

Maritime Liens: India – The Ticking Clock

A maritime lien is a privileged claim unique to the admiralty jurisdiction. It can be exercised by way of action *in rem* against the vessel. It attaches to the vessel automatically by law, survives change of ownership(s) and has priority over other maritime claims including those of registered mortgage or charges if a ship is sold pursuant to a court order.

It is this very privileged nature of a maritime lien which makes it an effective weapon in the hands of a claimant, binding an innocent third-party owner for claims they were not responsible for or might not even have any knowledge of. This raises both legal commercial complications, and questions often arise whether the “*privilege*” of a maritime lien extinguishes?

Indian Perspective

Until 1993, Indian courts relied on pre-independence statutes in exercise of the admiralty jurisdiction. This changed in 1993, when the Supreme Court in *MV Elisabeth* adopted the 1952 Arrest Convention and gave Indian courts the freedom to adopt International Conventions to fill in the lacuna left by the legislators (*quite ironic considering India’s colonial history the name of the ship involved in liberating the admiralty jurisdiction could not be more fitting*). Following this, Indian courts routinely applied conventions like the 1999 Arrest Convention, 1967 Maritime Lien Convention and 1993 Maritime Lien Convention. This resulted in chaos, as these conventions had neither been ratified nor acceded to by India, and in some cases, when applied had not even entered into force internationally.

However, 70 years after India awoke to freedom (*as India’s first Prime Minister declared*), The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (the “**Act**”) was enacted to consolidate the laws relating to admiralty jurisdiction relating to maritime claims, maritime liens, arrest, detention, sale of ships and connected matters. One of the many aspects the Act resolved was listing maritime claims and maritime liens.

Maritime Lien

Section 2 (1) (g) defines “maritime lien” as “*maritime claim against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section*”. Section 9 lists the “maritime claims” which are considered as a “maritime lien”:

1. 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.
2. 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.
3. Claims for reward for salvage services including special compensation relating thereto.
4. Claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel.
5. 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.

Effect of a Maritime Lien

Section 9 (2) states that the maritime lien *shall continue* to attach to the vessel despite any change of ownership or of registration or flag. Further, Section 10 clarifies that a maritime lien will have priority over claims related to registered mortgage and charges of similar nature and all other claims.

Does a Maritime Lien extinguish, and what is the position in India?

The issue with regard to extinguishment of maritime liens is a controversial topic, with differing views in England and other jurisdictions like United States of America and civil law jurisdictions. International conventions like the Maritime Lien Convention 1967 (not in force) and Maritime Lien Convention 1993 (in force) have attempted to bridge this divide to prescribe a period when a “maritime lien” will extinguish, but these conventions have not been globally accepted.

However, India has done so under Section 9 (2) and prescribes an extinguishment period for maritime liens:

1. Two (2) years from the claimant’s discharge of the vessel for the maritime liens in sub-section 9 (1) (a), i.e. 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; and
2. One (1) year from the time the claim arose for all other maritime liens set out in sub-section 9 (1) (b) to (e) of the Act (**see the head of claims listed in 2-4 above under the heading Maritime Lien**).

The period for extinguishment runs continuously without any suspension or interruption, unless prior to the expiry of this period, the vessel has been arrested or seized which has led to a forced sale by the court.

Would this mean a “maritime claim” is also lost?

Under Indian law, every “maritime lien” *is a* “maritime claim”, but every “maritime claim” is *not* a “maritime lien”. This conceptual distinction is important as while the privileges associated with a “maritime lien” may extinguish, the limitation period for enforcing a maritime claim is governed by the Indian Limitation Act 1963 or any specific legislation (example The Indian Carriage of Goods By Sea Act 1925). This means that a maritime claimant may still arrest a ship for its “maritime claim” if it complies with requirement of Section 5 of the Act.

Parting Comments

A claimant must take prompt steps to secure or recover their claims, and delay in doing so may result in prejudicing recovery their chances of recovery including losing their priority in cases where there is a maritime lien. This is even more important in the present geo-political situations where there has been a trend of ships only trading within certain geographical routes and regularly changing ownership to circumvent sanctions or liability.

At Binnacle Legal, we assist clients in navigating maritime disputes, offering strategic advice to secure and safeguard their position.