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SCOPE OF 'IN REM' PROCEEDINGS UNDER A 'SLOT CHARTER': ADDRESSING A GREY AREA IN THE INDIAN ADMIRALTY ACT

By **Ms. Anitta Varghese** (Callidus Intern)
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With the expansion of containerisation in the shipping industry, the arrangement called 'slot chartering' has become a very widely used mode for the transportation of cargo. Slot charter parties have evolved as a modern mode of maritime transportation adapting to the new changing commercial circumstances. A slot charter party has been defined as "a time or voyage charter under which the slot charterer has the right to use only a specified amount of the ship's container carrying capacity. In container liner trades, such charters may be reciprocal ("cross slot charters") between operators/carriers, in order to share capacity" . However, legal and judicial recognition of the status of slot charters is still a debated issue, particularly in the context of proceedings in rem against the slot charterer. It is also pertinent to note that in India, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017,

THOUGHT for the MONTH

I have noticed even people who claim everything is predestined, and that we can do nothing to change it, look before they cross the road

- STEPHEN HAWKING

Callidus

does not specifically mention 'slot charterer', leaving it as a grey area which calls for further consideration.

The question of whether a slot charterer is within the meaning of 'charterer' has been addressed by various jurisdictions across the world. In The "Tychy" , the English court held that for section 21(4) of the Supreme Court Act, 1981, the term 'charterer' includes both a time and a voyage charterer and it was also held that in principle there is no difference between that and a voyage charter of part of a ship. Clarke LJ said: "They are both in a sense charterers of space in a ship. A slot charter is simply an example of a voyage charter of part of a ship."

Similarly, in Australia, in Laemthong International Lines Co Ltd v. BPS Shipping , it was held that the meaning of the word 'charterer' in Section 19(a) of the Admiralty Act, 1988 included slot charterers. A US court while deciding the case International Marine Underwriters v. M V. Patricia S said that a slot charter is a 'more specific type of sub-charter'. In Canada, a slot charter has been described as a type of time charter in the case of Canada Moon Shipping Co Ltd and Another v. Companhia Siderurgica Paulista-Cosipa and Another . However, no such interpretations or clarifications regarding the status of slot charterers have been pronounced by the Indian courts.

There may also be opposing views for treating slot charters as charters based on the fact that they do not charter the entire vessel, but only a part thereof. Further, unlike demise charters, slot charterers have no control over the management or operation of the vessel. Nonetheless, the necessity to determine the status of a slot charter party arises where a claim has to be pursued by way of in rem proceedings against an associated ship of the slot charterer who does not own the offending vessel but hire a part of it. Also where the owner of the chartered vessel is not liable may be due to lack of privity.

The very purpose of the arrest of a vessel is to provide security to the maritime claim in an admiralty proceeding and the arrest of a ship is important in establishing jurisdiction. The scope of action in rem in case of a slot charterer cannot be dealt without looking into the ship arrest structure that prevails in the country. In India, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 is the enactment which governs arrest of vessels. Under this Act, an Admiralty Court in India has the exclusive jurisdiction to order the arrest of any vessel which is within its jurisdiction to secure a maritime claim which is the subject of an admiralty proceeding. However, such an in rem action cannot be proceeded against a vessel without meeting the threshold requirements laid down in Section 5 of the Act.

"5. Arrest of vessel in rem.—(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—

(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or

(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or

(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or

(d) the claim relates to the ownership or possession of the vessel; or

(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.

(2) The High Court may also 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 under this Act, subject to the provisions of sub-section (1):

Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4."

Section 5(1) (a) provides for the arrest of the offending vessel. The threshold requirements for an order to detain a vessel are;

- there must be a maritime claim which is subject of an admiralty proceeding.
- the owner of the vessel at the time the maritime claim arises is the person who is liable for the claim.
- the person liable must be the owner of the vessel when the arrest is affected.

