THE JUDICIAL SALE LOTTERY: FRAGMENTATION OF MARITIME LAW AND THE STRATEGIC ADVANTAGE OF DISTRESSED DEBT INVESTORS

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ABSTRACT

The paper, *"The Judicial Sale Lottery: Fragmentation of Maritime Law and the Strategic Advantage of Distressed Debt Investors,"* interrogates the fractured architecture of international maritime jurisprudence and its unintended consequence, transforming judicial ship sales into a jurisdictional lottery favouring distressed debt investors over traditional maritime lienholders. At its core, the work argues that divergent national interpretations of arrest conventions and lien priority rankings have enabled senior secured creditors to exploit jurisdictional inconsistencies to their advantage, thereby recalibrating the equilibrium between maritime finance and operational justice.

The analysis begins by tracing the cyclical volatility of global shipping finance, wherein regulatory retrenchment posts the 2008 financial crisis precipitated a vacuum in traditional maritime lending. This vacuum, in turn, catalysed the ascendance of hedge funds and private equity as dominant actors in distressed maritime debt markets. These investors, armed with discounted preferred ship mortgages, deploy aggressive enforcement strategies—chiefly vessel arrest and judicial sale, thus weaponizing legal fragmentation into a commercial asset. The study's comparative framework juxtaposes the 1952 Brussels Convention and the 1999 Geneva Convention, highlighting their partial harmonisation of maritime claims but conspicuous omission of lien hierarchy and title recognition standards, which collectively sustain systemic uncertainty.

Within the Indian context, the discourse delves into the collision between the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the Insolvency and Bankruptcy Code, 2016. Through an incisive examination of *Raj Shipping Agencies v. Barge Madhwa (2020)*, it elucidates how Indian courts have harmonised the principles of *lex rei sitae* and *lex concursus*, affirming the supremacy of in rem proceedings in preserving maritime assets and crew welfare. This pragmatic judicial balance, while fostering creditor confidence, reveals a deeper structural dichotomy between asset-based territoriality and insolvency universalism.

The paper's comparative analysis across the United Kingdom, Singapore, India, and the United States underscores how disparate priority frameworks, particularly concerning necessaries claims, facilitate strategic forum shopping. By arresting vessels in jurisdictions where statutory trade claims are subordinated to registered mortgages, distressed debt investors effectively dictate recovery outcomes, turning judicial sales into a "zero-sum lottery" for operational creditors. The recent *Beijing Convention on the International Effects of Judicial Sales of Ships (2022)* is presented as a promising, albeit partial, antidote, offering uniform title recognition and enhanced purchaser confidence, though its efficacy remains contingent upon widespread ratification and harmonised public policy interpretation.

In conclusion, the study advances a compelling call for reform, the harmonisation of lien priority under a unified international framework and the accelerated adoption of the Beijing Convention. It further recommends transparency mechanisms for non-possessory liens to mitigate the information asymmetries that underpin the current enforcement lottery. Through this interdisciplinary synthesis of law, finance, and maritime policy, the paper reveals how the judicial sale once a neutral enforcement device has evolved into a strategic instrument of financial engineering, reshaping the power dynamics of global shipping finance.

1.1. Thesis Statement

The fractured international maritime law concerning ship arrest, including the cyclical volatility of shipping finance, has indeed transformed the judicial sale process into a protracted jurisdiction, thereby creating a dependent lottery that benefits distressed debt investors over traditional maritime lien holders. This disparity arises from conflicting national approaches to priority ranking, which enabled senior secured creditors to strategically manipulate the venue for enforcement in their favour.

1.2. Scope and Context: Defining the Lexicon of Distress

The stability of global trade relies heavily on predictable legal mechanisms for enforcing security interests in maritime assets. Maritime transport stimulates international commerce, it facilitates the movement of world trade volume and trade value of 80% and 70% respectively and the integrity of vessel title and the predictable outcome of legal disputes are significant prerequisites for attracting the massive flow of global capital required to sustain low-cost maritime trade, which, in turn, fuels national economic development.

