TMT LAW PRACTICE
WHERE LAW MEETS INNOVATION

MARITIME & SHIPPING LAW INSIGHTS
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ABOUT US

TMT Law Practice is a boutique law firm providing a full suite of services in the TMT sectors. Over time, the firm's practice has expanded from a niche boutique IP practice, to include practice areas such as commercial disputes resolution & arbitration, regulatory litigation &advisory, corporate/commercial advisory and transactional support, and policy and legislative drafting across industry verticals. The Firm represents a broad range of clients including Fortune 500 companies, as well as MSMEs and Start-ups.

The firm engages in the practice of the conventional domains of law, and, is also heavily invested in the niche areas of emerging technology, including space technology and policy; healthcare and ICT; data privacy and protection; and, sports laws.

The Firm stresses on developing well-rounded, solution - oriented professionals, who specialize in client - focused service delivery.

I. Industry Sector News

1. India Bans Tanker and Bulk Carrier Vessels older than 25 years to fight environmental damage and aim to modernize its fleet.

The Directorate General of Shipping, under the Ministry of Ports, Shipping and Waterways of Union of India issued an Order dated 24.02.2023 ("Withdrawal Order") withdrawing trading licences for oil tankers and bulk carriers older than 25 years. With an aim to cut emissions and modernize its fleet. The Withdrawal Order prohibits the acquisition of vessels that are more than 20 years old. Prior to the Withdrawal Order, vessels that are less than 25 years old could be acquired without any technical clearance, this is set to change with the effect of the Withdrawal Order. "There is a need to modernise the Indian fleet, which requires extensive review of the requirements of the registration and operation of the ships," the Directorate General Of Shipping stated on its website. Consequences of non-compliance would lead to the cancellation of the vessels' trading license according to the directions contained in the Withdrawal Order. The effect of the Withdrawal Order would also apply to foreign vessels discharging in India and existing vessels affected by the new cap on the lifetime of operating vessels shall be allowed to sail for three more years, regardless of their current age.

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2. Australia Bans Leading Shipping Company's Vessel Over Constant Safety Deficiencies from its waters.

A Liberian-flagged containership operated by MSC Shipmanagement Ltd (MSC) has been banned from entering Australian waters for a nearly 3-month period citing a long list of safety failures and deficiencies by the Australian Maritime Safety Authority (AMSA). AMSA's inspection of the vessel found 21 deficiencies in its entirety, including a defective free fall lifeboat steering system, defective fire safety systems, dangerously-stored flammable materials, and multiple wasted or missing railing safety chains used to safeguard stevedores, which evidently are compulsory to be maintained at all times.

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3. India's First Inland River Cruise completes its maiden trip at Dibrugarh on 28 February 2023

MV Ganga Villas, India's first and the world's longest river cruise completed its maiden voyage by berthing at Assam's Dibrugarh Cruise Terminal on 28th February 2023. This has been accoladed by the Ministry of Ports, Shipping and Waterways as a pathbreaking and historic event in the country's 75 years of existence.

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II. Legal Updates – Indian Jurisdiction

1. A shipowner cannot have an absolute right to limit liability in a collision.

MV Nordlake V/s Union of India & Ors – BOM HC

In a collision between the MV Nordlake and INS Vindhyagiri on 30 January 2011 pursuant to which INS Vindhyagri sank at her birth. Union of India, through Commanding Officer, Indian Navy sought to judicially arrest MV Nordlake. The latter was released on a presentation of security by the Shipowner before the Court. Thereafter, the Shipowner of MV Nordlake instituted a suit u/s 352C of the Merchant Shipping Act ("MSA") citing that no other claim apart from that of the loss of INS Vindhyagiri had been instituted against the vessel. The Shipowner asserted that the gross tonnage of the MV Nordlake was 16,202 Mts. The vessel was registered in Cyprus, which is a State party to the LLMC 1976 and was thus entitled to invoke the right to limit its liability u/s 352A of MSA. It was contended that a shipowner's right to limit its liability was indefeasible and absolute in Indian law. Conversely, Indian Navy contended that the action to limit liability under Pt XA of MSA did not apply to naval warships. A party guilty of causing loss resulting from act or omission with intent to cause such loss, or committed recklessly with the knowledge that such loss will probably result, loses the right to limit liability under LLMC 1976. A shipowner can never have an absolute right to limit liability. If the limitation of liability to a shipowner, in this case, is allowed, Indian Navy would suffer grave loss.

