
CLAIMS FOR UNPAID BUNKER DUES WHEN SUPPLY REQUISITIONED AT THE **SHIP ARREST IN INDIA** BEHEST OF TIMECHARTERER

May 2012, Published by Brus Chambers, Advocates & Solicitors, Mumbai, India

Sector: Admiralty, Shipping and Maritime

Dr. Shrikant Hathi, partner and **Ms. Afia SenGupta**, with Indian law firm BRUS CHAMBERS, analyse the situation where bunker suppliers claim remains unpaid when bunker is requisitioned by master of a ship while the ship is time chartered and the also when requisition is at the behest of the time charterer. Unpaid dues of Bunker Suppliers are secured by a maritime claim and/or a right to arrest the vessel in rem



Division Bench of the Bombay High Court allowed the appeal filed by bunker supplier, Chemoil Adani Pvt Ltd for unpaid bunker dues, the order of arrest of the vessel m.v. Hansa Sonderburg was upheld, the order passed by the single judge vacating the order of arrest of the vessel was reversed in appeal on April 27, 2010 confirming the order of arrest of the vessel as prima-facie case was made out and the arrest was justified.

Although the appeal court was of the view that the appellant bunker supplier cannot be shut out at prima facie stage and the single judge vacating the order of arrest proceeded to analyse the case and rendering conclusive findings at the interim stage was not permissible at an interlocutory stage.

Chemoil Adani Pvt Ltd filed an admiralty suit in the Bombay High Court against the vessel m.v. Hansa Sonderburg, the owner of the vessel Hansa Sonderburg Shipping Corp and the time charterer of the vessel Hull & Hatch Logistics LLC. The suit was filed for unpaid bunker dues. Bunkers were supplied at the request of the master of the vessel m.v. Hansa Sondersburg, further, the supply was made in terms

of the agreement between the bunker supplier and the time charterer of the said vessel.

During the charter, the vessel was in need of bunker.

Time Charterer of the vessel enquired from the bunker supplier as to whether they are ready to supply bunkers. After negotiation, the terms of supply were agreed in an exchange of emails between the bunker supplier and time charterer, the terms were agreed on June 26, 2009. The master of the said vessel had made a request to the bunker supplier on July 5, 2009 for supply of 800MT of bunker to the vessel for the purpose of its onward journey to Eden.

The bunker came to be supplied under a bunker delivery note dated July 5, 2009. The bunker receipts were duly acknowledged by the master of the vessel on the bunker delivery note and also by a landing certificate dated July 5, 2009 thereafter a detailed invoice dated July 5, 2009 was delivered. There was a default in payment; suit was filed on October 19, 2009 and an exparte order of arrest of the vessel was passed by the single judge.

The vessel owner made an application for vacating the order of arrest before the single judge on the ground that the bunker requisition was made at the behest of the time charterer and it is the responsibility of the time charterer to arrange and pay for the bunkers. The ship owner urged that the bunker supplier has no privity of contract with the vessel and the owner of the vessel. The contract of the bunker is only with the time charterer and in the absence of any privity of contract the bunker supplier cannot have any right to proceed against the vessel in rem and the owner of the vessel in personam. The order of arrest was accordingly vacated by the single judge and vessel was ordered to be released but the order of release of the vessel was reversed in appeal.

The bunker supplier the appellant in appeal urged that whether the terms and conditions of the contract between the bunker supplier and time charterer would bind the ship and the ship owner or not, what are the legal repercussions of the stipulations in the bunkers delivery note and what is the legal consequence of the acknowledgment of the supplies by signing bunkers delivery note are matters which cannot be decided at an interlocutory stage. Bunker supplier further urged in appeal that at this interlocutory stage, they need not prove that supply was on the credit of the vessel. In any event, the documentary evidence was produced which would demonstrate that the bunkers were supplied against the Master's requisition for the benefit of the vessel and the supply of bunkers to the vessel is acknowledged and evidenced by the bunker delivery note also signed by Master/Chief Engineer of the vessel. As to whether the Master's signature was necessary and whether the Chief Engineer had the authority to sign the same or not are matters which cannot be gone into and decided at an interlocutory stage. The appellant bunker supplier's case was clear. The requisition was made by the Master but the acknowledgment /delivery note was signed by the Master/Chief Engineer. In such circumstances, whose signature binds the vessel is something which the learned Judge could not have conclusively decided at interlocutory stage.

Why it matters:

Bunker supplier's legal position is unclear as regards their claims under admiralty law when supplies are made at the behest of time charterer while legal position is different when supplies are requisitioned by master of the vessel or by the vessel owner.