To analyse the legal landscape surrounding vessel distress and liquidation, precise definitions of key terminology are necessary:

- **Ship Arrest:** This relates to that sphere of civil jurisprudence in which a ship or other maritime vessel is apprehended by order of the court and kept in custody by sovereign authority. Such custody is instituted to ensure satisfaction of existing or prospective claims asserted against the said vessel.

  "*All major systems of law the world over recognise the competence of the coastal State to assume jurisdiction over a foreign ship entering its waters in respect of certain well recognised claims… jurisdiction over the ship has to be exercised by its arrest and detention by means of an action in rem."*[1]

- **Maritime Lien (ML):** A defining feature of admiralty jurisprudence, the maritime lien represents a special and quasi-proprietary right attaching to the vessel itself (the *res*), arising automatically by operation of law in circumstances such as claims for seamen's wages or the performance of salvage services. Critically, a true maritime lien is often described as a "secret" lien because, aside from preferred ship mortgages, it is generally not required to be recorded or registered, yet it adheres to the ship and regardless of changes in ownership of the vessel it travels with. These characteristic grants maritime liens immense power, as they generally rank highly in the priority hierarchy, often superseding registered security instruments.

  The foundational principles of admiralty jurisdiction and the procedural enforcement of maritime liens through vessel arrest were reaffirmed in *M.V. Al Quamar*[2] by the Supreme Court of India. Under the Civil Procedure Code Section 44A the maintainability of an execution petition for a foreign decree arising from a salvage contract, a classic maritime lien against a vessel anchored in Indian territorial waters, was upheld by the Court. Notably, it was emphasised by the Court that 'the ship in question has been attached and is lying detained in Visakhapatnam Port' pursuant to the Andhra Pradesh High Court's *ad interim* order, thereby marking the vessel as the *res* subject to enforcement *in rem*. This decision affirms that Indian High Courts, as

[1] *M.V. Elisabeth v. Harwan Inv. & Trading (P) Ltd.*, (1993) Supp. 2 S.C.C. 433, 444 (India).
[2] See *M.V. Al Quamar v. Tsavliris Salvage (Int'l) Ltd.*, Civil Appeal Nos. 4578–4579 of 2000, decided on Aug. 17, 2000 (India), MANU/SC/0514/2000.

successors to colonial admiralty courts, retain the power to enforce maritime liens through arrest and sale of vessels, even when the underlying claim originates from a foreign jurisdiction

"*A maritime lien does not include or require possession, but being the foundation of proceedings in rem… such lien travels with the thing into whosesoever possession it may come."*[3]

- **Judicial Sale:** This is the court ordered sale of an arrested vessel by an Admiralty court exercising jurisdiction *in rem* universally is recognised as a singular mechanism by which all pre-existing rights, interests, liens, mortgages, and encumbrances upon the ship may be divested or extinguished, and 'clean title' thereby conferred upon the purchaser. The predictability and finality of such judicial sale are regarded as paramount, for the price realised is directly affected by the recoveries to be made by all creditors.

  "…a maritime lien does not include or require possession, but being the foundation of proceedings in rem (a process requisite only to perfect a right inchoate from the moment the lien attaches), such lien travels with the thing into whosesoever possession it may come, and when carried into effect by a proceeding in rem, relates back to the period when it first attached."[4]

- **Distressed Debt:** Typically managed by private equity or hedge funds, this category of investment capital is directed towards the acquisition of discounted debt instruments and assets linked to financially distressed shipping companies. Severe volatility and depressed asset valuations are regarded as the principal attraction for distressed investors, who are strategically positioned to have security interests, often in the form of preferred mortgages, enforced through the process of judicial liquidation[5].

