

# Maritime Laws – An Ocean to Explore

Maritime Industry is inseparably linked to the country's development because it is one of the primary sources of revenue for the country's economic development. India is a peninsular country with coastal line spread on both the Western and Eastern borders measuring 7516.6 kms (including the Island Territories). Though India has a long history of Maritime Trade since time immemorial, the Maritime Law is still an evolving area of law both within and outside of India.



## CS Swetha R, ACS

Senior Manager & Company Secretary  
Intersea Maritime Limited, Chennai  
[swethakaali@gmail.com](mailto:swethakaali@gmail.com)

## INTRODUCTION

**M**aritime Industry is inseparably linked to the country's development because it is one of the primary sources of revenue for the country's economic development. India is a peninsular country with coastal line spread on both the Western and Eastern borders measuring 7516.6 kms (including the Island Territories). Though India has a long history of Maritime Trade since time immemorial, the Maritime Law is still an evolving area of law both within and outside of India.

In the present day, the Company Secretaries are providing various services/ roles which are Statutory, Advisory, Management, Compliance Management, Representation Services, Arbitration, Mediation, Valuation, Due Diligence, Audit and Strategic Management. Let's dive into the Maritime Industry and its governing laws before we can understand the Scope of CS.

## WHAT IS MARITIME?

The word maritime has been defined in the merriam-webster.com as

- of, relating to, or bordering on the sea.
- of or relating to navigation or commerce on the sea.
- having the characteristics of a mariner.

Mariner means – a person who navigates or assist in navigating a ship.

In simple terms, 'maritime' covers all aspects of Ship, ocean and trade on the sea.

There are various types of ships/vessels that are sailing in the Oceans, some are Commercial / Merchant Ships carrying goods, commodities. Some are passenger Cruise ships and some are Military / Coast Guard Ships. The focus of this article will be more specifically to commercial ships.

*Maritime Industry and Maritime laws are governed by the "Ministry of Ports, Shipping and Waterways".*

The Maritime Laws deal with Shipping and logistics, Marine Insurance, Maritime Compliance and regulations, Marine pollution, Maritime Commerce, Seamen's safety, Admiralty litigation, Arbitration.

## TO SIMPLIFY AND UNDERSTAND

Eg., There is a ship MV Bon Voyage. The ship is owned by Owner Ltd. The Ship management is handled by Manager Ltd. (Ship management involves employing master, crew, officers, insurance for the crew members, payment of wages for the Crew). In simple terms Ship managers 'Manager Ltd.' run the vessel. In turn, the ship managers are paid "Ship Management Fee" by the Owners Ltd.

(The owners can themselves manage the ship or can delegate the same to a separate entity like in the above example).

In some cases technical management of the ship is also carried by Managers, which involves compliance with International Safety Management Code (ISM code) prescribed by the International Maritime Organization (IMO), employing competent personnel to maintain the efficiency of the Vessel, supplying necessary stores, spares, lubricants, Bunkers (fuel for the ship). Further, the requirements of the FLAG STATE should be complied. FLAG STATE means the country in which the ship is registered. eg., Indian flag/ Singapore flag etc.

The business of Shipping is governed by several agreements in order to safeguard the interests of the stakeholders at large. Though there are standard formats prescribed by BIMCO that are internationally accepted, Company Secretaries have a role to play in drafting/ vetting these agreements, Power of Attorneys and other such other Certifications as and when required.

## OWNERSHIP OF VESSEL

Ships must have a National Character to sail in the High Seas freely. Ships generally possess the Nationality of the Country whose flag they are entitled to use. Some countries may not require the Ship to be registered in their records when the owning company is registered. The ship will be subject to the laws and regulations of the State (Country) under whose Flag it is registered. Jurisdiction over vessels on the high seas, including for offences committed on the high seas, will reside with that Country.

The country to which a ship is registered is called its “Flag State.” A Ship is bound by the laws of its Flag State, and one commonly says a Ship sails “under the flag” of its country of registration.

The Registration of the Ship gives protection to the members of the crew in case of unforeseen circumstances, involving injuries or loss of life and claim compensation under the Indian Acts in Indian courts.

