

## MARITIME LIEN – A CONCEPT STILL REQUIRED TO BE ANALYSED AND EXPLAINED

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### **Abstract**

*Ships are meant for sailing through the vast oceans and they are the means for the continuous process of trade and commerce to keep going on. However sometimes it might happen that these ships might cause some damage either through collision, leakage, accident or any other reason. But the losses caused through these reasons are not in the control of the owner of the ship as he or she is not the one who is driving the ship. Thus he or she cannot be held liable for damage. Therefore because of this reason the concept of Maritime lien came into existence which not only gave clarity regarding the responsibility of the ship owner in such cases but also provided that who will be paying in case of such situations. However there was still some scope of confusion left but with the passage of time this is also gradually shedding away as legislations are formulated regarding Maritime Lien*

### **Keywords**

Maritime, Lien, balance, seizure, penalty, legal entity, Separate

### **Introduction**

Through ages there has been a concept of balancing of scales which is being followed everywhere around the world for achieving harmonious result between two conflicting situation. This concept can also be seen in cases where some damage is caused by one party to the other party and for balancing out the situation the party causing damage is either penalised or has to go through some form of punishment. There also have been situations when for maintaining the equilibrium in situations where loss is caused by one party to other party, the party to which loss was caused have seized and used and sold the property or belongings of the party which had caused the loss in order to recover and get back into the position which the party suffering from the loss earlier used to enjoy. This gave birth to the concept of lien which in simple term means to take away the property for recovering of the damage caused. However Maritime lien is a much different concept from of normal lien as

in normal lien a person is under the a duty betterment of the party facing losses while Maritime lien makes the property involved in the conflict responsible for compensating.

### **Meaning of Maritime Lien**

In cases when a Ship which is in territorial waters of some country other than its Home country causes any damage or any accident to any other ship. Will the owner of the ship should be the one to be made responsible for the causing of damages or the accident?

To answer this question the concept of Maritime Lien was formulated. According to this concept in a case where a ship causes any damage or accident the Owner of that ship would not be held responsible for the damage or accident but the ship itself will be held responsible for the occurrence of such event. It can be easily understood with help Doctrine of Separate Legal Entity that states that Company is not same as its members but is an artificial person in itself, thus having a separate entity of its own and

thus the Company is penalized and not its members if the company breaks any law. In Maritime lien the Ship which caused the damage is held responsible for making good the loss and not the owner of the ship is made liable for payment of any damages or compensation. In most common cases of Maritime lien a ship which caused the damage is seized and then the parts and equipment of the ship are used to recover the loss caused. Maritime lien is a concept which is different from lien as in this the ship is treated itself as a separate entity which is held responsible for the loss and recovery of the loss caused however in normal lien for recovery of money from the borrower banks or moneylenders either take away the borrowers money or his property. Maritime lien is not defined and in laws of some countries it is used in parallel to the concept of ship arrest.

### **Maritime Lien is Right in Rem And Not Right In Personam**

Maritime lien is a concept in which the ship which is the property causing damage is held responsible while the owner of the ship is not held liable. This concept is related to Right in Rem as it signifies a right over a property and in cases of collision, salvage, Leakage etc., the ship itself is held liable for the damages and the recovery of damages or loss is done from the components or the equipments of the ship itself. Thus not making any interest in the owner of the ship which is a right or interest in a person i.e., right in Personam.

### **Difference between Maritime Lien and Ship Owner Lien**

The core difference between these two liens is that in case of Shipowners lien the cargo of the shipper is being seized and used for the recovery of the damages while in Maritime lien the ship itself is being used for making good the loss.

### **Laws Governing Maritime Lien**

Every country around world have their own maritime laws to govern the ships or vessels which enter into their territory. These laws includes the concept of Maritime lien in them in the form of a separate provision or in the form of part of a provision. Here are some laws which deal with Maritime Lien –

#### **1. Federal Maritime Lien Act**

It is a legislation of USA which is used to govern over Maritime Lien and many other aspects related to Maritime Lien. There are two sections of this Act which are required to be looked upon in order to understand how Maritime Lien is handled under United States of America.

The Sections are as follows :-

**§31342. Establishing maritime liens** – This section states that any person who is been authorized to provide necessaries on a vessel has a maritime lien over that ship or vessel and he may even bring a civil action in rem over that vessel and he is even being not required to prove or allege that the credit was given to the ship or vessel.

However there is an exception provided that this law will not be applying over the public vessels.

**§31343. Recording and discharging notices of claim of maritime lien** – This section provides for the conditions which are required to be fulfilled for acceptance of a Notice of Claim of Maritime Lien –

a.) A person may record a notice of lien if he is claiming a maritime lien over a vessel or a ship which is covered under a preferred mortgage.

b.) Following things should be stated in the notice of claim for maritime lien –

- i.) the nature of the lien
- ii.) the date on which such maritime lien was established;
- iii.) the amount of such maritime lien or the amount covered under such maritime lien
- iv.) the person who is claiming such lien his name and address should also be mentioned in such notice.

c.) The person who is sending such notice of claim of maritime lien should acknowledge such a notice.

When all of these requirements are fulfilled the Secretary must record such notice of lien.

The Secretary shall be provided with a Certificate of discharge of indebtedness by the Claimant when any part of such indebtedness is discharged. This certificate is Claimant. Also this Certificate shall be recorded by the Secretary.