[3] *Harmer v. Bell (The Bold Buccleugh)*, (1852) 7 Moo. P.C. 267, 284; 13 Eng. Rep. 884 (P.C.).
[4] *Harmer v. Bell (The Bold Buccleugh)*, (1852) 7 Moo. P.C. 267, 284; 13 Eng. Rep. 884 (P.C.).
[5] Harmer v. Bell (The Bold Buccleugh), (1852) 7 Moo. P.C. 267, 13 Eng. Rep. 884 (P.C.), available at Seafarers' Rights Int'l, https://seafarersrights.org/wp-content/uploads/2018/03/GBR_CASE_HARMER-V-BELL_1850_ENG.pdf..

1.3. Comparative Legal Analysis

This paper relies upon an analytical comparison of international conventions and their interpretation across principal national jurisdictions. The paper focuses on the correlation between the 1952 Brussels Convention[6] and the subsequent Arrest Convention 1999[7]. The practical application of these principles, particularly concerning the conflict between preferred mortgages and trade claims, is demonstrated through a review of case law from prominent common law jurisdictions such as the United Kingdom and India, contrasted against the distinct federal admiralty system of the United States. This approach highlights how differing national rules govern maritime lien priority and how these differences influence the strategic behaviour of financial creditors during liquidation.

Section II: Shipping Finance Volatility and the Rise of Distressed Debt

2.1. The Idiosyncratic Cyclicality of Maritime Trade

The international shipping industry is fundamentally characterized by extreme cyclicality, volatility, and capital intensity. This high degree of market fluctuation stems from the derived nature of demand for shipping services, which is dictated by global trade flows, combined with the rigid supply of vessels due to lengthy shipbuilding cycles.

These unpredictable highs and lows in freight rates and vessel values frequently trigger financial distress. Following boom periods, such as the mid-2000s, excessive new building orders, combined with the subsequent global economic crisis, resulted in dramatic oversupply and corresponding drops in asset values, with values for cargo vessels reaching historical lows around 2013. Such downturns lead inevitably to defaults on debt obligations, creating a steady stream of distressed assets ripe for opportunistic investment.

2.2. The Vacuum in Ship Finance: The Retreat of Traditional Banking

The financial landscape of the maritime sector underwent a permanent structural shift following Global Financial Crisis of 2007-2008. Historically, traditional commercial banks,

[6] See Convention on the International Maritime Organization, Mar. 6, 1948, 289 U.N.T.S. 3, https://treaties.un.org/doc/publication/unts/volume%20439/volume-439-i-6330-english.pdf..
[7] International Convention on the Arrest of Ships, Mar. 12, 1999, available at Manupatra, http://student.manupatra.com/Academic/Conventions/Conventions-on-Navigation/InteConArreShip1999.pdf..

particularly in Europe, dominated the provision of debt capital to the maritime industry. However, post crisis regulatory reforms, most notably Basel III and IV, mandated that banks increase the capital held against certain loans, significantly diminishing the economic incentive for these banks to maintain or expand their maritime exposure [8]

This regulatory retreat created a significant funding gap for shipowners. European banks, faced with stricter capital rationing, political pressure to refocus on domestic lending, and suffering distress in their existing shipping loan books, slashed their exposure. Despite a fleet expansion of over 80% since the crisis, traditional bank lending became highly constrained, leaving an estimated global financing requirement of $100 billion annually unmet by conventional sources.[9] This financial vacuum provided the precise entry point for alternative finance providers.

2.3. Distressed Debt as a Strategic Asset Class: The Investor's Calculation

Private capital, including hedge funds and private equity firms, are increasingly drawn to the distressed nature of shipping assets, they recognizing an opportunity which is created directly by the withdrawal of traditional bank liquidity.

