

“Critical Analysis of right to lien under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017¹”

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Most of the transactions in the world are done for some obligation and when that obligation is not given or performed, there are some legal actions that can be taken to compel the other party/person to perform the obligation. Not all the actions are to be taken by way of filing of a suit of performance in the Court but there are some other ways in which the concerned party can be compelled to perform due obligation. One of the ways is Lien. In common civil law a right to lien is defined as “*The right to take another’s property if the obligation is not discharged*”.

It is the known fact that majority of total world trade is carried out by sea and one can imagine the amount of transactions involved and the obligations attached to such transactions. The claims arising out of such obligations are called *maritime claims*. Some of the maritime claims can be enforced by way of maritime lien. Maritime claims can be satisfied by way of proceeding *in rem*² and *in personam*³ but mostly the courts around the world proceed *in rem*. Maritime lien is different from the normal lien as in the normal lien the liability to perform the obligation is on the person responsible for that obligation but in maritime lien the liability is on the ship and its equipment. Also the maritime lien is terminated if the vessel no longer exists⁴.

Many countries at worldwide level have recognized maritime lien in their respective statutes and there are specific conventions related to the arrest of ships namely *International Convention for the unification of certain rules relating to Arrest of Sea-going Ships, 1952, International Convention on Arrest of Ships (Geneva Arrest Convention), 1999 and International Convention on Maritime Liens and Mortgages, 1993*⁵. Although India has not ratified these conventions but Apex court, in *M.V. Elisabeth V. Harwan Investment and Trading*⁶, has observed that “*Any attempt to confine the Admiralty law within the bounds of domestic statutes is not only unrealistic but also incorrect*”. It can be understood by this view of the Apex court

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² Right in rem- right against the whole world.

³ Right in personam- right against an individual.

⁴ UKP&I, 2018. Legal Article: India - Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017. Available at: <https://www.ukpandi.com/knowledge-publications/publications/article/legal-article-india-admiralty-jurisdiction-settlement-of-maritime-claims-act-2017-145425/> (Accessed On: 8-1-2020).

⁵ David W Robertsont Michael F. Sturley, 2017. Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits. Available at: <file:///Users/Aditya/Downloads/41TulMarLJ437.pdf> (Accessed on: 8-01-2020)

⁶ 1993 AIR SC 1014

that the domestic admiralty courts have been relying on the international instruments to decide the right to maritime lien and its enforcement by proceeding *in rem* and arresting the ships but now in *The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017* which came into force of 1st April, 2018, the legislature has aligned the said statute with the above mentioned international instruments. It is prominent from the relevant sections of the Act for example section 2(1)(g) of the act defines what is “Maritime Lien” and recognizes certain claims as Maritime Liens. Section 9 of the act prioritizes different types of maritime liens and interestingly in section 10, Maritime Lien is given the priority over the mortgage which means if a person is entitled to maritime lien, he/she will be given priority in the court proceedings⁷.

Maritime Liens have the highest priority, followed by registered mortgages and charges, and thereafter all other claims. The Act also provides the period of limitation for Maritime Lien, and states that the maritime lien shall stand extinguished after expiry of one year unless the vessel is arrested/seized and such arrest/seizure has led to a forced sale by the High Court. In respect of Maritime Liens relating to claims for wages or other employment related payments, including cost of repatriation and social insurance contributions, the limitation period is two years. The period of limitation would run continuously without any suspension or interruption, except the period during which the vessel was under arrest or seizure, which is to be excluded. It is pertinent to mention here the various types of maritime lien as recognized by *The Admiralty Act, 2017*. These are (a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf; (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. Under section 5 of the Act, the High Court may order the arrest of the vessel and a person seeking and order of arrest can approach the court to ascertain such order.

