

ENFORCED SALE OF THE SHIP

Under the Admiralty Rules of the High courts, the sale of ship whether *pendente lite* or after adjudication on the plaintiff's suit, has to be carried out by the marshal/sheriff, just like a sale of movable property in an ordinary civil suit. There is no provision for a reserve price and there is no provision for appraisalment as in English Admiralty practice. Nevertheless, the courts, in order to prevent the ship being sold at a price a great deal less than its real value, from recent times have invariably ordered that the ship be appraised at its real value by a ship's valuer and sold at not less than the appraised value thereof unless the court, on the Marshal's or the Sheriff's application, orders it to be sold for a lesser price when the bidding does not reach up to the appraised value.

The sale is normally by public auction after publication of the notice of sale in such newspapers as the court may direct. There have been no known instances of sales by private treaty, though there is nothing in the Rules preventing such a sale.

In any action a court has power to order the sale of property which is perishable, likely to deteriorate or in relation to which there is good reason for sale. Such a sale of itself would be subject to encumbrances existing prior to the sale. The sale of a ship includes all property on board other than that owned by someone other than the ship owner.

A sale is confined to property that must be under arrest. A court may order the discharge and sale of cargo not under arrest where a ship in which the cargo is loaded is under arrest and an order for sale is made in respect of it. The Admiralty Court may order the appraisalment and sale of property under arrest on the application of a party to the action or by an application of the

Marshal or the Sheriff. A sale pending suit is normally ordered on the grounds that retention of the property will cause the plaintiff's security to diminish if for no other reason than the mounting costs of arrest. Application must be served on any person who has obtained judgment against the ship and all caveators.

The Sheriff or the Marshal may sell the property in foreign currency. The proceeds will be paid into court and will be invested only on application. The effect of sale of property under arrest in an action in rem is to give a title free of encumbrances to the purchaser.

A judicial sale of ship is effected for the enforcement of a judgment or an arbitral award prescribing certain payment obligations to be performed by the ship owner; while in some other cases it is effected for the purpose of enforcing a court order, such as an order for the appraisal and sale of a ship under arrest which is applied for by a maritime claimant before a judgment is issued on the merits of the claims giving rise to the arrest.

The enforced sale of a vessel under admiralty law is a crucial remedy available to maritime claimants seeking to recover amounts owed under a judgment or to enforce a court order during the pendency of litigation (*pendente lite*). The process in India is governed by the Admiralty Rules of the High Courts and the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017"). The enforced sale of a vessel is similar to the sale of movable property in an ordinary civil suit, but with specific nuances to accommodate the maritime context.

Legal Framework and Procedures in India

Under the Admiralty Act, 2017, the High Courts exercising admiralty jurisdiction have the power to order the sale of a vessel under arrest, either before or after a final adjudication of the plaintiff's claims. The sale is carried out by the Marshal or Sheriff, who acts under the court's supervision. The

statutory framework is supplemented by the Admiralty Rules of the High Courts, which govern procedural aspects of the sale.

Section 5 of the Admiralty Act, 2017 empowers the High Court to exercise jurisdiction over maritime claims and arrest vessels for the enforcement of such claims. The court may order the judicial sale of the arrested vessel, which includes all property on board, except for items owned by third parties. The purpose of this sale is to satisfy the claims of the plaintiff or other maritime claimants who have established their rights before the court.

No Statutory Provision for Reserve Price or Appraisalment

Unlike English admiralty practice, Indian Admiralty Rules do not provide for a statutory reserve price or mandatory appraisalment of the vessel. However, Indian courts have increasingly recognized the importance of protecting the value of the arrested vessel and have often ordered an appraisalment by a ship valuer. The rationale is to prevent the vessel from being sold at an unreasonably low price, thereby ensuring that the proceeds of the sale reflect the actual value of the asset.

