

**Dr. Shrikant Pareshnath Hathi**, partner and **Ms. Vidya Rajan**, both associated with Indian law firm BRUS CHAMBERS, study the grounds for arrest of sister ship in India under admiralty jurisdiction, while analyzing the position of the arrest of associate ships, surrogate ships as well as ships under the same beneficial ownership, the world over and in Indian Admiralty Jurisdiction in specific.



“Sister-Ship” is a ship which is under the same beneficial ownership or in simple terms, owned in majority by the same owner or class of owners. More importantly, apart from arresting an offending ship in order to secure a maritime claim, a claimant may also arrest a sister ship of the offending ship in order to secure his claim. The International Convention Relating to the Arrest of Sea-Going Ships, Brussels, 1952 (the “Brussels Convention”) and the International Convention on the Arrest of Ships, Geneva, 1999 (the “Geneva Convention”) are very clear regarding the position of the arrest of a sister ship for maritime claims. Both the Conventions provide for the arrests of the sister ships for securing maritime claims.

In order to evade the arrest of a sister ship, in some instances, the (beneficial) owners of the said sister ships register the ships under different companies. This makes it difficult to trace it back to the beneficial owners and becomes an obstacle in arresting the “sister-ship” since it is not registered to the same beneficial owner. Such ships are known as “Associated Ships”. The associated ship arrest provision was introduced into South African legislation as an extension of the English sister ship provisions, which was incorporated into Nigerian Admiralty Law. This legislation works by way of following the principle of “Piercing the corporate veil” and provides for the arrest of a ship owned

by a different company than the one owning the offending vessel on the grounds that the two companies are commonly controlled or owned.

In Euroceanica (UK) Ltd. Vs Gem of Safaga, the Federal Court of Australia did not allow the Plaintiff to arrest the vessel “Gem of Safaga” as a ‘surrogate ship’ for securing the maritime claims against the vessels “JBU Opal” and “JBU Onyx”. In the present case, West Asia Maritime Limited, owned 9 out of the 10 shares of the vessel “Gem of Safaga” and the 10th share was owned by Four M Maritime Limited, a company controlled by or associated with West Asia Maritime Limited’s Managing Director, Abdul Qadir. A subsidiary of West Asia Maritime Limited, viz West Asia Maritime Singapore Pte Ltd, had chartered the said vessels “JBU Opal” and “JBU Onyx”, in respect of whom the maritime claims arose from the plaintiff, Euroceanica (UK) Ltd. The plaintiff, Euroceanica (UK) Ltd., sought to arrest the vessel “Gem of Safaga” stating that, notwithstanding the terms of the contract, which stated that West Asia Maritime Singapore Pte Ltd. were the charterers of the vessels “JBU Opal” and “JBU Onyx”, the parent company of the said chartering company, i.e West Asia Maritime Limited were ultimately the charterers of the vessel “JBU Opal” and “JBU Onyx”. The Court held that West Asia Maritime Limited was the owner of “Gem of Safaga” at the time of commencement

of proceedings and that it was in control of the vessels "JBU Opal" and "JBU Onyx" when the maritime claim arose with respect to the said vessels. The Court however held that, the vessel, "Gem of Safaga" cannot be arrested to secure the said maritime claims because West Asia Maritime Limited was not the sole owner of the vessel "Gem of Safaga" and notwithstanding the fact that the other co-owner of "Gem of Safaga" owned only 1 out of the 10 shares of the vessel, arresting the said vessel would impair the rights of Four M Maritime Limited.

The Brussels Convention provides that a claimant may arrest any ship with respect to which a maritime claim has arisen. In addition to that, Article 3 of the Brussels Convention provides that the claimant may arrest any other ship, which has the same owner as that of the offending ship. However, it also provides that such arrest of a "sister-ship" may be possible only and only if the person owning the ship was also the owner of the "sister-ship" at the time when the maritime claim arose. However, the Brussels Convention also states that there are certain maritime claims in respect of which no vessel apart from the offending / particular vessel may be arrested. That is to say, that it lays down the exception to the arrest of a "sister-ship". It enumerates these claims in the sub-sections (o), (p) and (q) of Article 1 of the Convention as: (a) disputes related to the title or of the ownership of any ship; (b) disputes related to the co-owners of any ship as to the ownership, possession, employment or earnings of that ship; (c) the mortgage or hypothecation of any ship. The Brussels Convention is also inspired by the principle of "res judicata", where it provides that a sister ship may not be arrested or no bail or security should be given more than once in any jurisdiction in order to secure the same maritime claim unless the claimant can prove that such bail or other security was insufficient or that has been finally released before the subsequent arrest or if there is a good cause for maintaining the arrest.

The Article 3 of the Geneva Convention, 1999 provides for the arrest of a ship to secure a maritime claim if: (a) the owner or the demise charterer of the ship is liable when such maritime claim arose and is still the owner or demise charterer of the ship when the arrest is effected; (b) the claim is based on a mortgage, hypothecation or a charge of a similar nature on the ship or it relates to the ownership or possession of the ship; (c) the claim is against the owner, demise charterer, manager or operator of the ship and is granted a maritime lien. It also provides that a sister ship may be arrested in case it is owned by a person who is responsible for a maritime claim and who was either the owner or the demise charterer, time charterer, voyage charterer of the ship when the maritime claim arose. Although the Geneva Convention steps in where the Brussels Convention lacks by stating that a sister ship may be arrested in order to secure a maritime claim related to the hypothecation or a like charge on a ship, it still stands in conformity with the view that a sister ship may not be arrested for a claim relating to the ownership or possession of the ship. Apart from the provisions for re-arrest of a sister ship in order to secure a maritime claim, the Geneva

Convention also provides for multiple arrests of a ship or its sister ship for unsatisfied maritime claims.

