the plaintiff would have to convert the foreign currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or, at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount to him. In either event, the valuation of the suit for the purposes of court-fees and the pecuniary limit of the jurisdiction of the court will be the amount in Indian currency claimed in the suit. The plaintiff may, however, choose the second course open to him and claim in foreign currency the amount due to him. In such a suit, the proper prayer for the plaintiff to make in his plaint would be for a decree that the defendant do pay to him the foreign currency cum claimed in the plaint.

For the purposes of court-fees and a jurisdiction, (he plaintiff should, however, value his claim in the suit by converting the foreign currency sum

claimed by him into Indian rupees at the rate of exchange prevailing on the date of the filing of the suit or the date nearest or most nearly preceding such date, stating in his plaint what such rate of exchange is.

In those cases where there are several claims payable in a foreign currency, usually United States dollars, the court may accede to a request in that behalf and order that the sale be restricted to persons who are able to bid for the ship in free foreign currency and that, in the event that there is no bid in free foreign currency equivalent to the appraised value, the ship be sold for Indian rupees. In order not to expose the claimants in foreign currencies to the hazards of fluctuations in the rate of exchange between the time from the filing of their suits and the payment out of their claims after adjudication, the court may be persuaded to direct that the sale proceeds in foreign currency, subject to prior approval of the Reserve Bank of India, be held by the registry in the same currency without conversion into Indian rupees. The Bombay High Court has so directed in the cases of *The East Hampton*, *The St. Nicolas*, and in both cases the Reserve Bank of India accorded approval to the sale proceeds, when received in the registry, being held in United States dollars without being converted into Indian rupees. The writer has mentioned the two cases within his experience which serve as precedents, as the Reserve Bank of India has not acted consistently in the matter of according such approval. In the cases of ships sold for Indian rupees, foreign claimants have experienced inexorable difficulty and delay in obtaining exchange control permission for repatriation out of India of the amounts recovered by them and wages claimants, especially, have had to suffer great hardship and privation.

The issue of claims payable in foreign currency has been a significant matter in admiralty law, especially when dealing with the arrest and judicial sale of vessels. The legal principles governing this area have been shaped by various case laws and statutory frameworks, particularly under Indian law, as governed by the Admiralty Rules of the High Courts and the Admiralty

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

Key Case Law: *Renusagar Power Co. Ltd. v. General Electric Co.*

The Supreme Court of India, in the landmark case of *Renusagar Power Co. Ltd. v. General Electric Co.* (1994), discussed the principles governing claims in foreign currency. The Court articulated the options available to a plaintiff who seeks to recover an amount due in foreign currency:

Claiming in Indian Currency: The plaintiff may convert the foreign currency claim into Indian rupees, either at the rate of exchange prevailing on the date when the amount became payable or at the rate prevailing on the date of filing the suit. This conversion determines the valuation of the suit for the purposes of court fees and the pecuniary jurisdiction of the court.

Claiming in Foreign Currency: Alternatively, the plaintiff can claim the amount in the foreign currency itself. The decree would then be for the foreign currency sum claimed. However, for court fees and jurisdiction, the claim must be valued by converting the foreign currency sum into Indian rupees at the prevailing exchange rate on the date of filing the suit.

These principles apply to various types of maritime claims, particularly in cases where the vessel or cargo in question is valued in a foreign currency. The conversion into Indian rupees or retention of the foreign currency can have significant implications for the parties, especially given the potential fluctuations in exchange rates.

Judicial Sale and Currency Conversion

In admiralty proceedings involving the judicial sale of a vessel, the issue of currency becomes particularly pertinent. Courts may order that the sale of the vessel be conducted in foreign currency, especially when the claims are

predominantly in a foreign currency like U.S. dollars. This approach seeks to protect foreign claimants from the risks associated with currency fluctuations during the pendency of the proceedings.

For instance, the Bombay High Court has, in cases such as *The East Hampton* and *The St. Nicolas*, directed that the sale proceeds be held in U.S. dollars, with the approval of the Reserve Bank of India (RBI). This practice safeguards the interests of foreign claimants, ensuring that they are not adversely affected by exchange rate changes. However, as noted in these cases, the RBI has not always been consistent in granting such approvals, leading to difficulties for foreign claimants in repatriating their amounts.

Global and Comparative Jurisprudence

The issue of claims in foreign currency is not unique to Indian admiralty law. English courts have also addressed similar issues, often allowing claims in foreign currency when it reflects the currency of the contract or the currency in which the loss was sustained. In *Miliangos v. George Frank (Textiles) Ltd.* (1976), the House of Lords established that English courts could give judgments in foreign currency, departing from the previous rule that required judgments to be given in sterling.

Internationally, admiralty courts in various jurisdictions, including the United States, have followed similar principles, recognizing the importance of ensuring that claimants are compensated in the currency that reflects their actual loss. This is particularly relevant in cases involving international shipping, where the contracts, payments, and losses are often denominated in foreign currencies.

Statutory Framework: Admiralty Act, 2017

In India, the statutory framework governing admiralty jurisdiction is primarily found in the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act,

2017. This Act consolidates and codifies the law relating to admiralty jurisdiction, legal proceedings, and the judicial sale of vessels. While the Act does not explicitly address the issue of foreign currency claims, it empowers the High Courts to exercise their discretion in determining the manner of judicial sale and the distribution of sale proceeds.

The Admiralty Rules of the High Courts further provide the procedural framework for dealing with such claims. Rule 48 of the Admiralty Rules of the Bombay High Court, for example, permits the court to direct that the sale proceeds be held in foreign currency, subject to the approval of the RBI.

Claims payable in foreign currency in admiralty cases involve complex legal and procedural issues, including the conversion of claims, the protection of foreign claimants, and the judicial sale of vessels. Indian courts, guided by the principles established in cases like *Renusagar Power Co. Ltd. v. General Electric Co.*, have the discretion to ensure that claimants are compensated in the appropriate currency, while balancing the statutory requirements under the Admiralty Act, 2017.

The interplay between domestic and international jurisprudence underscores the need for a consistent approach to foreign currency claims, especially in the context of maritime disputes, where the global nature of shipping necessitates cross-border legal considerations.