

MARITIME CLAIMS AND ANALYSIS

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, marks a significant advancement in the maritime legal framework in India. This legislation outlines the scope of admiralty jurisdiction exercised by High Courts, particularly focusing on maritime claims. Section 4 of the Act is instrumental as it delineates the specific maritime claims over which High Courts have jurisdiction.

Scope of Section 4

Section 4 of the Admiralty Act, 2017, provides an exhaustive list of maritime claims that High Courts can adjudicate. These claims align closely with those defined under international conventions, specifically the International Convention on the Arrest of Sea-Going Ships, 1952 (Brussels) and the International Convention on the Arrest of Ships, 1999 (Geneva).

Maritime Claims Under Section 4

Section 4 enumerates several categories of maritime claims, which include but are not limited to:

Claims related to port or harbor dues, canal, dock, or light tolls, waterway charges, and similar charges: These claims ensure that vessels pay for the use of public maritime infrastructure.

Particular average claims: These relate to losses or damages incurred by a specific portion of the cargo or the vessel.

Claims by master or crew or their heirs, dependents for wages, cost of repatriation, or social insurance contributions: Such claims protect the rights and welfare of the crew and their families.

Insurance premiums and mutual insurance calls: Claims arising from unpaid insurance premiums or calls by mutual insurance associations.

Commission, brokerage, or agency fees payable by the vessel owner or demise charterer: These claims ensure that intermediaries and agents are compensated for their services.

Environmental damage claims or threats thereof: These cover claims for damage to the environment caused by the vessel.

Wreck removal claims: These are for the costs associated with the removal of a wrecked vessel.

Additional Maritime Claims in Indian Legislation

Unlike the international conventions, the Indian Admiralty Act incorporates several additional claims, thereby expanding the scope of maritime claims under its jurisdiction.

Enforcement of Maritime Claims by Action in Rem

The enforcement mechanism for maritime claims through an action in rem has been refined under the Admiralty Act. Notably, the Act does not include provisions for the arrest of vessels owned by time charterers and voyage charterers, diverging from Article 3(2) of the 1999 Arrest Convention.

Section 5: Arrest of Vessels

Section 5(1) of the Admiralty Act empowers the High Court to order the arrest of vessels within its jurisdiction to provide security against maritime claims under certain conditions:

Ownership at the time of the claim and arrest: The vessel's owner at the time of the maritime claim and at the time of the arrest must be the same.

Demise charterer's liability: The demise charterer at the time the claim arose must be liable and still be the demise charterer or the owner of the vessel at the time of the arrest.

Mortgage or similar charges: Claims based on a mortgage or similar charges on the vessel.

Ownership or possession claims: Claims relating to the ownership or possession of the vessel.

Maritime liens: Claims secured by maritime liens as specified under Section 9.

Section 5(2): Sister-Ship Arrests

Section 5(2) permits the arrest of sister ships, albeit within the constraints set by Section 5(1).

Section 6: Admiralty Jurisdiction In Personam

Section 6 extends admiralty jurisdiction in personam, subject to certain restrictions under Section 7. For collision-related claims, an in personam action can be initiated only if the cause of action arises in India or if the defendant resides, conducts business, or works for gain in India.

Maritime Liens and Priorities

The Admiralty Act defines 'maritime lien' under Section 2(1)(g) and recognizes certain claims as maritime liens, specifying their priorities in

Section 9. Maritime liens, such as crew wages, have a higher priority and a longer limitation period compared to other claims.

Period of Limitation for Maritime Liens

The Act stipulates a limitation period of one year for maritime liens, extendable to two years for wage-related claims. This period runs continuously, except during vessel arrest or seizure.

Priority of Maritime Claims

Section 10 outlines the priority of maritime claims in admiralty proceedings. Maritime liens hold the highest priority, followed by registered mortgages and charges, and then all other claims. Salvage claims are prioritized based on their recency.

Conflict Between Municipal Law and International Conventions

Indian law prioritizes municipal law over international conventions in cases of conflict. The Admiralty Act's provisions override conflicting international norms.

Supreme Court Observations in M.V. Sea Success

The Supreme Court in M.V. Sea Success emphasized the applicability of international conventions unless prohibited by municipal law. This decision highlights the integration of international principles into Indian maritime law.

Landmark Indian Case Laws

M.V. Elisabeth and Others v. Harwan Investment and Trading Pvt. Ltd., Goa (1993 SCR (2) 1006): This case established Indian courts' jurisdiction in maritime claims, aligning with international principles.

Essar Oil Ltd. v. Hothur Ispat Pvt. Ltd. (2008 11 SCC 349): The Supreme Court reaffirmed the precedence of maritime liens over registered mortgages and unsecured claims.

