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Keystone in Dubai's evolution; birth of Free Trade Zones

Dubai, one of the Emirates in UAE and a famous tourist spot, is located along Arabian Gulf and Gulf of Oman. Though Dubai was gifted with a natural harbour ("Creek") which was a center for the fishing, pearling and sea trade, it was only by the turn of 20th century that it became a successful port. The souk (Arabic name for "Market") on the Deira side of the Creek was the largest on the coast with 350 shops and attracted a steady throng of visitors and businessmen from all around the world.

By 1950s when the creek began to silt, probably due to increase in the number of ships that used it, the then Ruler of Dubai, Late His Highness Sheikh Rashid Bin Saeed Al Maktoum decided to have the waterway dredged, thus transforming Dubai to the modern

Port City and a commercial hub for which, it is now well famous with the outside world. Though it was an ambitious, costly, visionary project, this move resulted in increased volumes of cargo handling in Dubai and ultimately it strengthened Dubai's position as a major trading and re-export hub.

In 1966, when the oil was first discovered in Dubai, it led to infrastructure development in Dubai. From then onwards, the pace of development of Dubai was frenetic. The late His Highness Sheikh Rashid also felt the need of having an industrial port as an important key for the further development and industrialization of Dubai and soon the largest man-made harbor in the world was constructed at Jebel Ali, and the

region's first free zone was created around the port.

Dubai's formula for development, a high-quality infrastructure, an expatriate-friendly environment, zero tax on personal and corporate income and low import duties, was becoming evident to every visionary leadership and the result was that Dubai quickly became a business and tourism hub for a region that stretches from Egypt to the Indian sub-continent and from South Africa to what are now called the CIS countries.

UAE has now developed into one of the richest countries in the world with a per capita GDP in excess of US\$17,000 per annum, but this milestone cannot be achieved without



THOUGHT
for
the MONTH

*The only way to do great work is to love what you do. If you haven't found it yet, keep looking.
Don't settle*

-Steve Jobs



mentioning of Free Zones, which have played a significant part in Dubai or we can say for the whole of UAE progression.

Free zones have been an integral part behind the success story of UAE with attributes such as legal structures permitting full foreign ownership of business which in turn have encouraged commercial ventures, aided foreign direct investment, fostered entrepreneurialism and created significant employment numbers. Needless to mention, the choice of geographical location of these Free Zones has been thriving trading hubs

making it all the more investment friendly.

The idea behind the same is to have a pro-business setup, with assistance in helping firms set-up and trade in a tax friendly environment with advantages including 100 per cent foreign ownership, 100 per cent tax exemption, quick approval procedures, full repatriation of capital and profits, and the availability of real estate for sale or lease. Set up options usually include status as a Free Zone Establishment (FZE), Free Zone Company (FZCO) or as a branch/representative office of an

existing onshore or offshore parent company.

It has been reported in 2014 that 33 per cent of the country's non-oil trade came from free zones. The free zone sector has played a vital role in Dubai's economy, accounting for 32 per cent of its total direct trade, driving about Dh500 billions of commerce and trade in 2015. All this is a result of skillful thinking and notion to focus on specific business sectors such as finance, technology, aviation, media, logistics and healthcare.

While free zones may currently be

tax free, but that doesn't mean that they do not provide solid revenue generating opportunities for their respective master authorities and governments. Miscellaneous fees for business set-up, employment visas, trade licenses and other activities provide attractive recurring income streams from a captive market.

Plans by Dubai, Abu Dhabi and some northern emirates to increase their numbers of free zones is a testament to the success of this model in the UAE and its role in the onward growth of the country.



Redefining Indian Law on Arrest of Non-Owned Ships

The Supreme Court of India, on 9th March 2018, marked a milestone in the field of Admiralty law while deciding the case, Sunil B. Naik v. Geowave Commander by incorporating the principle that there cannot be an arrest or restraint of a vessel in possession of a non-owner, but owned by a complete third party, for a maritime claim against the former. The Admiralty law in India regarding this was silent. It was this huge uncertainty that was set aside by the apex court through the above decision.

The facts of the case are as follows-Oil and Natural Gas Corporation Ltd. awarded a contract to one Reflect Geophysical (a Singapore based company) to carry out seismic survey off the coast of Gujarat near Okha port in 2012. Reflect Geophysical then entered into a bareboat Charter Party Agreement dated 29.06.2012 to charter the vessel 'Geowave

Commander' from Master and Commander AS, registered in Norway, for 3 three years.

Later, Reflect Geophysical contracted with one Yusuf Abdul Gani (on 01.10.2012) and one Sunil B Naik (on 30.10.2012), to give on hire the vessel 'Orion Laxmi' to work in support (like towage duty) and 24 fishing trawlers being the chase vessels to assist in survey operations to be conducted by chartered vessel Geowave Commander respectively. When payments due to Yusuf Gani and Sunil Naik were defaulted by Reflect Geophysical, they approached the Bombay High Court to enforce their claim against Reflect Geophysical by arresting the vessel Geowave Commander. Even though the court gave an ex parte decree to arrest the vessel, later it refused to order arrest, holding that Reflect Geophysical was not the owner of the vessel Geowave

Commander, and hence the claims against Reflect Geophysical could not be enforced through the arrest of the chartered vessel.