Jurisdictions all over the world allow the arrest of sister ships in order to secure a maritime claim, either directly or at times, when the circumstances call for it, by piercing the corporate veil. However, arrests of associate ships are not as prevalent in all jurisdictions. One of the leading pioneers of associate ship arrests is the South African Admiralty Jurisdiction. South African provisions are so extensive that they permit piercing of the corporate veil on comparatively more liberal terms. In this respect a vessel owned by a different company from the company which owns the ship concerned is susceptible to arrest simply by virtue of the fact that the two companies are commonly controlled or owned. This was buttressed in the case of Belfry Marine Ltd Vs Palm Base Maritime. It therefore goes without saying that ships are associated so long as there is common shareholding in the owning companies and any arrest affected on any such ship is valid in South Africa.

Although India recognises the arrest of sister ships for the satisfaction of maritime claims, it hasn't been liberal with regard to the arrest of associate ships and surrogate ships for the same.

In *m.v. Mariner IV vs Videsh Sanchar Nigam Limited* decided on 15th December 1997, the Bombay High Court observed that "In view of the decision of the *m. v. Elizabeth*, we are of the clear view that the High Court does have jurisdiction to arrest a "sister ship" for securing any maritime claim." In case of *m.v. Mariner IV*, 1998 (1) Mah. L.J. 751, the Division Bench of this Court held, "The admiralty jurisdiction could be invoked not only against the offending ship in question but also against a sister ship in regard to which the claim arose".

The Appeal Court of the Bombay High Court in *m.v. Sea Success I -v- Liverpool and London Steamship Protection and Indemnity Association Ltd.*, are of the view that a subsidiary company and a parent company of the subsidiary company are two separate entities. The Appeal court has the following view, "In maritime law worldwide ownership of a ship is denoted by the concept of the owner of the shares in a ship..... Fundamentally each company incorporated in law is a distinct legal entity and mere incorporation of 100% subsidiary company by its parent Company cannot lead to the conclusion that the assets of the former belong to and are owned by parent company. ....The action in rem under admiralty jurisdiction has been initiated by the plaintiffs against the defendant no.1 vessel *Sea Success -I* on the basis of allegations of it being a sister ship i.e. a ship in the same beneficial ownership as the ships "*Sea Glory*" and "*Sea Ranger*" in regard to which the claim arose. The ships are deemed to be in the same ownership when all the shares are owned by the same person or persons (Article 3(2) of 1952 Brussels Arrest Convention).

The Bombay High Court division bench hearing appeal, in the matter of *Lufeng Shipping Company Ltd -vs- m.v. Rainbow Ace & Anr.* has handed down a decision that lifting of corporate veil will arise if there is fraud and evidence

thereof. A ship can be arrested under beneficial ownership for a maritime claim under the 1999 arrest convention supported with evidence of the beneficial ownership of the ship sought to be arrested is the same as the one who is responsible and liable for the claim, and not merely on suspicion. In this case, the Appellant, also the original Plaintiff sought to arrest the defendant vessel for a claim arising out of a charter party entered into between the Appellant and the other defendant. The Appellant filed an appeal against an order of the Court vacating the order of arrest of the defendant vessel. In the current situation, the appellant had obtained an order for the arrest of the defendant vessel stating that the company against whom the appellant had a claim in, in his capacity as the original plaintiff and the defendant vessel that the appellant sought to arrest, were in the beneficial ownership of the same person. As a result of the applicability of the provisions of the Geneva Convention for the arrest of ships, the appellant submitted that since the defendant vessel and the defendant company were in the beneficial ownership of the same person, the appellant was entitled to arrest the defendant vessel for the unsatisfied claims arising from the charterparty. However, the court held that the shareholder of the company is different from the company itself. Although it was admitted that the said beneficial owner did have a beneficial interest in the defendant vessel, it was expressly denied that he was also the beneficial owner of the defendant company. The court refused to pierce through the corporate veil in the present situation, thereby, stating that the plaintiff had failed to prove that the defendant vessel and the defendant company were in the same beneficial ownership. Therefore, the Court vacated the order of the arrest of the Defendant vessel. The Appellate Court, while upholding this order, held that, although the Geneva Convention is applicable to India, the Court will not pierce the corporate veil to arrive at the fact that the Defendant vessel and the Defendant Company are in the same beneficial ownership.

It may be seen from the above case studies that, although the Indian Courts are encouraging when it comes to the arrest of sister ships, the same cannot be said for the arrest of associate ships or surrogate ships as well as ships that are in the same beneficial ownership as far as piercing the corporate veil is concerned. Indian Courts do not lift the corporate veil where it is not evident that the ships are not sister ships or that they are in the same beneficial ownership as the concerned vessel.

## **BRUS CHAMBERS**

Advocates & Solicitors

8, Rajabhadur Mansion, 3<sup>rd</sup> Floor, Ambalal Doshi Marg, Fort, Mumbai 400001, India.

Contact Partner: Shrikant Hathi

Mob: +91-976-9946865

Off: +91-22-22659969

Email: [shrikant@bruschambers.com](mailto:shrikant@bruschambers.com)

Web: [bruschambers.com](http://bruschambers.com)