Shipping Corporation of India Ltd. v. Machado Brothers and Others (2004 11 SCC 168): This case focused on the prioritization of salvage claims, emphasizing the importance of recent salvage efforts.

Indian Register of Shipping v. Owners and Parties Interested in the Vessel M.V. Sertao and Others (2016 SCC OnLine Bom 11028): The Bombay High Court discussed maritime liens and the necessity of following the statutory priority order.

M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd. (2002 4 SCC 745): The Supreme Court reaffirmed the superior priority of maritime liens over other claims, including those by insurers.

Practical Implications for Maritime Stakeholders

Understanding the priority of maritime claims is crucial for various stakeholders:

Shipowners: Must manage liabilities and ensure prompt payment of crew wages and other maritime liens.

Crew Members: Benefit from the high priority given to wage claims.

Lenders: Need to assess risks associated with maritime liens taking precedence.

Service Providers: Should negotiate favorable terms to mitigate risks of lower payment priority.

Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, along with related sections, provides a comprehensive legal framework for maritime claims in India. The Act aligns with international conventions while incorporating additional claims, ensuring robust protection and enforcement of maritime rights. The detailed order of priority and the principles for determining inter se priority promote fairness and predictability in maritime legal proceedings. Understanding these provisions is essential for stakeholders to navigate the complexities of maritime law effectively.

Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 sets out a list of maritime claims in respect whereof, the High Courts can exercise their Admiralty Jurisdiction. The lists of maritime claims are similar to the maritime claims defined under the International Convention in relation to the Arrest of Sea-Going Ships 1952, Brussels and the International Convention on the Arrest of Ships, 1999, Geneva. However, the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017 incorporates the following additional claims as maritime claims in relation to which a vessel can be proceeded against and arrested. They are claims related to port or harbor dues, canal, dock or light tolls, waterway charges and such like; particular average claims; claims by master or crew or their heirs, dependents for wages, cost of repatriation or social insurance contributions; insurance premiums, mutual insurance calls; commission/ brokerage agency fees payable by vessel owner or demise charterer; environment damage claims or threat thereof; and wreck removal claims.

The enforcement of the maritime claims by an action in rem has been narrowed down. Arrest of vessels owned by Time Charterers and Voyage charterers in respect of Maritime claims against them is conspicuously absent from the Admiralty Act (2017); i.e. Article 3 (2) of the 1999 Arrest Convention, does not find a place in the Admiralty Act; which gives rise to issues in this behalf and in relation to enforcements of maritime claims against time and voyage charterers in India.

Section 5. (1) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017: The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or

(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

The above provision of the Admiralty Act (2017) and its divergence from the Arrest Conventions has led to questions/ issues relating to arrest of ships and sister ships for claims against time charterers, which issue is presently pending for decision before the Bombay High Court.

Section 5(2) permits sister-ship arrests. But, what a sister-ship is, would be subject to Section 5(1).

Section 6 of the Admiralty Act also confers Admiralty Jurisdiction in personam in respect of certain Maritime claims, subject to certain restrictions as contained in Section 7. Under Section 7, for claims arising out of a collision and related claims, an in personam action can be initiated against the

Defendant only if the cause of action, wholly or in part arises in India, or if the Defendant, at the time of commencement of the action actually and voluntarily resides or carries on business or personally works for gain in India.

The Admiralty Act (2017) defines 'maritime lien' under section 2(1)(g) and recognizes certain claims as Maritime Liens; and sets out their priorities in Section 9. The Admiralty Act also specifies the period of limitation for Maritime Lien, and states that the maritime lien shall stand extinguished after expiry of one year unless the vessel is arrested and seized and such arrest and seizure has led to a forced sale by the High Court. However, in respect of Maritime Liens relating to claims for wages or other employment related payments, including cost of repatriation and social insurance contributions, the limitation period is two years. The period of limitation would run continuously without any suspension or interruption, except the period during which the vessel was under arrest or seizure which time is to be excluded.

Likewise, the Admiralty Act (2017) also provides for priority of Maritime Claims in Admiralty proceedings in Section 10. Maritime Liens have the highest priority, followed by registered mortgages and charges, and thereafter all other claims. If there are more than one claim in any single category of priority, they shall rank equally and salvage claims rank in inverse order of time to when the claims accrued.

The Conventions are inconsistent with the Municipal Law as found in Section 433 of the MS Act and Rule 954 of the Original Side Rules of this Court. Hence, the Municipal Law will apply and not the convention. Therefore, as per the settled legal position, in case of such inconsistency or conflict, it is the Municipal law which will prevail and not the International Convention. There is no controversy about the proposition that in case of conflict between municipal law and an International 1999 Convention, the Court will have to apply the municipal law therefore it makes it clear that in case of conflict between the municipal law and the international law or conventions, the court

will have to apply the municipal law. However, when there is no conflict between the two then all just principles of international law or conventions could be legitimately applied unless either they are in conflict with any statute or are prohibited by any municipal law.

