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## **Sister Ships, Associate Ships and their Arrest For Maritime Claims**

*The concept of sister ships and associate ships is now well incorporated in Indian law. Therefore, it is important for a claimant to know that in case it has any claim against a foreign ship, which is not within the territorial jurisdiction of India say authors Krrishan Singhania, Founder and Managing Partner and Omair Khan, Associate, K Singhania & Co., Advocates & Legal Advisors*



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Imagine yourself in a situation where a ship has caused you a great deal of damage. As a claimant, your recourse against the ship owner would be very limited. Many a times, companies own ships as their sole asset. The ship owner might be a foreigner and once he has taken the ship out of your jurisdiction, it is very hard to follow him and the ship to seek reparation. Several ship owning companies are registered in countries like Liberia that do not have a strong system of law. Even if you succeed in getting a domestic decree in your favour, it could be rendered infructuous by the ship owner selling off the ship. This difficulty is cured by treating ships as defendants and proceeding against them in res, forcing the appearance of the owner to submit to the jurisdiction of the Court affecting the arrest. This action of proceeding against the ship as opposed to the owner is a unique facet of the admiralty jurisdiction vested in the High Courts. Arrest of ships cost the ship owners a great deal of money as the ships are restrained from performing their contractual obligations. This article attempts to delineate the differences in and nuances of sister ships and associate ships as only the former, which will be arrested to satisfy maritime claims.

Admiralty law in India is largely derived from English Admiralty law and based on case-law expounded by the High Courts of Bombay, Madras and Calcutta and the Supreme Court. However, Parliament enacted the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and codified the procedure of ship arrests and gave it much needed clarity. Earlier, Courts were more inclined to order arrest of ships but now S. 5 casts an obligation on them to apply legal reasoning before ordering such arrest with the use of the words ‘where the court has reason to believe.’ The intent of the legislature seems to be to strike a delicate balance between the rights of ship owners and claimants so that one does not have the upper hand over the other. While S. 5 (1) allows for arrest of the ship in question against whom a maritime claim exists, S. 5 (2) permits the High Court to ‘order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made.’ S. 5 (2) inserts into the legislation the concept of ‘sister ships’ and ‘associate ships’ that in the topic of ship arrests find special significance. This article seeks to trace the history of judicial pronouncements on the arrest of both sister ship and associate ship and discuss their implications. Let us first define ‘sister ships’.

A sister ship is simply a ship owned by the same owner or the same set of owners against whom the maritime claim exists.

In India, it appears that the first case discussing this matter was the landmark case of *m.v. Mariner IV v Videsh Sanchar Nigam Limited*, decided on 15th December 1997 by the Appeal court of the Bombay High Court. Admiralty jurisdiction of a High Court is a component of its totality of jurisdiction and not a distinct and separate part of it. In exercise of its powers, the High Court can order the arrest of a foreign vessel in its territorial waters to satisfy a maritime claim. This power of arrest applies to not only the offending ship but also its sister ship. Indian High Courts are repositories of the judicial power granted to them by the Constitution of India and have unlimited jurisdiction including the jurisdiction to decide their own rules.

Several international conventions like the Brussels and Geneva Conventions prescribe the scope and procedure to arrest sister ships, apart from the offending to ship to secure a maritime claim. It is a settled principle that despite municipal law prevailing over international law, in the absence of any express prohibition by any municipal law or any conflict between them, the international convention would be applicable. Therefore, as there was no municipal law for arrest of sister ships, the High Court could arrest a sister ship to satisfy a maritime lien under International Convention.

The concept of ‘associate ships’ requires more nuance to understand it. Often to avoid arrests of sister ships, owners register the said ship to different companies to evade arrest by making it difficult to trace it back to the owner. Such ships are called associate ships. In this case, the role of the Court is more important, as they must lift the corporate veil to see if the separate ownership is a mere sham being done only to avoid the claim in question.

The Bombay High Court in *m.v. Sea Success I v Liverpool and London Steamship Protection and Indemnity Association Ltd.*, had to consider whether the ship owned by a parent company and one owned by a subsidiary company would be ‘sister ships’ or ‘associate ships.’ It is important for the court to ascertain this question because it is only against a sister ship that an arrest to satisfy a maritime claim can be made in India. The Court held that each company incorporated under law is a separate legal entity and despite the subsidiary company having been incorporated by the parent company, the parent company would not have ownership of it.

This decision is highly appreciated because accepting the reverse would negate the entire raison d'être of company law in the world over. Piercing the corporate veil of a company can only be done in the rarest of rare circumstances, mostly when an element of fraud is involved. Indeed the Bombay High Court has admitted this in *Lufeng Shipping Company v m. v. Rainbow Ace*, where it has laid down that 'piercing of the corporate veil shall be conducted when there happens to be fraud or evidence of it.'

A lot more will be required to prove the same 'beneficial ownership' of a ship than merely commonality of shareholding. This concept has been firmly and consistently cemented in Indian jurisprudence most recently in the Bombay High Court judgment on 19th August 2022 in *Polygreen International DMCC and others v MT Pamboor 2 and another*. The respondent had provided salvage services for a ship 'MT Tresta Star' owned by another company with the same shareholding as the company interpleaded in this suit. The ship for which salvage services had been provided was worthless as it was stuck between volcanic rocks and there was no way to manoeuvre it out of the quagmire it found itself in. The respondent procured an arrest of the MT Pamboor vessel. The issue before the court was whether the arrest against MT Pamboor was justified when the maritime lien for salvage services existed for MT Tresta Star. The Court held that despite the commonality of shareholding between the two companies, which owned the two ships, the respondents failed to make the case justifying the lifting of the corporate veil. The fact that a director of the company owning MT Pamboor was copied on an email hardly proved that the two companies were the same.

### **Conclusion**

The concept of sister ships and associate ships is now well incorporated in Indian law. Therefore, it is important for a claimant to know that in case it has any claim against a foreign ship, which is not within the territorial jurisdiction of India, then it has a legal remedy to enforce its maritime claim against the sister ship if it fits into the definition of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017.

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