In the case of *Shipping Corporation of India Ltd. v. Machado Brothers* (2004), the Bombay High Court emphasized that a judicial sale of the ship should be conducted in a manner that ensures fairness and transparency, protecting both the rights of the claimants and the interests of potential buyers. Although the Admiralty Rules do not explicitly require appraisalment, the court in this case ordered that the vessel be appraised to prevent it from being sold at an undervalued price.

Public Auction and Notice Requirements

The enforced sale of a vessel is typically conducted through a public auction, which ensures that the sale process is transparent and competitive. The court directs the publication of the notice of sale in national and international

newspapers, inviting bids from potential purchasers. The objective is to secure the highest possible price for the vessel, thereby maximizing the return for the claimants. Indian courts generally prefer public auctions to private treaty sales, although the Admiralty Rules do not prohibit the latter.

In *M.V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd.* (1993), the Supreme Court of India upheld the principles of transparency and fairness in admiralty proceedings, emphasizing the need for the sale process to be conducted in a manner that maximizes the value obtained from the judicial sale of a vessel.

Sale Pendente Lite

A sale pendente lite (i.e., during the pendency of litigation) is usually ordered when the court is satisfied that the continued retention of the vessel will lead to a diminution in the security available to the plaintiff. This situation may arise when the vessel is not being maintained by the owner during the arrest, leading to its gradual deterioration in value. The rationale behind ordering a sale pendente lite is to protect the interests of the claimant by ensuring that the security provided by the vessel does not erode due to ongoing costs and depreciation.

In *The Myrto* [1977] 2 Lloyd's Rep 243, the English court laid down the principle that a sale pendente lite should be ordered only for "good reason," which could include the heavy and continuing costs of maintaining the vessel under arrest. Indian courts have adopted similar principles, balancing the interests of the claimant with the need to preserve the value of the vessel.

Title Free of Encumbrances

One of the most significant legal effects of the judicial sale of a vessel under arrest is that the purchaser acquires the vessel free of all encumbrances. Section 8 of the Admiralty Act, 2017 specifically provides that the vessel shall

vest in the purchaser free from all liens, attachments, registered mortgages, and similar encumbrances. This principle ensures that the purchaser obtains clear title to the vessel, which is crucial for maintaining confidence in judicial sales. The proceeds of the sale are then distributed among the claimants in accordance with the priority of claims as determined by the court.

This principle was reinforced in *Banco Nacional Ultramarino v. Olympia Voyager* [2006] EWHC 1541 (Admlty), where the court held that a judicial sale extinguishes all prior maritime liens, thereby ensuring that the purchaser obtains good title. Indian courts have consistently followed this approach, ensuring that judicial sales confer title free from encumbrances, promoting finality and security in maritime transactions.

Enforced Sale as a Means of Enforcement

The judicial sale of a vessel is often used as a means of enforcing a judgment or an arbitral award against the shipowner. In such cases, the court orders the sale of the vessel to satisfy the monetary obligations of the shipowner under the judgment or award. The proceeds of the sale are paid into court and distributed to the claimants in accordance with their priority of claims.

In *M.V. Sea Success I v. Liverpool and London Steamship Protection and Indemnity Association Ltd.* (2002), the Bombay High Court ordered the sale of the arrested vessel to enforce a maritime lien. The court emphasized that the judicial sale is a powerful tool for maritime claimants, allowing them to recover amounts owed under judgments and awards.

The enforced sale of a vessel under admiralty law in India is a well-established process that serves as a critical remedy for maritime claimants. Although the Admiralty Rules do not provide for a reserve price or mandatory appraisalment, Indian courts have adopted practices to protect the value of the arrested vessel, including ordering appraisalment where necessary. Judicial sales are typically conducted through public auctions, ensuring transparency

and fairness, and the purchaser acquires the vessel free from all encumbrances, as provided by Section 8 of the Admiralty Act, 2017. This legal framework, supported by judicial precedents, ensures that maritime claimants can effectively enforce their rights while protecting the interests of all parties involved..