The strategic calculation of these distressed debt investors hinges on acquiring control of the senior secured positions, typically a registered Preferred Ship Mortgage. Often purchased at a discount from retreating banks. Their operational model differs fundamentally from that of traditional banks. Rather than pursuing restructuring designed to maintain the owner's solvency, the distressed investor frequently relies on aggressive enforcement mechanisms, including vessel arrest, to force an expedient judicial sale and realize maximum value from the liquidation[10].

The reliance on judicial enforcement necessitates an environment where the legal security instrument, the mortgage is highly predictable in its ranking against competing claims. The decision by distressed investors to pursue aggressive liquidation through vessel arrest thus accelerates the transition from corporate financial distress to a high stake, jurisdictionally

[8]See Bryan Schneider, *Maritime Private Credit: The Investment Opportunity Set Making Waves*, NCPERS Blog (Sept. 4, 2024), https://www.ncpers.org/blog_home.asp?display=405.
[9] See Andreas Povlsen, *The Untapped Opportunity in Shipping Finance*, Private Debt Investor (Mar. 4, 2020), https://www.privatedebtinvestor.com/the-untapped-opportunity-in-shipping-finance/; see also supra note 4.
[10] See Brad L. Berman, *Can Private Equity Save the Distressed Shipping Market?*, Financier Worldwide (Aug. 2013), https://www.financierworldwide.com/can-private-equity-save-the-distressed-shipping-market..

sensitive legal dispute. The transition from relationship-based finance to enforcement centric finance heightens the impact of legal fragmentation on operational creditors, as the new financial players use the admiralty courts not as a last resort, but as a primary tool for achieving asset realization and clean title acquisition.

Section III: The Legal Fragmentation: Arrest Conventions and Jurisdictional Choice

The international legal framework governing vessel seizure endeavours to achieve uniformity, yet ultimately falls short in standardising the procedures surrounding judicial sale and ship arrest, thereby perpetuating systemic jurisdictional risks within maritime commerce.

3.1. International Conventions: Defining the Right to Arrest

To arrest a ship temporary has been restricted globally to specific grounds defined as "maritime claims".

- **The 1952 Brussels Convention:** The International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, adopted at Brussels in 1952 and widely known as the 1952 Brussels Convention, secured ratification from nearly 75 nations, marking extensive international acceptance. It enumerated the categories of maritime claims warranting the arrest of a vessel, encompassing matters such as collision-related damages, cargo loss, enforcement of a mortgage, and unpaid pilotage. The Convention further provides, though without absolute textual precision, that an arrest may generally be affected where the shipowner bears responsibility for the underlying liability.[11].

- The 1999 Geneva Convention: The evolving realities of commerce and protections that must be offered to sea farers gave birth to the Geneva Convention on the Arrest of Ship 1999, bringing stability to the admiralty practice, while it retained the foundational principle that arrest must be predicated based on a maritime claim, there was significant broadening of scope, for such claims. It included benefits like repatriation costs and also social insurance contributions for crew members (Art. 1(1)(o)), and it also covers

[11] See generally Mahin Faghfouri, *International Convention on Arrest of Ships (1999)*, U.N. Audiovisual Library of International Law, https://legal.un.org/avl/ha/icas/icas.html (last visited Oct. 22, 2025); see also Erik R. Swanson, *The Arrest Convention: Problems and Suggested Solutions*, 30 Ga. J. Int'l & Comp. L. 625, 631–32 (2002), https://digitalcommons.law.uga.edu/gjicl/vol30/iss3/6

business deals like insurance premiums, brokerage fees, and sale disputes (Art. 1(1)(q), (r), (v)). These additions showed a clear intention to include creditors, even for claims that were thought to be only business or contractual. The Convention still has not been ratified as widely as its 1952 predecessor making it harder for people around the world to follow the same rules.

- Sister Ship Arrests: Both Conventions govern the circumstances under which a vessel other than the one directly involved in the claim, commonly referred to as a sister ship, may be arrested. Such action is permissible when both vessels are under the ownership of the same debtor. However, it is crucial to note that while a sister vessel may be detained as property belonging to the same liable owner, the true maritime lien itself does not attach to that vessel, rather, its enforcement depends predominantly upon how national courts construe the relevant Conventions.

