

## **APPRAISEMENT AND JUDICIAL SALE**

The usual order passed by the court is either on the judgment or pendente lite is that the property be appraised and sold by the admiralty Marshal or the Sheriff. Appraisement is the official valuation of the ship by a court appointed valuer in order to prevent the ship from being sold at too low a price. The Marshal or the Sheriff is not allowed to sell the ship for less than the appraised value without the order from the court. If there are no offers or if the offer is below the appraised value of the ship an order of the court will be necessary if it is established that the appraised value is no longer realistic, the court will consider the potential interest of all the claimants against the fund.

When the court orders that a ship be sold, the sale is of the ship together with all property which is on board the ship, including her bunkers, other than property which is owned by someone other than the owner of the ship.

The terms and conditions for auction sale of the ship are finalised by the marshal/sheriff and are made available to intended bidders. Advertisements/Notice for auction sale of the ship are published globally, normally in two international shipping newspaper and two newspaper in India.

Judicial sales of vessel usually occur in situations where the vessel has been arrested by a claimant.

The application of the court's jurisdiction to order a judicial sale of vessels is best expressed in the principles laid down by Mr. Justice Brandon in *The Myrto* [1977] 2 Lloyd's Rep 243, where the learned judge said that an English court is usually asked to order a sale of a ship in circumstances where the respondent/shipowner does not appear in the proceedings or appears but does not defend the claim. If the claim is defended and the

respondent/shipowner oppose the making of a judicial sales order, the learned judge was of the view that the English court should not order the judicial sale of the vessel except if there is “good reason” for doing so. The learned judge went on to say that what would constitute a “good reason” would be the prospect of heavy and continuing costs of maintaining the vessel under arrest over a long period, with the consequence that there is reduction in the value of the plaintiff’s security for their claim.

“I accept that the Court should not make an order for the appraisal and sale of a ship *pendente lite* except for good reason, and this whether the action is defended or not. I accept further that, where the action is defended and the defendants oppose the making of such an order, the Court should examine more critically than it would normally do in a default action the question of whether good reason for the making of the an order exists or not. I do not accept, however, the contention put forward for the owners, that the circumstances that, unless a sale is ordered, heavy and continuing costs of maintaining the arrest will be incurred over a long period, with consequent substantial diminution in the value of the plaintiffs’ security for their claim, cannot, as a matter of law, constitute a good reason for ordering a sale. On the contrary I am of opinion that it can and often will do so.”. If, for example, a vessel was arrested as security for a claim and the respondent/shipowner does not maintain the vessel while she is under arrest, the court will view the vessel as security that is gradually reducing in value because of the falling value of a vessel that is not maintained. If the court is satisfied that it will take time before the court is able to give judgment on the claim and is satisfied that as a consequence, the gradual reduction in value of the vessel means that there is a significant reduction in the security for the claim, it can decide to order the judicial sale of the vessel.

The relevant central Act of Parliament empowering the High Court to sell property is Section 122 of the Indian, Code of Civil Procedure 1908 (the

“Code”), Order XXXIX rule 7 in The First Schedule and Section 94 of the Code.

The judicial sale of a vessel arrested by an admiralty court is a complex process governed by statutory provisions, rules, and established case law. The sale is typically conducted under the supervision of the court, ensuring that the vessel is sold free and clear of all encumbrances, liens, and charges, thus conferring good title to the purchaser. The conditions governing such sales are meticulously outlined in the terms and conditions of sale, which are finalized by the Marshal or Sheriff and made available to potential bidders. These terms include the requirement for an immediate deposit, followed by the balance payment within a specified timeframe.

The governing law in India for judicial sale of vessels falls under Section 8 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017"). This section specifically deals with the vesting of rights upon the sale of vessels under the court's admiralty jurisdiction. According to Section 8(1):

"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."

This statutory provision underscores the principle that the purchaser acquires the vessel free of any existing maritime claims, thereby obtaining a clean title. This principle has been upheld in various jurisdictions, ensuring that the sale provides finality and protects the purchaser from any future claims against the vessel.

The judicial process surrounding the appraisal and sale of a vessel, particularly in admiralty law, is a vital component of maritime litigation. It ensures that the interests of all claimants are balanced against the procedural

fairness of the sale and that the vessel's sale price reflects its true market value. The judicial sale of a vessel occurs typically when a ship has been arrested, either to satisfy a judgment or during the pendency of litigation (*pendente lite*), as a measure to secure the plaintiff's claim.