## MERCHANT SHIPPING ACT, 1958

In India, Merchant Shipping Act of 1958, deals with registration of ships. Part V of this Act deals with exclusively with the registration of Indian ships, while Part XV deals with registration of sailing vessels and Part XVA deals with the registration of fishing boats.<sup>1</sup>

A Central Register is maintained by the Director General of Shipping, which contains all the entries recorded in the Register Books kept by the Registrar at the Port of Registry in India. The Director General of Shipping, at the request of owners of Indian ships, desiring to be known at sea, allots signal letter & controls the series that may be so issued. Certain formalities are required to be complied with before a ship is registered as an Indian ship and these are laid down in the Merchant Shipping (Registration of ships) rules 1960 as amended from time to time.

Over the years, the Act has been amended to ratify the changes approved by the International Maritime Organisation (IMO), through its conventions and protocols, to which India is a Member. This Act deals with the Registration of Indian Ships.

At present Mumbai, Kolkata, Chennai, Cochin and Mormugao have been notified as Ports of Registry and Principal Officers of Mumbai, Kolkata & Chennai and Surveyor in charge of Cochin and Mormugao have been notified as Registrar of Indian ships. The Registrar of Indian Ships will maintain a complete record of Ships on register. A Central Register is maintained by the Director General of Shipping, which contains all the entries recorded in the register books kept by the registrar at the port of registry in India. The role of DG Shipping is implementation of shipping policy and law as well to ensure the safety of life and ships at sea, prevention of

marine pollution, promotion of maritime education and training in co-ordination with the International Maritime Organization, regulation of employment and welfare of seamen, development of coastal shipping, augmentation of shipping tonnage, examination and certification of Merchant Navy Officers, Supervision and Control of the allied offices under its administrative jurisdiction.<sup>2</sup>

At the time of Purchase and Sale, the ship is registered and deregistered with the Registrar of Indian Ships as per the procedures laid down in the Merchant Shipping Act and rules made thereunder.

Further, the filing of documents under this Act is still done physically and there are no e-filing facilities. The documents such as Bill of Sale, Power of Attorney and Agreements duly Notarized must be submitted to the Registrar of Indian Ships.

A Practicing Company Secretary or the Company Secretary of the Company can assist in the entire process of Purchase or Sale of the Vessel starting from drafting and vetting of the agreements to the Registration with the Registrar of Indian Ships. Presently, the Shipping Brokers or Agents represent their clients while registering the vessel with the Registrar of Indian Ships.

## SEAMEN'S PROVIDENT FUND

Provident fund paid for the Crew members are governed by the **Seamen's Provident fund Act of 1966** under the Ministry of Ports, Shipping and Waterways. This SPF is similar to our Employees Provident Fund, where in Employer's (12%) and Employee's (12%) contribution is made.

## PORTS ACT

The Indian Ports Act, 1908 was enacted for safeguarding ports and regulating the port charges.

The Major Port Authorities Act, 2021 deals with the regulation, operation and management of the Major ports in India.

**The Indian Ports Bill, 2021** is yet to be enacted and it provides safety and security and containment of pollution at ports. It ensures compliance with the country's obligation under the Maritime Treaties and International Instruments to which India is a party. It provides measures for conservation of ports as well providing adjudicatory mechanisms for redressal of port related disputes and to empower a National council for fostering structured growth and development of the port sector, and ensure optimum utilization of the coastline of India, as may be necessary, and to provide for matters ancillary and incidental thereto, or connected therewith.

The adjudication mechanism in the Indian Ports Bill 2021, establishes an Appellate Tribunal which is a Quasi-Judicial body. Hence, Company Secretaries can represent their clients or their company in these Appellate Tribunals.

<sup>1</sup> Source: [https://www.dgshipping.gov.in/Content/PageUrl.aspx?page\\_name=ShipManualChap6](https://www.dgshipping.gov.in/Content/PageUrl.aspx?page_name=ShipManualChap6)

<sup>2</sup> (Source: <https://www.dgshipping.gov.in/>)

## MARITIME ARBITRATION

Gujarat International Maritime Arbitration Centre (GIMAC)

GIMAC is a unique Arbitration Centre for Maritime Disputes. It will cover the disputes arising from the maritime, shipping and logistics sector. It is a specialized ADR (Alternate Dispute Resolution) Centre. Based on an MOU signed by Gujarat Maritime University (GMU) with IFSCA (International Financial Services Centers Authority) on 21<sup>st</sup> June 2021, the GIMAC has been formed to deal exclusively in Arbitration of Maritime and Shipping Industry.

