

IBC vis a vis Admiralty Act

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The Bombay High Court on 19.3.2020 in **Raj Shipping Agencies v. Barge Madhwa and Anr.**, considered the nature and provisions of proceedings under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (Admiralty Act) and harmonised the provisions of the Admiralty Act with IBC.

The Hon'ble Court observed that the Admiralty Act is a complete code as regards legal proceedings in connection with vessels (otherwise called actions in rem), their arrest, detention, sale and determination of priorities in respect of the sale proceeds of the vessels that were ordered to be arrested. It was noted that a maritime claim is enforced by an action in rem against the vessel (or its sale proceeds) and thus the vessel is liable to pay the claim.

Referring to the Ram Janmabhumi Temple case, it concluded that the vessel could be treated as an independent legal personality. In Admiralty proceedings only the vessel is sued in its own name de hors the status of its owner (who may be the corporate debtor) and without reference to its owner. The vessel is itself liable and can be arrested for crystallizing the maritime claim in this respect. Thus, proceedings against the vessel may commence and continue without the corporate debtor or company even though they may be undergoing winding up proceedings.

Effect of Moratorium on in rem actions

The action in rem if filed prior to the moratorium period, will not be continued during the CIRP as this would defeat the very purpose of Code. However, the Court further held that a Plaintiff could institute an action in rem even after a moratorium is declared as the action in rem is not against the corporate debtor. However, the suit would not be continued after the arrest of the vessel so as to allow for the CIRP to be effective.

Status of maritime lien holders

A Plaintiff who has invoked the Admiralty jurisdiction and got a warrant of arrest executed would crystallise its security interest. The Plaintiff shall be a "secured creditor". However, the Plaintiff's security would extend only to the particular vessel and the value of such vessel. The Plaintiff's rights and entitlements as secured creditor will be determined by the COC/ Adjudicating Authority.

In case, a Resolution Plan is approved, then the claim of Plaintiff will be determined in accordance with the resolution plan approved by the COC and the adjudicating authority. In such a situation the Plaintiff should be entitled to realise his claim to the full extent of the security provided. If the CIRP is not successful and the company is ordered to be liquidated, an order of liquidation under Section 33 of the IBC and appointment of Liquidator would not bar institution or continuation of in rem proceedings against the vessel as it would not amount to a suit instituted against the corporate debtor.

On maintenance of the Vessel.

The obligation to maintain the vessel is of the Resolution Professional. This includes various charges that are required to be paid. This is coupled with the obligation to ensure that the vessel does not

become a navigational hazard. Thus, payment of crew wages, port dues, etc. cannot be avoided by the Resolution Professional. The Admiralty Court may consider an application for sale of the vessel at any stage during the CIRP if the above is not being done.

Further to protect the person making the payments towards the aforesaid costs, held that all expenses incurred with the permission of the Court for preservation and maintenance of the vessel during the period of arrest will be treated as 'Sheriff's Expenses' in Admiralty and 'Resolution Process Costs' under the IBC. The same would be paid out in priority from the sale proceeds of the vessel if the company is liquidated or be accorded priority in the resolution plan as resolution process costs.

Proceeding with sale of a vessel pending CIRP and/or liquidation proceedings

Pending the CIRP and during the moratorium period; the Court held that there shall be no order of sale in order to allow the insolvency resolution process to fructify. However, in special circumstances the High Court held that it could exercise its discretion and proceed to sell the vessel if the vessel is not being manned, equipped and maintained by the Resolution Professional during the moratorium and all charges including port charges, supply of bunker, fuel, and other necessary supplies for the same are not being paid by the Resolution Professional or if the vessel becomes a navigational hazard. This could be done upon an application for sale made by the Resolution Professional or the Plaintiff.

After CIRP and pending liquidation; the Court held that a Plaintiff can approach the Admiralty Court for sale of the vessel. The Court observed that such a sale would realize maximum value due to the inherent benefits of a judicial sale by an Admiralty Court and would be in the interest of all concerned since a sale of the vessel by the Liquidator cannot extinguish maritime liens and therefore the vessel may not attract any bidders. In all cases where sale of the vessel is applied for before the Admiralty Court, notice will be given to the owner who may be represented by the Resolution Professional or the Liquidator before any such sale takes place.

On priorities inter se maritime claimants and distribution of sale proceeds.

The Court held that determination of priorities will have to be done in accordance with Section 10 of the Admiralty Act and inter se priorities of maritime liens will have to be decided in accordance with Section 9 of the said Act. The Court held that Section 53 of the IBC, which does not take into account maritime claimants will not be applicable.

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