BOM HC Held: Article 4 of the LLMC 1976 incorporates the principle of 'breaking of limitation', Being a signatory to the Brussels Limitation Convention 1957 which is the foundation of the LLMC 1976, India introduced Pt XA of MSA to provide for limitation of liability. Section 352A of MSA carved an exception for invocation of the right to limit liability laying down that the shipowner may limit its liability for claims resultant of listed occurrences only. However, claim resulted from the actual fault or privity of the shipowner, limitation of liability could not be availed. Furthermore, the burden of proof of occurrence not resulting from the shipowner's fault shall be on the shipowner. The LLMC 1976, while providing for when limitation is not available, demands a superior degree of proof to deny a liable person to limit the liability. Under the unamended Act, a liable person would be deprived of the right to limit liability if the occurrence giving rise to the claim resulted from the actual fault or privity of the shipowner. Contrastingly, the LLMC 1976 incorporates a higher requisition of accountability. Under Article 4 of LLMC 1976, the recklessness of conduct aligned with knowledge effectively places an almost impossible onus to prove the contrary. Secondly, the onus is on the claimant who is denying the availability limitation of liability to the shipowner. Considering the provisions providing for limiting liability, the specific omission by the Indian Legislature for an exception is evident. A provision on breaking limitations to liability ought to be considered. Instantly, Indian Navy contended that notwithstanding the omission of the exception incorporating a provision for breaking the limitation of liability, Article 4 of LLMC 1976 should have been incorporated into MSA and as such there is no absolute right to limit liability available to the Shipowner. However, the plain language of s 352B of the MSA does not indicate any such incorporation of Article 4. Reliance was placed on the decision reached in Murmansk Shipping Co v Adani Power Rajasthan Ltd 2016 SCC Online Bom 167 (CMI156) that the shipowner's right to limit liability can be construed as absolute as long as the claims in respect of which limitation is sought are claims capable of limitation under s 352A of MSA and are without reference to any proof of loss resulting from personal act or omission, is correct. The Court cannot lose sight of the conscious omission of the provisions on breaking the limitation of liability by the legislature when amending Part XA of MSA. Nor can the Court unilaterally import the language of Article 4 of LLMC 1976 and supplant legislation.

2. Maritime Claims by way of an Action in Rem for a contractual obligation with a subsidiary or group company is a legitimate Claim and Group companies or holding/ subsidiary companies should be treated as a single economic unit considering facts and circumstances.

Kreuz Subsea Pte Ltd v Barge Sapura 2000 – BOM HC

Originally, Kreuz Subsea Pte Ltd ("Plaintiff") had arrested the Barge Sapura 2000 ("Barge"), a Malaysian flag vessel pursuant to supplying equipment and personnel to the Barge and had not been paid for the same. In this instant matter Sapura Dana SPV Pte Ltd ("Sapura Dana"), the owner of the barge sought a declaration that the barge's arrest was illegally obtained, and furthermore sought a refund of the security deposit with interest accrued. Plaintiff claimed that the barge was beneficially owned by Sapura Energy Bhd ("Sapura Energy") and that Sapura Energy in turn controlled subsidiaries globally, including Sapura Offshore Sdn Bhd ("Sapura Offshore"). Sapura Offshore ordered with the Plaintiff a reel drive unit, together with personnel and technicians, for the vessel on a rental basis which undeniably the Plaintiff had supplied. Sapura Offshore did not pay Plaintiff for this. Plaintiff at the time of the arrest claimed that Sapura Offshore was an agent of Sapura Dana, and that it was expressly warranted that Sapura Offshore had authority from the vessel and its owner to pledge its credit. The Plaintiff, therefore, arrested the vessel in the Port of Mumbai.

In its application, Sapura Dana, contended that Barge's arrest was unjustified. Plaintiff did not supply the equipment and personnel pursuant to a contract between Plaintiff and Sapura Dana. Plaintiff had no maritime claim against the Barge but a claim in personem against Sapura Offshore. As such no maritime claim arose and the consequential arrest of the vessel was illegal. Sapura Dana asserted that under the Admiralty Act, 2017 beneficial ownership

arrest was not envisaged. Conversely, Plaintiff argued that its maritime claim fell within s 4(1)(l) of the Admiralty Act. Plaintiff's case was not based on beneficial ownership alone and that Group companies or holding/subsidiary companies should be treated as a single economic unit if the facts and circumstances so demand.

