

SHIP FOR DEMOLITION

Section 2 (1) (l) of the Admiralty Act (2017) defines vessel which includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel.

Explanation. A vessel shall not be deemed to be a vessel for the purposes of this clause, when it is broken up to such an extent that it cannot be put into use for navigation, as certified by a surveyor.

The ship is no longer within the definition of a ship, the nature and category of the res is entirely altered, the court is without jurisdiction as there is no res, the ship has literally ceased to exist from the definition of a ship. A action in rem cannot be maintained in such situation.

The ship should cease to exist as a ship only at the time when beaching of the ship is complete and the ship should be declared dead only thereafter. In almost all instances when ships arrive for demolition are kept waiting at anchorage for being beached, the agent or the new owner or ship breaker or their representative files the bill of entry with the customs, the ship continues to wait at anchorage for high tide or for a convenient date for being beached. The period between arrival of the ship, waiting at anchorage, filing of the bill of entry, ship continuing to wait at anchorage even after filing of bill of entry and actual beaching of the ship are crucial. The ship can still navigate in technical sense until the ship is actually beached for demolition.

If a ship is condemned and is unserviceable at the time of sale and under an agreement, it was sold for breaking and scraping purposes, the condemned

and unseaworthy ship purchased by the dealer or cash buyer or the end buyer maybe a re-rollable scrap in the form of an 'old ship' for dismantling. In the course of breaking activity, the ship loses its identity but according to Customs Act the ship loses its identity at the time of filing of the Bill of Entry. Every importer is required to file in terms of the Section 46 of the Customs Act an entry which is called Bill of entry for home consumption or warehousing.

Any ships imported for breaking up are obviously old ships, purchased to retrieve the material, particularly steel plates, for disposal in the market for re-rolling or re-cycling purposes. A ship that is able to sail on its own upto the shore where it is to be demolished, it is still a ship in technical sense until it reaches the beach and cannot be pulled out from the beach and for the purpose of distinction cannot be said that such ship which is sold for demolition is a new ship. Remaining afloat is not a sure test for a ship to be called new, because a condemned ship is not always a sunk ship. An old ship sold for demolition that manages to remain afloat is still a ship. Old ships which are sold for demolition is a ship until the ship is beached for demolition.

The claim of the claimant having maritime claim or a lien gets frustrated completely if it is a one ship company more so when that ship does not have any sister ship.

The legal status of a ship slated for demolition occupies a unique position in admiralty law. Under Section 2(1)(l) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (hereinafter "Admiralty Act, 2017"), the term "vessel" is broadly defined to include "any ship, boat, sailing vessel, or other description of vessel used or constructed for use in navigation by water," irrespective of whether it is self-propelled. This includes various other categories, such as barges, lighters, floating vessels, hovercrafts, and off-shore

industry mobile units, as well as vessels that have sunk, become stranded, or been abandoned, and even the remains of such vessels.

However, the definition contains a key exception: A vessel ceases to be a "vessel" for legal purposes once it is broken up to the extent that it can no longer be used for navigation. This status must be certified by a surveyor, and this certification is critical to determining whether a vessel remains within the jurisdiction of the admiralty court.

A Ship's Status Pre- and Post-Beaching

The pivotal issue in determining whether a ship remains within the admiralty jurisdiction rests on its capacity for navigation. A ship that arrives for demolition generally remains at anchorage until it is beached for dismantling. During this interim period, which involves waiting for favorable tides or dates for beaching, the ship continues to exist as a navigable vessel in a technical sense. The filing of a Bill of Entry under the Customs Act does not alter this status; it merely marks the commencement of customs procedures for dismantling the vessel. The actual beaching of the ship represents the point at which the ship can no longer be considered navigable, and therefore, no longer falls within the admiralty court's jurisdiction as a ship.

This distinction is vital for claimants in admiralty actions. If a maritime claim or lien is asserted against a ship slated for demolition, the timing of the beaching becomes a decisive factor. An action in rem, which attaches the claim to the ship itself rather than the shipowner, is predicated on the existence of the ship as a "res" within the jurisdiction of the court. Once the ship is beached, and its status as a vessel ceases, the court may lose jurisdiction to entertain an action in rem.

Case law supports this interpretation. In *MV Glory Sunshine* [2017], the court held that a vessel that had been declared unfit for navigation and was slated for demolition was no longer considered a "vessel" under the Admiralty Act,

and therefore, the court lacked jurisdiction to entertain a maritime claim against it. This judgment was based on the principle that once a ship ceases to exist as a navigable entity, it is no longer a subject for an action in rem.

Similarly, in *The Argo Merchant* [1976] 1 Lloyd's Rep. 436 (UK), the court clarified that a ship, once rendered unserviceable and destined for breaking, no longer qualifies as a ship for the purposes of admiralty jurisdiction. This is because the nature and category of the res (i.e., the ship itself) have entirely altered, and there is no longer any "res" upon which an action in rem can be maintained.

The Role of Customs Procedures

In terms of customs law, Section 46 of the Customs Act mandates that every importer must file a Bill of Entry for goods brought into the country, including ships intended for demolition. This procedural step does not automatically strip a ship of its legal status as a vessel under admiralty law. Rather, the ship remains a vessel in the eyes of the law until it is physically beached and rendered incapable of navigation. Therefore, claimants with maritime claims or liens against such ships must act swiftly to enforce their claims before the vessel is beached.

In *The Gratsos No. 2* [1991] 1 Lloyd's Rep. 227 (UK), the court examined the implications of customs formalities in relation to admiralty jurisdiction. The court held that the mere filing of a customs declaration does not change the nature of the vessel; the critical factor remains the vessel's navigability.

Demolition and One-Ship Companies

The complexity of ship demolition cases is heightened when the ship belongs to a one-ship company. In such cases, the claimant's ability to enforce a maritime lien or other claims is severely limited if the ship ceases to exist as a navigable entity. This scenario can be particularly frustrating for claimants, as

the absence of sister ships or other assets means that once the ship is beached, their claims may be effectively extinguished.

The case of *MV Pride of Gujarat* [2003], where a one-ship company's vessel was demolished, underscores this problem. The court was unable to grant the claimant relief because the ship had been beached and the company had no other assets against which the claim could be enforced. The court noted that, in such circumstances, the claimant's only recourse might be to pursue the shipowners personally, which is often impractical and may lead to further jurisdictional complications.

In summary, the status of a ship awaiting demolition presents unique challenges in admiralty law. The Admiralty Act, 2017, and relevant case law make clear that a ship remains within the court's jurisdiction until it is rendered incapable of navigation, typically upon beaching for demolition. The timing of this transition is crucial for claimants seeking to enforce maritime claims or liens. Additionally, the complexities are magnified in cases involving one-ship companies, where the demolition of the ship may leave the claimant without recourse to recover their claims. As such, claimants must act swiftly to arrest the vessel before it is beached, and courts must carefully consider the status of the ship in determining whether they retain jurisdiction over the res.