The GIMAC has set out below criteria for selection of experts into its panel as Arbitrator.<sup>3</sup>

- 1) has been empaneled as an Arbitrator with other arbitral Institutions; or
- 2) has been a Judicial Officer; or
- 3) has been an Officer of the Indian Legal Service; or
- 4) has been a Professor of Law; or
- 5) has been an Officer having senior level experience of administration in the Central Government or State Government or having experience of senior level management of a Public Sector Undertaking or a Government company or a Private Company of repute; or
- 6) has a minimum of ten years of engagement in a responsible position in one or more areas of the maritime and/or shipping industry/logistics; or
- 7) has been an Advocate having a minimum of ten years of practice experience as an advocate with specialisation in the field of commercial or arbitration laws; or
- 8) **has been a Chartered Accountant/ Company Secretary having a minimum of ten years of practice experience with specialisation in the field of commercial or arbitration laws; or**
- 9) has been a Cost Accountant (within the meaning of the Cost and Works Accountants Act, 1959) having a minimum of ten years of practice experience as a cost accountant with specialisation in the field of commercial or arbitration laws; or
- 10) has been an Officer with a law degree having a minimum of ten years of experience in legal matters in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in the Private Sector and where he/she has worked in the Private Sector; or
- 11) has been an Officer having a minimum of ten years of experience as an Engineer in the Government,

Autonomous Body, Public Sector Undertaking or (at a senior level managerial position in the private sector or self-employed); or

- 12) has educational qualification at degree level with ten years of experience in a scientific or technical stream in the fields of architecture, telecom, information technology, intellectual property rights or other specialised areas in the Government, Autonomous Body, Public Sector Undertaking or senior level managerial position in the Private Sector, as the case may be; or
- 13) has been teaching law relating to Arbitration/ Maritime/ Shipping Law for a duration of 10 years or more; or
- 14) has a cumulative experience of 10 years in the fields mentioned from points 5 to 12 above.

List of arbitrators includes members of the Institute of Company Secretaries of India having 10 years of relevant experience. Hence there is a tremendous Scope for Company Secretaries in Maritime Arbitration to act as Arbitrators.

## ADMIRALTY (JURISDICTION AND SETTLEMENT OF MARITIME CLAIMS) ACT, 2017

An Act to deal with the Maritime claims and Settlement in connection with the same.

This Act is applicable to every vessel (ship), irrespective of the place of residence or domicile of the owner. But does not extend to Inland Vessel defined in clause (a) of sub-section (1) of Section 2 of the Inland Vessels Act, 1917, vessel under construction, warships, naval auxiliary such foreign vessel which is used for non-commercial purpose as may be notified by Central Government.

The Admiralty jurisdiction in respect of all Maritime Claims under this Act shall vest in the respective High Courts and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act.

Section 2(1)(e) of the Act, defines the High court - "High Court", in relation to an Admiralty Proceeding, means any of the High Court of Calcutta, High Court of Bombay, High Court of Madras, High Court of Karnataka, High Court of Gujarat, High Court of Orissa, High Court of Kerala, High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh or any other High Court, as may be notified by the Central Government for the purposes of this Act.

Section 4 of the Act provides the following situations classified broadly wherein Maritime Claims may arise;

<sup>3</sup> (Source: <https://gimac.in/eligibility-criteria>)

- Disputes regarding ownership of a vessel;
- Disputes between co-owners of a vessel regarding employment or earnings of the vessel;
- Mortgage on a vessel; Maritime lien;
- Loss or damage by operation of the vessel;
- Loss of life or personal injury on land or water in connection with operation of the vessel;
- Agreements relating to carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise; hire of the vessel;
- Construction, repair, or conversion of the vessel;
- Insurance premium;
- Disputes arising out of the sale of a vessel;
- Environmental damage caused by the vessel, etc.

### Arrest of Vessel *in rem*

Since the vessels travel from one port to another and to different countries, there is every possibility of incurring certain unforeseen liabilities due to collision, loss of life or damages to goods in their voyage to different countries which result in Maritime Claims.

As per Section 5- The High Courts having Jurisdiction under the Act have the power to order for Arrest of any Vessel for settlement of a Maritime claim which is the subject matter of the Admiralty proceeding, wherein the High court has a reason to believe that-

- The person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or
- The demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or
- The claim is based on a mortgage or a charge of the similar nature on the vessel; or
- The claim relates to the ownership or possession of the vessel; or
- The claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

An *action in rem* is directed against the Ship itself, to satisfy the claim of the plaintiff. In Maritime claims, the ship is treated as a Person different from its owners.

The Plaintiff does not sue the owner directly and by name; but the owner or any one interested in the proceedings may appear and defend. A Maritime Lien is a privileged claim against the ship. Because the ship has to “pay for the wrong it has done”, it can be compelled to do so by forced sale.