- Indian courts have consistently held that a claimant may only detain a sister vessel when it is established that the person or entity responsible for the maritime liability holds beneficial ownership over that vessel. The Supreme Court has further underscored that such ownership must subsist at the exact moment of arrest, and that neither common corporate control nor group affiliation suffices to authorise the vessel's detention.[12]

3.2. Procedural Divergence and Enforcement Gaps

A substantial source of friction lies in procedural divergence and the absence of major maritime powers from the global arrest framework. The United States, despite being a leading maritime jurisdiction, has intentionally stayed beyond the ambit of international ship arrest conventions. Its procedures are instead regulated solely through Rules B and C of the Supplemental Admiralty Rules under the Federal Rules of Civil Procedure, a dual structure that renders international enforcement increasingly complex.

Moreover, national courts exercise sovereign discretion in determining essential procedural safeguards. For example, the obligation imposed upon an arresting party to furnish counter-security, intended to safeguard the shipowner against potential claims of wrongful arrest, differs significantly across jurisdictions. Although the potential exposure to liability for wrongful arrest functions as a critical deterrent for claimants, the court's inclination to demand counter-

[12] *Chrisomar Corp. v. MJR Steels Pvt. Ltd.*, (2018) 16 SCC 117 (India).

security frequently influences strategic decision-making regarding the forum chosen for initiating a vessel's detention. For example, Dutch courts possess the discretionary power to demand counter-security, although historically they have rarely exercised it, though recent practice suggests increasing receptiveness to such requests[13].

3.3. The Unresolved Problem of Clean Title Recognition

Arguably the gravest deficiency of the pre-2022 international regime, and a central cause of asset undervaluation, lay in the lack of any binding global duty compelling states to acknowledge and give effect to the outcomes flowing from a judicial sale conducted abroad.[14].

Historically, although common law jurisdictions including the United Kingdom and those shaped by its judicial precedents (common law countries) typically acknowledged foreign admiralty court sales as transferring title *in rem*, free from all prior liens, such recognition stemmed from principles of comity and established doctrine rather than any binding treaty obligation. As a result, there existed no definitive assurance that a subsequent port state would honour the 'clean title' effect of such a sale.[15]

The commercial consequence of this legal uncertainty was severe, potential purchasers, fearing the risk of rearrest by residual claimants in a third jurisdiction (as seen in historical incidents like the harassment of new owners in the *Tremont* context or the *Galaxias* case[16]), would discount their bids. This reduction in the auction price harmed all creditors, including the senior mortgagee, by diminishing the distributed fund. The difficulty arose from the essential fact that, although the 1952 and 1999 Arrest Conventions endeavoured to standardise the permissible grounds for arrest, that is, the causes of action. They intentionally left the decisive matters, namely, the legal effect of a judicial sale and the order of priority in claim distribution entirely subject to the domestic law of the forum (*lex fori*). This delegation of jurisdictionally critical

[13] See *Ship Arrests in Practice*, 11th ed., Vardikos & Vardikos (2020), https://vardikos.com/wp-content/uploads/2020/07/Ship-Arrests-In-Practice-11th-Edition.pdf..
[14] See *Judicial Sale of Ships and the Beijing Convention*, Int'l Bar Ass'n, https://www.ibanet.org/beijing-convention-judicial-sale-ships
[15] See David M. Ong, *The Beijing Convention on the Judicial Sale of Ships: A New Global Framework for Maritime Creditors and Buyers*, 45 Roger Williams U. L. Rev. 1 (2023), https://docs.rwu.edu/cgi/viewcontent.cgi?article=2431&context=law_ma_jmlc; United Nations Convention on the International Effects of Judicial Sales of Ships, UNCITRAL (2022), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/united_nations_convention_on_the_international_effects_of_judicial_sales_of_ships.pdf.
[16] *A Brief Discussion on Judicial Sales of Ships*, Comité Maritime Int'l (May 2018), https://comitemaritime.org/wp-content/uploads/2018/05/A-Brief-Discussion-on-Judicial-Sales-of-Ships.pdf.

matters means the final financial outcome of a vessel liquidation is determined solely by the choice of the arresting jurisdiction, establishing the foundation for the strategic lottery.