Section 5 (1) (b) provides for the arrest of a vessel in case of demise charter if;

- there is a maritime claim which is subject of an admiralty proceeding.
- the demise charterer of the offending vessel at the time the maritime claim arises is the person who is liable for the claim.
- the person liable is the demise charterer or owner of the vessel when the arrest is affected.

A bare perusal of the above requirements makes it clear that an offending vessel, which is slot chartered by a slot charterer cannot be arrested as he is not the owner of the vessel. The only way to procure security for a claim against a slot charterer is to arrest any other vessel owned by him, which is within the jurisdiction of the court.

In cases where the owner of the offending vessel is not liable and the claim lies against the slot charterer, it is obvious that there is no reason to drag the owner of the offending vessel into the proceedings for the sake of an action in rem. However, the liability of the slot charterer towards the shipper under a valid bill of lading will remain unaffected by such arrangements. Therefore, if any claim arises out of any loss of or damage to or in connection with any goods, according to the contract of bill of

lading, the slot charterer undersigned as the carrier may be liable.

Section 5 (2) provides for the arrest of 'any other ship' instead of the offending vessel, if the threshold requirements enlisted under section 5(1) are met. It is to be noted that the legislative intent behind this provision is to provide a remedy in such circumstances where the arrest of a vessel cannot be effected against the offending vessel. However, the narrow wordings of section 5(1) do not allow the inclusion of 'slot charterer' into the arrest structure provided. The condition that the person liable must be the owner of the offending vessel cannot be met in the case of a slot charterer as he only hires a space in the vessel and does not own the vessel. Further, the condition that the person liable must be the demise charterer of the offending vessel also cannot be met in the case of a slot charterer as he hires only a space in a vessel and not the entire vessel itself. This grey area is being exploited by slot charterers to escape from their liability under the technical excuse that the offending vessel was not owned/ demise chartered by them. Hence, it can be concluded that even though the 'slot charters' have become a very significant development in the dry cargo sector, the accommodation of the same into the arrest structure provided by the Admiralty Act remains a legal conundrum. This may undermine the purpose of promoting the ability of the plaintiff/shipper to enforce maritime claims and hence the Admiralty Act needs to be revisited.

EXPATS RIGHTS OVER OWNERSHIP OF BUSINESS IN UAE

The news cycle of 2020 has been dominated by fear, grief, and stress. This year has brought unprecedented difficulties to communities across the globe, which started with raging wildfires in Australia and the tensions of the presidential impeachment process in the United States. China was also facing the earliest cases of the deadly virus, now known as COVID-19. By March, much of the world had entered lockdown in the face of a rising global pandemic. However, there have been many moments of beauty, love, and joy. Whether these stories play out on a national or local stage, they have not gone unnoticed like New York City's Great Hump Back Whale Returned to New York City, Sweden stopped burning coal for energy and Went Coal-Free, and the prominent one which we will be discussing is UAE's decision on amending its Law No. 2 of 2015 on companies and their shareholding.

UAE President, Sheikh Khalifa bin Zayed Al Nahyan, issued a decree on Monday, November 23, 2020, allowing foreign nationals 100 per cent ownership of commercial companies within the country. The amended law allows natural and legal persons to establish companies without the need for a specific nationality. The law, however, will not apply to some companies/ sectors deemed strategic are exempt from the new rules. These include energy and hydrocarbons, telecommunications and transport and those that are either wholly-owned by federal or local governments or their subsidiaries.

Under article No.10 of the amended law, a committee shall be formed as per a Cabinet decision and will include representatives from relevant agencies. It will deal with proposals to oversee companies engaged in activities of strategic importance. The Cabinet will then issue a decision based on the committee's recommendations to issue regulations licensing such companies.

The decree also supersedes the UAE Federal Law No. 19 of 2018 on Foreign Direct Investment (FDI Law). It also includes certain provisions and regulations related to limited liability and joint stock companies aimed at attracting foreign capital.