## 2. International Convention on Maritime Liens and Mortgages, 1993

This convention contains a total of 22 Articles which deals with Maritime Lien and Mortgages. Some of these Articles which mentions about Maritime Lien are stated as follows –

**Article 4** – This Article mentions regarding certain claims which shall be secured by the Maritime Lien on the vessel. These claims are mainly against the owner, demise charterer, manager or operator of the ship or vessel. These claims are stated as follows –

a.) First one is the claim regarding payment of wages and other sums which are due to the master, officers and other members which form the whole staff of the vessel. These claim also involves the costs regarding repatriation and social insurance contributions payable on the behalf of the above stated members.

b.) Claims regarding personal injury or loss of life which is directly caused due to the operation of vessel. The claim for such injury or loss can be made whether such injury or loss has occurred on land or even on water.

c.) Claims regarding the rewards which arise due to salvage of the vessel.

d.) Claims which arise because of port, canal and other waterways dues and pilotage dues.

e.) Claims which arise due to physical damage or loss which is caused by the operation of vessel. Such claims are based on a tort which arise due to such dame or loss. The loss or damages mentioned herein does not contain any loss or damage which is caused to cargo, containers and caused because of passengers' effects carried on the vessel.

The points (b.) and (e.) are not applicable for attachment of maritime lien to the vessel in case if the damage is caused to or caused by vessels carrying oil , nuclear materials, radioactive materials or any other hazardous material.

**Article 8** – This Article states about the characteristics of Maritime Lien. According to this Article Maritime Lien attached to a vessel will follow that vessel even if there is any change in ownership of the vessel or in registration of the vessel or any change in flag. However this Article is subjected to the provisions of Article 12 of this convention.

**Article 9** – It states about extinguishing of maritime lines because of ending of a time period. It is mentioned in this Article that maritime liens as mentioned in Article 4 of this convention will come to an end after a period of one year except in a situation where before the expiry of this one year period the vessel to which such maritime lien was attached has been arrested or seized or in a situation where such arrest or seizure has ended up in a forced sale.

The one year time period mentioned here will begin after the claimant's discharge from vessel in case of a maritime lien mentioned in Article 4 point (a) .

The one year time period in case of claims mentioned in Article 4 points (b) to (e) will begin when the claims mentioned in these points arise.

This one year time period shall not be affected by suspension or interruption. However this one period shall not run or be calculated during the period when the arrest or seizure of the vessel is not permitted by law.

## The Admiralty (Jurisdiction and Settlement of Maritime Claims) ,Act 2017

This Act contains provisions which govern and regulate the Maritime liens in India. Section 9 of this Act is the provision which mainly deals with the maritime liens.



**Section 9** – This section mentions about the order of priority of the claims within a maritime lien. This order is as follows –

- a. Claims in relation to the wages or any other sums which were due to master, officers or other members of the vessels staff in respect of their employment on the vessel. This claim involves costs in relation to repatriation and social contribution payable on behalf of the members stated above
- b. Claims arising due to the operation of vessel which directly causes loss of life or personal injury whether on water or on land.
- c. Claims which may arise for rewards relating to the salvage services.
- d. Claims in relation to port, canal or any other ways dues or pilotage dues or any other statutory dues.
- e. Claims which arise due to physical damage or loss which is caused by the operation of vessel. Such claims are based on a tort which arise due to such damage or loss. The loss or damages mentioned herein does not contain any loss or damage which is caused to cargo, containers and caused because of passengers' effects carried on the vessel.

This Article also mentions that even if there is any change in ownership of the vessel or registration or flag the maritime lien attached to that ship will continue to exist and will only extinguish after a period of one year has lapsed but it will not extinguish if within such period or before expiry of such period that vessel is under arrest or seizure or such arrest or seizure has led to a forced sale by a High Court.

However the period mentioned above will become a two year period in case of the claim mentioned under point (a) and the period will be calculated from the day when such sum, or wage or cost falls due or become payable.

It is also mentioned in this article that the maritime lien in case of claim mentioned under point (a) of this article shall commence upon the discharge of claimant from the vessel.

And in case of claims mentioned in the remaining four points the Maritime Lien shall commence from the date when such claims arises.

There is also an exception where a Maritime Lien is not being attached to a ship if the claim in such maritime lien arises because of damage in connection to carriage of oil, nuclear material or any other hazardous or noxious material.

It is easily seen that the Admiralty Act 2017 of India and International Convention on Maritime Lien has certain provisions which are almost similar to each other. Thus signifying inclusion of international conventions in Indian laws. But all the laws on maritime lien are not similar with each other which can be seen while looking at Federal Maritime Lien Act of USA in comparison with Admiralty Act 2017 of India and also at International Convention on Maritime Lien. There this leaves some scope for changes to be made which might make Indian Laws regarding Maritime Lien more acceptable and applicable on an international level.

### Recommendations

Here are certain recommendations made regarding the improvement of laws relating to Maritime Lien in India –

1. In Indian scenario the notice of claim of maritime lien which is given under USA law should be included as it will clearly provide the courts or appropriate authorities with the clear intention of the party who claiming for the Maritime Lien.
2. Maritime lien claims should be dealt by the special tribunals established for maritime disputes or claims as it will help not only in reducing in burden over the High Courts but will also provide ease in dealing with maritime matters as such tribunals will have specialization over such cases or matters.
3. The claims which are included in the maritime lien in Admiralty Act 2017 of India should be visited and should be revised on a fixed interval basis as there may be certain claims which earlier were not found to be



included in the Maritime lien might now required to be included.

### **Conclusion**

With the passage of time every thing is required to be changed and the same is applicable to the maritime laws. However before making such changes it's important to understand that Maritime lien creates a Right in Rem over the ship itself thus relieving the owner of the ship. Every country had their own Maritime Laws and there are certain international conventions which have been made and changed according to the requirements of the global situation. In India legislation have been made on maritime laws which are provided with the provisions regarding maritime lien however these laws either domestic or international have not clearly explained about the concept of Maritime lien thus requiring more changes to be made within them.

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