Section IV: The Harmonization of High Seas and High Code: Jurisdictional Conflicts in Indian Maritime Insolvency

4. The Collision of Universalism and Territoriality

The landscape of Indian commercial law has undergone an immense transformation, marked by the enactment of two landmark statutes, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the Insolvency and Bankruptcy Code, 2016 (IBC). These reforms aimed to modernize India's financial and maritime sectors, by replacing archaic frameworks with comprehensive, time-bound mechanisms. While intended to operate in distinct spheres, the insolvency of a shipping company often forces these two specialized legal regimes into direct conflict, creating complex jurisdictional puzzles regarding asset control, stays on legal action, and priority of claims.[17]

The foundation of modern Indian Admiralty Law rests significantly upon the Supreme Court's ruling in *MV Elisabeth* (1993)[18], where in the Indian High Courts established the plenary power in regards to maritime matters and it also recognized the validity in *action in rem*. The Admiralty Act, 2017, explicitly codified and expanded upon these very foundations, aligning Indian law with contemporary international maritime conventions regarding vessel arrest, maritime claims, and lien enforcement.[19]

The Defining Conflict: Lex Rei Sitae vs. Lex Concursus

The fundamental tension arises from the competing philosophical approaches of insolvency and admiralty regimes. Insolvency Law, encapsulated by the IBC, adheres to the principle of *Lex Concursus* (law of the concurrence of creditors). This principle embodies the doctrine of universalism, aiming to bring together all assets and liabilities of the corporate debtor under

[17] Bhatt & Joshi Associates, *The Interplay of IBC and Admiralty Law*, https://bhattandjoshiassociates.com/the-interplay-of-ibc-and-admiralty-law/ (last visited Oct. 27, 2025).
[18] M.V. Elisabeth v. Harwan Inv. & Trading (P) Ltd., Civil Appeal No. 896 of 1992 & Transfer Case No. 27 of 1987, decided on 26 Feb. 1992 (India), [1992] INSC 60, MANU/SC/0685/1993.
[19] Bhatt & Joshi Associates, *The M.V. Elisabeth Doctrine: Supreme Court's Foundational Ruling on Indian Admiralty Jurisdiction*, https://bhattandjoshiassociates.com/the-mv-elisabeth-doctrine-supreme-courts-foundational-ruling-on-indian-admiralty-jurisdiction/

the authority of the National Company Law Tribunal (NCLT)[20]. Its primary objectives are to maximise the value of the debtor's estate and to secure fair distribution among all creditors, a process typically dependent upon the imposition of an automatic, global moratorium on proceedings against the debtor and its assets.

Conversely, Admiralty Law operates under the doctrine of *Lex Rei Sitae* (law of the situs of the thing). It inherently territorial and multinational, designed to enforce highly specialized rights (*in rem*) against the physical asset the vessel (*res*), wherever it is found. The multinational character of shipping, involving vessels registered in one country, owned by entities incorporated in another, and arrested elsewhere, necessitates that maritime law remains universal in its recognition of liens and arrest principles.

The procedural distinction exacerbates the conflict. Insolvency proceedings are *in personam*, aimed at the corporate debtor as a legal person. Admiralty proceedings, however, are unique in that they are initiated *in rem* against the vessel itself, treating the ship as a separate juridical person capable of being sued independently of its owner[21].