Under admiralty law bunkers can be arrested and an application for redelivery of the bunker by bunker supplier be made to the admiralty court, this appears to be feasible and a safer route for unpaid bunker dues when vessel is time chartered and requisition for bunker is at the behest of charterer.

Certain countries, such as Holland, India as well as at least some court districts in France, apply a less strict interpretation of the Arrest Convention and allow arrest even in cases where the debtor is not the owner of the vessel. English law does not recognise the concept of a

maritime lien for necessaries (charges for goods and services rendered to the vessel). Therefore, an unpaid bunker supplier would not enjoy a maritime lien as a matter of English law. However, under US maritime law, such a bunker supplier does have a maritime lien.

Ship owners should be aware that if charterers start defaulting under the charterparty, they are also likely to be defaulting on payments to suppliers of bunkers and other services, exposing the vessel to enforcement actions as a result. Bunker suppliers have experienced the impact of defaulting charterers but the tide has turned in some jurisdiction.

Unpaid bunker dues requisitioned by master of a ship that is time chartered, is a maritime claim and can be arrested as the master is first and foremost the ship owner's representative, he has more or less the same authorities as a ship owner himself but he is obliged to contact the ship owner if possible before making a major decision.

It is the master's responsibility to make the vessel ready for sailing before the commencement of a voyage. This for example means that sufficient supplies of adequate food and water are brought onboard, the master is also responsible for the seaworthiness of the vessel when the voyage commences and that the vessel continues to be seaworthy during the voyage. Whether the vessel is seaworthy or not is decided by the master. The duty of the master to supervise the seaworthiness of the vessel also means that he is obligated to refuse to carry out the orders of the charterer or shipowner, in case their assessment of the seaworthiness is not compatible with his. If the charterer or the shipowner does not respect this it is possible to prosecute each of them as an instigator or accessory.

The master also shall supervise the loading and the discharging of the vessel. (The actual supervision is often carried out by the first officer.) It is also his responsibility to make sure the voyage is performed as swiftly as possible without time loss. The charterer can have a great influence on the circumstances surrounding the voyage but the master is the person who is primarily responsible for the performance of the voyage.

The Master need not obey orders given by Charterers of his vessel if it is, or at the material time he reasonably believes that it is, unsafe for him to obey them; or they call upon him to perpetrate or to facilitate a fraud upon, or commit a tort in relation to, or break a contract with, a third party; or they are manifestly inconsistent with the express or implied terms of the charterparty. The master has got several assignments on board. He is principally responsible for the seaworthiness of the vessel, both at the time of the departure and during the voyage. The master has got the legal right to refuse to obey orders that will jeopardize the seaworthiness and sometimes he is even obligated to refuse to obey such orders.

The master is responsible for the day-to-day operation of the vessel while the shipping company has the ultimate responsibility.

Section 4 of the ISM-Code "Designated Person(s)" reads as: To ensure the safe operation of each ship and to provide a link between the company and those on board, every company, as appropriate, should designate a person or persons ashore having direct access to the highest level of management. The responsibility and authority of the designated person or persons should include monitoring the safety and pollution prevention aspects of the operation of each ship and to ensure that adequate resources and shore based support are applied, as required"

Bunker oil is 'necessary' goods and supplies for ship. If it is conclusively shown that necessities supplied or services rendered to any ship are prima facie 'necessaries' and are within the category of necessities within the scope and ambit of section 5 of Admiralty Courts Act, 1861, admiralty action will lie. The concept of "necessaries" goods and materials supplied or services rendered to a ship for her operation and maintenance. The operation of the ship would necessarily include operation of ship 'necessary' for voyage and sea worthy necessarily include necessities including bunkers, for the vessel to be seaworthy from commencement and continues to be seaworthy during the voyage. Bunker fuel oil is used mainly in powering ships.

A common feature of bunker supply contracts is that bunker suppliers frequently allow all or part of the purchase price to fall due some time after delivery of the bunkers. One reason why a bunker supplier may be willing to grant such credit is that the amount owing may be secured by a maritime claim and/or a right to arrest the vessel in rem to which the bunkers were supplied or her sister ship.

Owners trading vessels in the spot market purchase bunkers on their own account. In such circumstances, fulfilment of the payment obligations under the bunker supply contract will be within owners control. If, however, the vessel is chartered out on a time or bareboat charter, bunkers will normally be purchased by the charterer. In such cases, owners have no control over the purchasers fulfilment (or not) of the payment obligations under the bunker supply contract. And if the purchaser defaults, this may lead to actions against the vessel by the bunker supplier.

In many other jurisdictions, while the bunker suppliers claim will not be secured by a maritime lien, it may qualify as a maritime claim, which may entitle the bunker supplier to arrest the vessel to which the bunkers were supplied

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