On appeal by the two aggrieved parties, the Supreme Court bench consisting of Justice J. Chelameswar and Justice Sanjay Kishan Kaul, considered three important principles while adjudicating the matter. One being the precedent set by the SC itself in the landmark decision of **MV Elisabeth &Ors. v. Harwan Investment & Trading Pvt. Ltd.** "The foundation of an action in rem against a ship arises from a maritime lien or claim imposing a personal liability upon the owner of the vessel." Here the claim was only against the charterer of the vessel and not against the de jure owner of the vessel. Thus the chartered ship cannot be arrested for a claim against its charterer. The court observed

that “the crucial test would be of ownership, which in the present case clearly does not vest with Reflect Geophysical and the de facto ownership under their bareboat charter cannot be equated to a de jure owner, which is necessary for an action in personam”.

The second point that crossed the Hon’ble Court was **Article 3(3)** of the **International Convention on Arrest of Ships, 1999**, which forbids the arrest of ships not owned by the person liable for the claim, except under a judgment based on a contrary law of the respective state. The Indian Admiralty law is silent on that matter, hence no judgment for arrest of such a ship could not take place. The SC itself has stated in the Elizabeth case (supra) that in the absence of any specific statutory provisions, maritime laws of the world can be adopted and adapted by Indian courts. Therefore, though India is not a signatory to the above convention the

principles of the same can be utilized appropriately.

Finally, despite the fact that the court considered the plea of “**beneficial ownership**”, it didn’t really agree to it while adjudication. In *Medway Drydock & Engineering Co. Ltd. v. M.V. Andrea Ursula*, it was observed that “a ship would be beneficially owned by the person who, whether or not he was the legal or equitable owner or not, lawfully had full possession and control of her, and, by virtue of such possession and control, had all the benefit and use of her which a legal or equitable owner would ordinarily have”. But the fact that the above judgment was dissented by the Queen’s Bench itself in **I Congreso Del Partido** was duly noticed by the court. From the latter case, the court concluded that “*mere possession of the ship, however, complete and whatever be the extent of the*

control was not found good enough to confer the status of ownership. The “beneficial use” of a chartered ship would not ipso facto convert the status of a charterer into a “beneficial owner”.”

Hence, the Apex Court of India laid down a strong precedent that there cannot be an arrest or detention of a vessel in possession of a non-owner, but owned by a complete third party, as a security for a maritime claim against the former. The fact that the most significant admiralty case of *Elisabeth v. Harwan Investment & Trading* was cited and International Convention on Arrest of Ships was referred, where India not being a signatory, are all fascinating points to be noted. It is also interesting to look into, how the plea of “beneficial ownership” wasn’t really given importance for adjudication.

HOT NEWS

Harnessing the Wind: ‘Viking Grace’ Becomes First Passenger Ship to Use a Rotor Sail for Wind-Assisted Propulsion

One of the world’s most eco-friendly passenger vessels is about to get a whole lot more eco-friendly.

Finnish shipping line Viking Line has equipped its LNG-fueled Viking Grace with a rotor sail to help reduce the vessel’s environmental impact even more by harnessing the power of the wind.

The 57,565 GT, which has been in operation since 2013, is already considered one of the most eco-friendly cruise ferries in the world, but the addition of a rotor sail will help the vessel cut fuel consumption and reduce emissions even further when it begins wind-assisted voyages in the Baltic Sea between Turku, Finland and Stockholm, Sweden beginning on Thursday.

Developed by the Finnish company Norsepower Oy Ltd, the Rotor Sail Solution installed on the Viking Grace is a modernized version of the Flettner rotor; a spinning cylinder that uses the Magnus effect to harness wind power to propel a ship. The company was the first to install one of its devices aboard Viking Grace in January

2017.

While rotor sails have been in use on commercial ships before, the Viking Grace will be the first passenger ship in the world to be equipped with the technology.

The cylindrical rotor sail installed on the vessel 24 meters in height by 4 meters in diameter. As the rotor is spinning, the passing air will flow with a lower pressure on one side, creating a pressure difference that will propel the vessel forward.

Norsepower’s Rotor Sail Solution is already in commercial use on board the Bore’s MV Estraden, a 9,700 DWT Ro-Ro carrier, which has achieved a 6.1% reduction in fuel consumption through use of the rotor sails, according to Norsepower. The technology is fully automated, sensing whenever the wind is strong enough to deliver fuel savings, at which point the rotors start automatically.

Aboard the MS Viking Grace, the rotor sail will

reduce the vessel’s carbon dioxide emissions by up to 900 tonnes per year, depending on the wind conditions, Viking Line says.

“For Norsepower, it’s an honour to be able to make the M/S Viking Grace even more environmentally-friendly by means of our novel rotor sail technology. The last traditional windjammers in the world were owned and operated by shipping companies based in Åland, so it’s fitting that Åland-based Viking Line should be a forerunner in launching modern auxiliary sail technology,” says Tuomas Riski, CEO of Norsepower.

In addition to the Viking Grace, Viking Line has also announced it will also utilize wind propulsion in the company’s new vessel, which is due for delivery 2020. Built in China, the passenger ship will be equipped with two mechanical rotor sails supplied by Norsepower.

– GCaptain

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