Over the years, the Act has been amended to ratify the changes approved by the International Maritime Organisation (IMO), through its conventions and protocols, to which India is a Member. This Act deals with the Registration of Indian Ships.

If the owner does not submit to the jurisdiction and appear before the Court to put in bail and release the ship, then Ship is liable to be condemned and sold to satisfy the claims against her. The Owner of the Vessel may obtain the release of the Ship by depositing security and becomes personally liable to be proceeded against *in personam* in case the bail amount is in excess of decreed amount. The arrest of the foreign ship by means of an *action in rem* is thus a means of assuming jurisdiction by the competent court.

Section 7 of the Act lays down the Restrictions on *action in personam* – Actions against the persons/ owners of the Ship.

Maritime claim which arises in respect of damage or loss of life or personal injury arising out of Collision; non-compliance with the collision regulations made in pursuance of Section 285 of the Merchant Shipping Act, 1958 (44 of 1958). In these cases, unless

- The cause of action, wholly or in part, arises in India; or
- The defendant, at the time of commencement of the action by the High Court, actually and voluntarily resides or carries on business or personally works for gain in India.

Further the High Court should not entertain any *action in personam* against the defendant until the previous proceedings brought by the plaintiff in any other court outside India against the same defendant in respect of the same incident or series of incidents are discontinued or has come to an end.

Hence, the above mentioned condition prevents the High Court from proceeding against the Owners of the ship. Till, then the ship is only arrested or proceeded for settling the claims.

### WHAT HAPPENS TO THE ARRESTED VESSEL?

The Vessel is arrested for settlement of the Maritime Claims which is done either by sale of the vessel in Auction by the High court or by payment of security by the owner or charterers to release the vessel.



Section 8 of the Act states that the vessel which is sold by High Court exercising its Admiralty jurisdiction is free from Encumbrance, liens, attachments, registered mortgages and charges of the same nature on the vessel. Hence, the purchaser of the Vessel is protected from any further claims.

Section 10 of the Act stipulates the order of priority of Maritime Claims-

- (1) A claim on the vessel where there is Maritime Lien;
- (2) Registered Mortgages on the vessel.

Also, Maritime Liens – Section 9 of the Act covers the Order of priority of Maritime Liens which are-

- (a) Claims for wages;
- (b) Claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
- (c) Claims for reward for salvage services including special compensation relating thereto;
- (d) Claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;
- (e) Claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

#### **Protections available to the Owner of the Vessel under Section 11**

The High Court may impose a condition on the Claimant who seeks to arrest the vessel, an undertaking to pay for the damages or such security for any loss or damage which may be incurred by the defendant because of the arrest wherein the claimant may be found liable in case (a) the arrest having been wrongful or unjustified, or (b) excessive security having been demanded by him.

In cases wherein the owner or the demise charterer abandons the ship after the arrest, the High Court will

auction the Vessel within 45 days from the date of arrest or abandonment.

Hence, the Act protects all the stakeholders connected with the Ship.

Understanding the provisions of Admiralty Act will become necessary while working in Maritime Industry particularly in cases of Insolvency and Winding up.

### **INSOLVENCY OF SHIPPING COMPANIES**

Insolvency and Bankruptcy Code, 2016 is legislation for resolving the Insolvency of Corporate Debtors by way of implementing a Corporate Insolvency Resolution Process (CIRP) as well as Liquidation of the Corporate Debtor if revival is not possible. The Code maximizes the Asset value as well protects and takes care of all the Stakeholders connected with the Corporate Debtor.

While Insolvency Code centralizes all the assets of the Corporate Debtor pooling them into a common box so that insolvency can be resolved and payment be made to creditors, the Admiralty Act in the Maritime law allows the Creditor to obtain security for their claims by arresting the ship which owes them. In case of IBC, the waterfall mechanism for payment to be made will be decided by the Committee of Creditors (CoC). But, the Maritime liens will get extinguished only by way of a sale by an Admiralty Court as per the Admiralty Act, 2017. The order of priority under the Admiralty Act in Section 9 and Order of priority under Section 53 of the IBC Code are different.

Giving priority among the similarly placed workmen in different classes will violate the principles of natural justice. For eg., providing priority to wages of seamen over the wages of workers in land, when both face considerable personal peril, may be difficult to reconcile with the intent of the Code. These issues of conflict in the priorities need to be clearly addressed to promote certainty and enable effective restructuring.

