

Dr. Shrikant Pareshnath Hathi, partner and **Ms. Gazal Aggarwal**, legal researcher with Indian law firm BRUS CHAMBERS, studies the grounds for arrest of ship in India under admiralty jurisdiction. Ship arrest is the quickest way to obtain security for a claim or to negotiate for a settlement. Arrest may be a suitable remedy for creditors, such as owners that need to repossess the vessel under the charterparty, bunker or spare suppliers that have not been paid, a bank that has terminated the loan facility and wishes to draw on its mortgage or crew members that have outstanding wages. Ship arrest is a relatively easy, inexpensive and quick solution globally.



Ship arrest is the quickest way to obtain security for a claim or to negotiate for a settlement for unpaid dues. Arrest of a ship may be a suitable remedy for creditors, such as owners that need to repossess the vessel under the charter party, bunker or spare suppliers that have not been paid, a bank that has terminated the loan facility and wishes to draw on its mortgage or crew members that have outstanding wages. Ship arrest is a relatively easy, inexpensive and quick solution globally.

Ships flying flags of different nations travel from port to port carrying goods or passengers. In the course of their voyage they may incur liabilities like causing damage to some other ship through collision, unpaid wages, loss or damage to the goods being carried by them or due insurance premiums etc. and when they enter the waters of foreign states, they subject themselves to their jurisdiction. The ships can be detained or arrested for the enforcement of maritime claims, or seized in execution or satisfaction of judgments in legal actions arising out of the liabilities incurred by them. The authorities of foreign States can confiscate the ships for violating their customs, regulations, safety measures, rules of the road, health regulations, and for other such reasons.

Criminal jurisdiction may be exercised by the Coastal States against the vessels for the purpose of arrest or investigation with respect to certain serious crimes. During an international voyage, upon breaching the laws of other countries, a vessel thus subjects itself to the public and private laws of those countries. A ship does not stay at one port for long. Therefore a plaintiff who wishes to enforce his maritime claim against a foreign ship is rendered helpless once it has sailed away and if the foreign owner has neither property nor residence falling within the jurisdiction of the country where the ship was found. Therefore in order to detain the ship an order of arrest is to be obtained by the plaintiff whenever it is feared that the ship is likely to slip out of jurisdiction.

The main purpose of arrest is to obtain security from the owner in order to safeguard the interest of the plaintiff. On being detained the ship's custody goes to the Marshal or Sheriff or any other competent authority. Custody should not be confused with possession. The possessory rights remain with the owner only. Any interference with the custody is considered as contempt of court which ordered the arrest. The attachment by arrest is only provisional and

the purpose is to detain the ship till the time matter is not settled in the competent court.

Arresting a ship is a relatively straightforward matter and can be arranged quickly at a reasonable cost but with a high risk factor if it tantamount to wrongful arrest.

The claimant must file a suit under Admiralty jurisdiction and submit an application to the court by way of Judges Order for arrest to the Admiralty Judge of the High Court having admiralty jurisdiction when the ship has called or is expected to arrive. The application may be made to the court prior to the vessel entering the port if evidence can be presented showing that the vessel will most likely call a named port in the near future in Indian waters. The Admiralty suit and the application must specify the:

- a. Claimant
- b. Vessel name
- c. Flag she is flying
- d. Port or harbor where she is or likely to arrive
- e. Facts leading to the dispute and the claim;
- f. If sister ship, beneficial ownership details supported with documents;
- g. Size of the claim;
- h. Grounds for arrest
- i. Jurisdiction and Court fees payable
- j. Prayers.

Supporting documents should be given to the judge at the time of arrest application by way of a separate compilation of document to the Plaintiff, also the Caveat book for caveat against arrest is produced, and **after** hearing the Admiralty Judge passes an order in terms of the Judges Order. The decision is usually immediate.

For practical purposes, the arrest of ships is always dealt with ex parte, without notice to the opponent. However, the ship owner or the vessel interest may apply for a subsequent hearing to be held if it intends to dispute by filing an Notice of Motion or and application. Such a hearing of the Notice of Motion to oppose the arrest order will normally be scheduled within a few days.

The arrest order is then served upon the master of the vessel by the bailiff and the port and custom authorities. The vessel will then be under an obligation to stay within port limits.

The Indian Courts possessing Admiralty jurisdiction namely Bombay High Court, Calcutta High Court, Madras High Court, Gujarat High Court, Andhra Pradesh High Court and Orissa High Court have jurisdiction over the following claims defined under Article 1 of the International Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Ships, Brussels, May 10, 1952 and Article 1 of the International Convention on the Arrest of Ships, Geneva, March 12, 1999.

The Pan India Arrest jurisdiction lies only with the Bombay High Court while the other High Courts with Admiralty jurisdiction namely Calcutta, Madras, Andhra Pradesh,

Gujarat and Orissa High Courts have the admiralty jurisdiction over their state territorial waters only.

International Convention relating to the Arrest of Seagoing Ships, Brussels, 1952 and Geneva Arrest Convention, 1999, have not been ratified and adopted by Indian legislation. But the principles incorporated in both the Brussels and Geneva Conventions are part of the common law of India. These very principles are applicable for the enforcement of maritime claims against the ships in the Admiralty proceedings. The same has been held by The Supreme Court of India in the matters, M.V Elisabeth vs Harwan Investment & Trading Pvt.s Ltd., Goa and M.V Sea Success I vs Liverpool and London Steamship Protection and Indemnity Association Ltd.

A ship can only be arrested to secure a maritime claim.

Claims for which the ship may be arrested under 1952 Brussels Convention

Article 1 (1) of the Brussels and Geneva International Conventions on Arrest of Ships defines 'Maritime Claim' as mentioned below:

Article 1 of the Brussels Arrest Convention:

- (a) damage caused by any ship either in collision or otherwise;
- (b) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
- (c) salvage;
- (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- (f) loss of or damage to goods including baggage carried in any ship;
- (g) general average;
- (h) bottomry;
- (i) towage;
- (j) pilotage;
- (k) goods or materials wherever supplied to a ship for her operation or maintenance;
- (l) construction, repair or equipment of any ship or dock charges and dues;
- (m) wages of Masters, Officers, or crew;
- (n) Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
- (o) disputes as to the title to or ownership of any ship;
- (p) disputes between co-owners of any ship as to the ownership, possession employment or earnings of that ship;
- (q) the mortgage or hypothecation of any ship.

Claims for which the ship may be arrested under 1999 Geneva Convention

Article 1 of the Geneva Arrest Convention:

- (a) loss or damage caused by the operation of the ship;

(b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;

(c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

(d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);

(e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;

(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

(g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;

(h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;

(m) construction, reconstruction, repair, converting or equipping of the ship;

(n) port, canal, dock, harbour and other waterway dues and charges;

(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

(p) disbursements incurred on behalf of the ship or its owners;

(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;

(s) any dispute as to ownership or possession of the ship;

(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;

(u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;

(v) any dispute arising out of a contract for the sale of the ship.

The claimant must prove, that the claimant has prima-facie case and on a balance of probability, that it has an 'arrest ground'.

In principle, the only ship that may be arrested is that in relation to which the claim arises. However, in accordance with the arrest convention, India recognises the right of sister ship arrest.

It was held by the Bombay High Court appeal court in the matter of Rainbow Ace that it may be possible to pierce the corporate veil if there is fraud and is supported with documents also beneficial ownership should be supported with documents and not on mere suspicion.

If an arrest is granted, the owner of the vessel or vessel interest may arrange for the release of the vessel by putting up security.

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