Needless to mention that, Dubai and Abu Dhabi are already recognized as two of the most powerful business and financial hubs in the world by international investors who are lured by the incredible possibilities offered in terms of finance, trade and commerce and the low tax environment in these destinations and this amendment has further sky-rocketed the possibility to the reform of the business ownership law, which now permits businesses to be fully owned by foreign nationals and we can now expect an unprecedented explosion of foreign direct investment in Dubai and Abu Dhabi and they will further cement their growing status as major international financial centers.

HOT TIPS

Stretching 'green' possibilities for shipping fuels

In this decade, we'll see more accelerated change in shipping fuels than we've seen in the last century.

What does this heightened diversity mean for shipowners?

They must be nimbler than ever – a shift that requires work. It means "greening" supply chains, bolstering energy efficiency, nurturing more partnerships, streamlining costs, and becoming adept at green finance (frequent change can be expensive to start with). All will help shipowners' fuel portfolios adapt to the inevitable need for a greener status quo as the gpush for a lower carbon world intensifies – and maritime fuels are often caught in an unflattering spotlight.

Need to get it done

Overhauls can be stressful for any industry, but there's good news. We know that the supply chain for bunker fuels, including shipowners, can react quickly. We're nearly one year into the International Maritime Organization's (IMOs) ruling to cut the sulphur limit on bunker fuels from 3.5 per cent to 0.5.

Removing these three percentage points marked one of the bunker fuel industry's biggest overhauls in decades. The ruling was designed as part of the IMO's initial greenhouse gas (GHG) strategy to cut carbon intensity of international shipping by 40 per cent by 2030, compared to 2008. And it wasn't cheap.

Compliance bills were cited at an additional $25 billion to 30bn in fuel costs for container liners alone in 2020-2023, said Boston Consulting Group (BCG) in late-2019. This was especially tricky for shipowners, an industry emerging from bankruptcies and closures, to absorb.

Smooth switch

Yet the switch has been relatively seamless – a point which buoys many stakeholders' optimism in the face of even greater change.

LNG ahoy

Appetite for liquified natural gas (LNG) bunkering is undoubtedly rising, helped by the robust supply of this "greenest fossil fuel". In early 2019, there were just six LNG bunkering vessels around the world. This has doubled, and with a further 27 on order and/or undergoing commissioning, according to SEA-LNG.

Of these 27, the majority are due to come into service by 2023. Plus, the bunkering infrastructure is also rapidly developing. LNG can now be delivered to vessels in some 96 ports with a further 55 ports in the process of facilitating LNG bunkering investments and operations. And shipbroker SSY said in November that around 10 per cent of the total tanker orders made so far this year were for LNG dual-fuelled vessels.

But rising demand doesn't mean LNG is a one-stop shop win for all shipowners. It's still a fossil fuel in an increasingly green world, putting it at a high risk of falling victim to environmental restrictions. The stakeholders who've caught on early are proactively examining how to decarbonize LNG, which would vastly elongate its longevity and thus commercial viability.

Silver bullet?

Can the most abundant element in the universe transform the maritime fuel industry up to 2050? Yes, but there's a vast amount of groundwork that must first be achieved.

Hydrogen's potential is not new; it's had a few false starts in the last half century. But the current revival – illustrated by news headlines describing hydrogen as the, not a, fuel of the future – seems to have greater credibility than ever in the political and business circles embracing sustainability.

Still, roadmaps detailing policy and technological developments, an array of pilot projects to pinpoint risk-reward ratios, reliable supply-demand dynamics and scalability, are all still needed.

But clearly potential abounds. Nearly all of the voyages made by container ships along the China-US corridor – one of the busiest shipping lanes in the world – in 2015 could have been powered by hydrogen, detailed the International Council on Clean Transportation (ICCT) this year.

And even this array – LSFO, LNG, and hydrogen – are just a part of the greener marine fuels bucket in the 21st century. There's still plenty of work to explore other clean alternative fuels, such as ammonia and methanol.

Proactivity will be pivotal to help shipowners calm the roaring seas of change, for one thing is certain: the status quo they sailed in the last century will be unrecognisable in the next decades to come.

Source : Gulf News

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