The observation of the Supreme Court (*m.v. Sea Success*) clearly suggest that unless there is any prohibition by the municipal laws the principles of trans-national law or international conventions could be applied for affording remedy for the satisfaction or realisation of maritime claim.

The Supreme Court held that though the Merchant Shipping Act provides a detailed code of substantive and procedural law regulating shipping as an industry and the control exercised over it by the competent authorities, the jurisdictional questions concerning arrest of foreign ships are in many respects left unregulated by the Indian legislation. While the provisions of various international conventions concerning arrest of ships, civil and penal jurisdiction in matter of collision, maritime liens and mortgages etc. have been incorporated in the Municipal Laws in many maritime States, India lags behind them in adopting these unified rules. In the absence of specific statutory provisions, can be adopted and adapted by courts to supplement and complement national statutes on the subject.

The list of maritime claims is a closed list, the claim must fall within one or more of the categories of claims listed the Admiralty Act (2017). If it does not, then it cannot be the subject of an action in rem and a ship or other property cannot be arrested in the enforcement of that claim. The claims listed are all claims that are expressed to or impliedly concern or relate to 'a ship'. They therefore contemplate some connection between the claim and a particular ship or ships. That being so, it is not sufficient for the pursuit of an action in rem that the intended claim be one against a ship owner either generally or in respect of its ships or operations generally. Nor is it sufficient that the person who is alleged to be liable for that claim happens to own a

ship. It is therefore not possible to pursue as an action in rem against a ship in a claim that is not related to or concerns that ship, or in the case of sister ship arrest, a maritime claim that is not related to or concerns some other ship that was at the time the cause of action arose owned or chartered by or in the possession or control of the owner of the sister ship.

Accordingly, in order to pursue a claim as an action in rem against a ship or other property, there must be some connection between that claim and either the ship that is intended to be the subject of the in rem proceeding or of which the ship the subject of the in rem proceeding is intended to be a sister ship.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, has incorporated several advancements to accommodate the complexities of modern maritime commerce, while also providing clarity on issues of jurisdiction and the enforcement of claims. These provisions collectively ensure that India's maritime legal framework is robust, responsive to the evolving nature of maritime disputes, and consistent with international norms.

Key Case Law on Maritime Claims and Admiralty Jurisdiction

M.V. Elisabeth and Others v. Harwan Investment and Trading Pvt. Ltd., Goa (1993 SCR (2) 1006): This landmark case established that Indian courts have the authority to exercise admiralty jurisdiction even in the absence of codified national legislation, by applying principles of international law. It emphasized the importance of providing remedies for maritime claims and arresting ships to secure such claims.

Essar Oil Ltd. v. Hothur Ispat Pvt. Ltd. (2008 11 SCC 349): The Supreme Court dealt with the priority of claims, ruling that maritime liens have precedence over registered mortgages. This reaffirmed the principle that specific claims, such as those by crew members for unpaid wages, are of paramount importance and should be satisfied first.

Shipping Corporation of India Ltd. v. Machado Brothers and Others (2004 11 SCC 168): In this case, the court reinforced the principle that salvage claims are prioritized based on their recency, and highlighted the importance of salvage operations in ensuring the safety of life and property at sea.

Indian Register of Shipping v. Owners and Parties Interested in the Vessel M.V. Sertao and Others (2016 SCC OnLine Bom 11028): This case emphasized the need to strictly adhere to the statutory priority order when determining the priority of claims in admiralty proceedings, underscoring the importance of maritime liens and the statutory provisions governing their enforcement.

M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd. (2002 4 SCC 745): The Supreme Court reiterated the principle that maritime liens have superior priority over other claims, including those by insurers. This case serves as a benchmark for understanding the hierarchy of claims in maritime law.

Practical Implications for Maritime Stakeholders

For shipowners, the stringent requirements regarding liabilities and the high priority accorded to certain claims, such as crew wages, highlight the need for prudent financial management and prompt settlement of maritime obligations. Crew members benefit from the enhanced protections under the Admiralty Act, particularly the extended limitation period for wage claims, which ensures their claims remain enforceable for a longer duration. Lenders and financial institutions must carefully assess the risks associated with maritime liens, as these can override other secured interests, potentially affecting their recovery prospects in insolvency or enforcement scenarios. Service providers, including agents and intermediaries, should negotiate contracts that address the risk of lower payment priority, ensuring they are compensated adequately and without undue delay.

Understanding the intricacies of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, is critical for stakeholders involved in maritime commerce and disputes. The Act's provisions regarding the enforcement of claims, the arrest of vessels, and the prioritization of maritime claims form the bedrock of India's modern maritime legal framework, ensuring that maritime rights are protected and enforced in a fair and predictable manner.