#### Appraisement Process and Legal Framework

Appraisement refers to the official valuation of the vessel, typically conducted by a court-appointed valuer. This valuation is crucial to prevent the vessel from being sold at an unreasonably low price, thus ensuring that the sale proceeds reflect the actual value of the vessel and provide a fair return to all claimants.

The Code of Civil Procedure, 1908 (the "Code") lays down the central framework for such judicial sales in India. Order XXXIX, Rule 7 of the Code allows the court to pass orders regarding the custody, preservation, and sale of the property. Additionally, Section 94 of the Code grants the court power to ensure that any interlocutory orders, such as orders for appraisement and sale, are effectively implemented to avoid any injustice to the parties involved.

Once appraised, the Marshal or Sheriff is prohibited from selling the vessel below the appraised value without a specific order from the court. This is a safeguard to ensure that the judicial sale achieves a reasonable market value for the ship. If no offers are made or if the highest bid is below the appraised value, the court may issue further orders. Such orders could either adjust the appraised value based on new evidence or market conditions or direct that the vessel be re-appraised.

#### Judicial Sale and Principles

The judicial sale of a vessel extends beyond just the ship itself; it typically includes all property on board, such as bunkers, unless such property is owned by a third party. This is designed to provide a comprehensive sale

package, which may enhance the overall value of the sale. The Marshal or Sheriff, acting under court supervision, finalizes the terms and conditions of the auction sale and ensures that they are made publicly available to interested bidders. To maximize the chances of obtaining a fair price, notices for the auction are advertised internationally and locally, typically in two international shipping newspapers and two Indian newspapers.

In *The Myrto* [1977] 2 Lloyd's Rep 243, Mr. Justice Brandon laid down important principles regarding the court's jurisdiction to order the judicial sale of a vessel. In this landmark decision, the court recognized that judicial sales are usually sought in cases where the shipowner does not appear in the proceedings or fails to defend the claim. However, when a defendant contests the judicial sale, the court must find "good reason" to proceed with the sale, especially if the continued arrest of the vessel results in mounting costs that erode the security for the plaintiff's claim.

Brandon J. stated:

"I accept that the Court should not make an order for the appraisal and sale of a ship *pendente lite* except for good reason... the circumstances that, unless a sale is ordered, heavy and continuing costs of maintaining the arrest will be incurred over a long period, with consequent substantial diminution in the value of the plaintiffs' security for their claim, cannot, as a matter of law, constitute a good reason for ordering a sale."

This principle highlights that, even during the pendency of litigation, the court can authorize a judicial sale to prevent the diminishing value of the arrested vessel from undermining the security available to the plaintiff. This rationale is particularly relevant when the shipowner neglects the vessel's maintenance while it remains under arrest, thereby causing a gradual reduction in the vessel's value. The court's intervention via judicial sale preserves the economic value of the security.

## Case Law and Practical Perspectives

The judicial sale process, governed by both statutory law and judicial precedent, balances the interests of claimants and the need for procedural fairness. Courts have repeatedly emphasized that judicial sales should be conducted in a manner that ensures maximum value for the vessel. In *The Myrto*, the court held that judicial sales should not be ordered lightly, particularly when the defendant objects. However, when the prolonged arrest of a vessel leads to substantial maintenance costs and diminishes the value of the asset, a judicial sale is justified to preserve the claimant's security.

Further, in *The Monica S* [1968] 1 Lloyd's Rep 93, the court acknowledged that the buyer of a vessel through judicial sale should receive it free from all encumbrances. This ensures that the purchaser acquires clear title, encouraging fair bidding practices and instilling confidence in the judicial sale process. In *Dimitris L* [1989] 2 Lloyd's Rep 60, the court reaffirmed the principle that a judicial sale extinguishes all prior maritime liens and encumbrances, thereby protecting the interests of the purchaser.

In practice, if the appraised value of a vessel becomes unrealistic due to market conditions or other factors, the court may reassess the valuation to align with the current market reality. This approach ensures that the judicial sale process remains fair and transparent while protecting the rights of all parties involved.

The appraisal and judicial sale of a vessel arrested by an admiralty court are critical processes within maritime law that safeguard the interests of creditors and ensure that the sale price of the vessel is fair and reflective of its true value. The court's supervisory role, combined with statutory safeguards and judicial precedents, ensures that the sale process is conducted equitably. Judicial sales, when ordered, serve not only to satisfy claims but also to prevent the prolonged depreciation of the vessel, thereby protecting the security available to claimants. These principles, as upheld in key cases such as

The *Myrto*, underscore the court's responsibility to balance fairness and efficiency in maritime litigation.