The resolution of this conflict required judicial harmonization, necessitated by the presence of overlapping, powerful statutory directives. The IBC contains a non-obstante clause (Section 238) purporting to override other laws, but the Admiralty Act itself is a highly specialized statute granting exclusive jurisdiction to specific High Courts and outlining a distinct priority scheme. Simple judicial override was deemed insufficient, as it risked either frustrating the IBC's goal of value maximization through generalized asset seizure or crippling the maritime industry's need for swift, specialized security enforcement.[22] Ultimately, the affirmation of the Admiralty Court's authority, backed by the plenary power established in *MV Elisabeth*, positioned India as a stable, creditor-friendly jurisdiction, providing regulatory clarity that mitigates risk for international shipping finance.

[20] ICSIIIP, *Insolvency in Maritime Industry*, https://icsiiip.in/panel/assets/images/research_articles/16331656803814Insolvency%20in%20Maritime%20Industry.pdf (last visited Oct. 27, 2025)
[21] Bhatt & Joshi Associates, *The Interface Between Admiralty Law and the IBC: A Legal Analysis*, https://bhattandjoshiassociates.com/the-interface-between-admiralty-law-and-the-ibc-a-legal-analysis/ (last visited Oct. 27, 2025).
[22] SCC Online, *No Smooth Sailing for Insolvency Law*, https://www.scconline.com/blog/post/2022/08/28/no-smooth-sailing-for-insolvency-law/ (last visited Oct. 27, 2025).

4.2. Jurisdictional Primacy and Restructuring Stays

Mandated under Section 14, the most acute point of conflict is the effect of the IBC moratorium, on the ability of maritime claimants to secure a vessel through arrest.

The Statutory and Judicial Clash

Under the protective framework of the Insolvency and Bankruptcy Code (IBC), the commencement of the Corporate Insolvency Resolution Process (CIRP) triggers the moratorium prescribed in Section 14, which prohibits the initiation or continuation of any legal proceedings against the corporate debtor.[23] *A comparable stay operates during the liquidation stage pursuant to Section 33(5). At the same time, Section 3 of the Admiralty Act vests exclusive admiralty jurisdiction in designated High Courts for adjudicating maritime claims and vessel arrest proceedings, thereby insulating maritime matters from the purview of other judicial bodies, including the NCLT.*

The *Raj Shipping Agencies v. Barge Madhwa* Resolution

The Bombay High Court in its landmark judgment, *Raj Shipping Agencies v. Barge Madhwa* (2020) addressed the conflict definitively. Court established the core doctrine, an *action in rem* for the arrest of a vessel, initiated under the Admiralty Act does not in essence, constitute a proceeding against the corporate debtor within the meaning of the IBC.[24]

Consequently, the judiciary ruled that the moratorium under of Section 14 (specifically, Sections 14(1)(a) to 14(1)(d)) and the stay provisions during liquidation (Section 33(5)) are inapplicable to admiralty actions instituted against the vessel itself. This ruling granted maritime claimants crucial temporal flexibility, confirming their absolute right to initiate or continue *in rem* proceedings and seek vessel arrest (or subsequent judicial sale) before, during, or after the CIRP or liquidation commences against the shipowner.

The foundation of this decision rests on highly pragmatic considerations directly related to asset preservation and human welfare. The Court acknowledged that the prompt exercise of

[23] Bhatt & Joshi Associates, supra note 5.
[24] Parinam Law, *Bombay High Court Harmonizes Provisions of the Admiralty Act and the Insolvency Code*, https://parinamlaw.com/wp-content/uploads/2020/05/Bombay-High-Court-Harmonizes-Provisions-of-the-Admiralty-Act-and-the-Insolvency.pdf (last visited Oct. 27, 2025).

admiralty jurisdiction is necessary to secure the *res*, preventing the vessel from absconding or deteriorating in value, a risk inherent in time-sensitive maritime claims Furthermore, the Court observed troubling instances in which Resolution Professionals (RPs) or liquidators, during insolvency proceedings, had neglected to undertake sufficient measures for the maintenance and preservation of vessels, thereby leading to situations where crew members were abandoned without wages or essential provisions. The intervention of the Admiralty Court, therefore, does not hinder the insolvency process but assists it by ensuring the preservation of a valuable asset and protecting the fundamental welfare of the crew. This judicial critique of generalized insolvency management provides a powerful practical justification for preserving the specialized, exclusive power of the Admiralty Court over the maritime asset.