BOM HC Held: Rejecting the application of Sapura Dana, It was held that whether Sapura Dana has made out a prima facie case for a refund of the security on the ground that the arrest of the barge was unjustifiable would depend on whether the Plaintiff had made out a prima facie case for the arrest of the Barge in the first place. On a plain reading of s 5(1)(a), two conditions need to be satisfied before the jurisdiction to arrest a vessel can be exercised. That there must be a maritime claim against the defendant vessel and secondly, the maritime claim must be against the person who owns the vessel both at the time when the claim arose and at the time when the arrest is effected. Considering the first issue, Plaintiff relied on s 4(1)(l) of the Admiralty Act and contented that it is not restricted to 'necessities', in the strict sense of the term. The applicability of the provision cannot be restricted to the essentials which are absolutely required to keep the vessel afloat or to prevent a black-out on board. Supplies and services rendered to a vessel necessary for equipping the vessel to conduct the operation of cargo is the purpose for which the vessel sails, would squarely fall within the ambit of a maritime claim. Furthermore, considering the second condition, Plaintiff's claim is against the person who owns the vessel, both at the time the claim arose and at the time the arrest is effected. There is substantial jurisprudence on supply to vessels to establish that courts have held where it can be inferred from the facts that services were actually supplied to the relevant vessels, the issue of absence of privity of contract cannot be satisfactorily adjudicated at an interlocutory stage and should be determined at trial. The Court opined that the controversy as to whether the liability for the Plaintiff's maritime claim could be foisted onto Sapura Dana. Factually, the service orders were placed by Sapura Offshore and that in the standard terms and conditions appended to the service order, the 'buyer' was defined as Sapura Engineering & Construction Pvt Ltd, Sapura Fabrication Bhd, and Sapura Offshore Sdn Bhd. Plaintiff's invoice was addressed to Sapura Offshore. However, there are clear and categorical allegations in the plaintiff's claim that Sapura Offshore acted on behalf of the vessel and its owner and was an agent of the owner. It is further averred that Sapura Offshore operated and managed the project undertaken by the vessel and its owner. Sapura Energy, the holding company of Sapura Dana and Sapura Offshore, is the commercial operator and technical manager of the vessel. A Lloyd's List Intelligence Vessel Report identifies Sapura Energy as the beneficial owner and commercial operator of the vessel. Sapura Dana is a wholly-owned subsidiary of Sapura Energy. This becomes evident from the documents placed on record pertaining to not only Sapura Offshore but also Sapura Dana. It is in the context of this relationship between Sapura Energy and Sapura Dana, on the one hand, and Sapura Energy and Sapura Offshore, on the other hand, and the all-pervasive control which Sapura Energy seems to exercise over Sapura Dana and Sapura Offshore, that the allegations in the plaintiff's claim have to be appreciated. All the entities are inextricably interchangeably linked to each and controlled by Sapura Energy. Weighing the allegations and evidential nexus, prima facie, sustain a case that the liability was incurred for and on behalf of the vessel and its registered owner. On the facts of this case, any other view would erode the sanctity of the contractual obligation in a commercial transaction having a maritime flavour, where supplies are made and services are rendered on the faith and credit of the vessel. It may not, therefore, be appropriate to decide the contentious issue of the in personam liability of the applicant at this stage, and sans evidence. No case for a declaration that the arrest was wrongful and for the refund of the security deposit is thus made out.

3. Inter-Se Priority for Settlement of Claims After Judicial Sale of Vessel; Seafarers' Claim First Priority. Vadym v OSV Beas Dolphin – BOM HC

Determination of priorities of claims against the judicial sale proceeds of the OSV Beas Dolphin in accordance with provisions of the Admiralty Act. The Court awarded the seafarers' wages claims first priority as a wages

maritime lien under s 9(1)(a) of the Act (based on art 4.1.a of the MLM Convention 1993). The main issue was whether the interest of 8% pa awarded by the Court on the unpaid wages from the date of the institution of the suit until payment and/or realisation, and the costs awarded to the seafarers also commanded the same priority as the wages claims themselves. The seafarers argued that they did; the other creditors disagreed.

BOM HC Held: The interest and costs awarded by the Court enjoy the same priority as the wages claims, and must be paid out to the seafarers accordingly. The nature and character of interest and costs awarded by the Court while decreeing a claim of crew members for wages must be appreciated. First and foremost, the character of the claim for wages itself. It is trite that in an admiralty action, the wages of the crew command the highest priority. The crew members are entitled to proceed in rem against the vessel and its sale proceeds irrespective of any change in ownership of the vessel. From the very text of s 9(1)(a) of the Act, the highest priority according to the claim for wages and other sums due to the crew members becomes abundantly clear. The enormity of the situation in which the crew is often called upon to discharge functions on board the vessel is recognised by according the highest priority to the wages of the crew members. The seafarers relied on the judgment of the Federal Court of Australia in Patrick Stevedores No 2 Pty Ltd v Proceeds of Sale of the Vessel MV 'Skulptor Konenkov' [1997] FCA 1625 (CMI1467), which was followed by the High Court of Singapore in The Songa Venus [2020] SGHC 74. The seafarers further submitted that in Chrisomar Corp v MJR Steels Pvt Ltd [2017] INSC 781 (CMI149), the Supreme Court of India approved a judgment of the Calcutta High Court wherein interest and costs were held to be part of a maritime lien.

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