However the courts in India and around the world has taken different and novel views regarding the concept of maritime lien. In the case of *M.V. Success*⁸, the Apex court

⁷ Hariani & Co. 2018. Admiralty (Jurisdiction and settlement of Maritime Claims) Act 2017. Available at:

[http://www.manupatrafast.in/NewsletterArchives/listing/Hariani/2018/Feb/The%20Admiralty%20\(Jurisdiction%20and%20Settlement%20of%20Maritime%20Claims\)%20Act,%202017.pdf](http://www.manupatrafast.in/NewsletterArchives/listing/Hariani/2018/Feb/The%20Admiralty%20(Jurisdiction%20and%20Settlement%20of%20Maritime%20Claims)%20Act,%202017.pdf) (Accessed on: 8-01-2020)

⁸ Liverpool & London S.P. & I Asson. ... vs M.V. Sea Success I & Anr on 20 November, 2003

observed that: “In British Shipping Laws, Volume 14, while contrasting *maritime liens* and statutory rights of action it is stated that “ Although *maritime liens* and statutory rights of action in rem are similar in that they involve the Admiralty process in rem, nonetheless there exist fundamental differences between the two categories. These differences may be categories as follows:

(1) Nature of the claim Although the point is not free of uncertainty it is probably the case that a *maritime lien* is a substantive right whereas a statutory right of action in rem is in essence a procedural remedy. The object behind the availability of a statutory right of action in rem is to enable a claimant to found a jurisdiction and to provide the res as security for the claim.” The court thus clarified the difference between the statutory lien and maritime lien.

In case of *M.V.A.L Quamar Vs. Tsavliris Salvage*⁹ the Hon’ble Apex court that “Be it noted that there are two attributes to maritime lien. (a) a right to a part of the property in the res; and (b) a privileged claim upon a ship, aircraft or other *maritime* property in respect of services rendered to, or injury caused by that property. *Maritime lien* thus attaches to the property in the event the cause of action arises and remains attached. It is, however, inchoate and very little positive in value unless it is enforced by an action. It is a right, which springs from general *maritime* law and is based on the concept as if the ship itself has caused the harm, loss or damage to others or to their property and this must itself make good that loss”. It was also observed in this case that “although admiralty actions are frequently brought in personam, against individual or corporate defendants only, the most distinctive feature of admiralty practice is the proceeding in rem, against *maritime* property, that is, a vessel, a cargo, or freight, which in shipping means the compensation to which a carrier is entitled for the carriage of cargo.” Thus Apex court much before the enactment of The admiralty act, 2017, clarified the stance on the maritime lien and identified the areas where the maritime lien can be exercised and the procedure thereof. In the case of *O. Konavalov vs Commander, Coast Guard Region*¹⁰ The court crystallized the commencement and the end of the maritime lien. It observed that “A Maritime lien adheres to the ship from the time that the facts happened which gave the *Maritime lien*, and then continues binding on the ship until it is discharged, either by being satisfied or from the laches of the owner, or in any other way which, by law, it may be discharged. It commences and there it continues binding on the ship until it comes to an end”¹¹.

⁹ M.V.A.L. Quamar vs Tsavliris Salvage ... on 17 August, 2000.

¹⁰ O. Konavalov vs Commander, Coast Guard Region & ... on 23 March, 2006.

¹¹ Majumdar (Raja), A., Krishnamurthy, A., Mital, A. and Kottaram, P., 2017. Commercial Overview Of The Shipping Industry. The Shipping Law Review.

With the above various provisions in The Admiralty Act, 2017 and various clarifications by the Apex court, it can be understood that the area of maritime lien is being given importance in the legal fraternity and the legislature. However there are certain areas that are to be clarified and worked upon. For example the period of limitation is mentioned clearly in the Act but people are not aware of the period of limitation ab initio and this is the negative aspect of the concept of maritime lien as the lien holder does not know as to till when he can enforce his right to lien which can be misused by the other party. Also the period of limitation is unreasonable as to the person might not know when and how to exercise his right to lien and when it can be enforced. There can also be some unforeseen circumstances due to which the person could not reach the court to exercise his right to lien and for this there is no clause waiver of limitation period in the Act. Also one more grey area in this field is the transferability of right to lien. The Act is silent on the issue as to who can exercise the right to lien on behalf of the person in case of non-availability or death of that person and can the right to lien be transferred from one person to another.

The area of Maritime Lien is important, as it is important to satisfy and justify the work of hardworking seamen and the others. The concept of lien must be incorporated in the contracts of sea related business so as to make the procedure of exercising the right smooth and lessen the burden of courts.