This has given rise to several instances of conflict of provisions in the Code and the Admiralty Act. But

the judgement of Bombay High Court in *Raj Shipping Agencies v. Barge Madhwa* on 19<sup>th</sup> May 2020 has given some clarity on the same.

## QUESTIONS OF LAW FRAMED BY THE COURT

The Court puts forth the following questions with respect to the provisions of the Admiralty Act, the IBC and the Companies Act:

Whether leave under Section 446(1) of the Companies Act is required for the commencement or continuation of an Admiralty action *in rem* where a winding up order has been made or the Official Liquidator has been appointed as Provisional Liquidator of the company that owned the ship?

The Court after considering various pronouncements of the Supreme Court of India, held that “the Admiralty Act is a Special Act and a later Act whereas the Companies Act is a General Act. The Admiralty Act is also a consolidating Act and a complete code as regards Admiralty jurisdiction, arrest of ships, maritime claims, sale of ships and determination of priorities” and hence, the leave under Section 446(1) is not applicable.

Is there a conflict between actions *in rem* filed under the Admiralty Act, 2017 and the provisions of IBC and if so, how is the conflict to be resolved?

The Court after considering the various judgments pronounced by courts in India and Foreign Courts, observed put forth the following :

- a. That as per the Section 4 of the Admiralty Act, the jurisdiction for an *action in rem* against the vessel vests only with the High Court having jurisdiction of the territorial waters within which the vessel is stationed for the maritime claims.
- b. The *action in rem* is against the vessel under Admiralty Act and the Vessel is considered as a separate entity from its owners.
- c. Further the Maritime Liens attach only the particular vessel against which the claim arises and no other property or vessel of the owner can be charged to settle the same.
- d. The moment a ship is arrested, the Plaintiff becomes a secured creditor of the vessel and not against its owner or the other assets of the owners.
- e. Further an action *in rem* may be filed and the ship arrested-
  - (a) Before the moratorium under Section 14 of the Code comes into force; or
  - (b) During the moratorium period; or
  - (c) Even after the Corporate Debtor is ordered into Liquidation.

In case an Admiralty suit has been proceeded against a Ship and its owner is already a Corporate Debtor under CIRP. The proceedings may be commenced when there is a maritime claim which seeks arrest and the subsequent sale of the Ship to enforce the right of a secured creditor.

The above Admiralty proceedings can be commenced even when the insolvency proceedings are commenced against the Corporate Debtor.

But the Corporate Debtor can prevent the Arrest of the Ship by furnishing the required amount of security for the Ship, so that the Ship can be utilized for CIRP Revival. Till the CIRP is initiated, the vessel will not be sold.

In case CIRP is initiated, it is the discretion of the Admiralty court to sell the vessel and settle the Maritime Claim raised by any party, by providing due notice to the owner of the vessel. This is permissible only when the Application for sale is made by the Resolution Professional or when the Vessel is not maintained properly, crew wages are not paid by the RP during the moratorium period or when the Ship becomes unsafe to sail or threat to environment.

## HENCE, RP IS PRIMARILY RESPONSIBLE FOR THE SHIP

If the CIRP is successful, then the plaintiff under the Admiralty will be treated as a Secured Creditor. In case the Corporate Debtor is ordered to be liquidated, then the security if any provided for the Plaintiff’s claim will be realized. If no such security is provided, then the Sale of the Ship will be by way of Admiralty Sale to reap the maximum benefit to settle maritime claims. Further, the Admiralty court will be entitled to invite claims against the sale proceeds and Parties who have a maritime lien or a maritime claim against the Ship will be paid as per the Order of claims under the Sections 9 and 10 of the Admiralty Act. If the Sale proceeds of the Ship are insufficient to settle the claims, then such claimants would have to pursue their claims in the liquidation of the Corporate Debtor.

The Scope of a CS as a Resolution Professional in the Insolvency of a Shipping Company is huge wherein the responsibility for maintenance of the Ship and its crew falls on the RP in addition to their other roles under IBC.

## CONCLUSION

The above explanations on Insolvency Code and Admiralty Act gives rise to further questions, in cases of Cross border transactions. Once the Cross Border Insolvency mechanism is implemented in the IBC 2016 the issues on cross-border insolvency in the Maritime industry can be solved to a greater extent. The Maritime Industry and the governing Laws are yet to be explored to its full depth. In simple words, there is a huge potential for professionals to unearth and expand their area of practice in the Maritime Laws.