The Conversion Paradox (*In Rem* to *In Personam*)

While the *Barge Madhwa* judgment protects the *in-rem* action, a critical vulnerability exists once the corporate debtor intervenes. An arrest order secures the *res*. However, if the corporate debtor appears in the High Court and furnishes security (such as a monetary deposit or a bank guarantee) to secure the release of the vessel, the legal proceeding becomes an *action in personam* against the debtor and not an *action in rem* against the vessel.[25]

This structural mechanism highlights a key limitation on the superiority of the *in rem* action: the moment the corporate debtor successfully provides security, the suit becomes an action *against the corporate debtor* and is immediately subject to the Section 14 moratorium.[26] While the maritime claimant successfully obtained security, further legal proceedings to adjudicate the underlying debt are stayed. The claimant is thereafter regarded as a creditor secured by security solely in respect of that particular claim and is required to pursue recovery within the framework of the CIRP.[27] This "Conversion Paradox" shows that although the initial seizure is protected by Admiralty law, the IBC ultimately re-asserts control over the resulting debt claim, integrating the claimant into the centralized insolvency structure.

[25] CML NLUO, *Bombay High Court Resolves the Conflict Between Admiralty and Insolvency Law*, https://cmlnluo.law.blog/2020/06/16/bombay-high-court-resolves-the-conflict-between-admiralty-and-insolvency-law/(last visited Oct. 27, 2025).
[26] Bhatt & Joshi Associates, *IBC and Admiralty Law*, https://bhattandjoshiassociates.com/ibc-and-admiralty-law/ (last visited Oct. 27, 2025).
[27] Prasad Warkar, *Sinking Ship: IBC vis-à-vis Admiralty Act*, IBC Laws, https://ibclaw.in/sinking-ship-ibc-vis-a-vis-admiralty-act-by-adv-prasad-warkar/(last visited Oct. 27, 2025).

4.3. Enforcement and Priority(Judicial Arrest and Sale)

The ability for maritime claimant to enforce their security interest against the vessel, even during insolvency proceedings, dictates the effectiveness of maritime finance and lending in India.

Maritime Claims as Perfected Security Interests

The arrest of a vessel under admiralty jurisdiction effectively elevates maritime claimants to the status of secured creditors, granting them preferential rights over the vessel and its proceeds. The nature of the maritime claim determines when the security interest is perfected. Maritime liens (e.g., salvage, crew wages, damage claims) attach to the ship intrinsically from the time the underlying cause of action arises.[28] In the case of general maritime claims that grant merely a statutory right *in rem*, the security interest materialises upon the initiation and service of *in rem* proceedings, thereby enabling the claimant to effect the arrest of the vessel, notwithstanding the pendency of insolvency proceedings.

The Admiralty Judicial Sale

The Indian harmonization model is the Admiralty Court's has a crucial component of retinting of the power to order the judicial sale of the an arrested vessel, regardless of the ongoing CIRP or liquidation of the owner. The judiciary has repeatedly affirmed the commercial imperative of this specialized realization process. The Admiralty judicial sale is structured to resolve claims against the *res* conclusively against all the world, ensuring a clean title transfer.[29]The courts concluded that such a specialized process is likely to achieve a higher price and ensure a quicker resolution compared to generalized liquidation sales under the IBC, thereby actively supporting the core IBC objective of value maximization.[30] Upon realisation of the sale value, the funds are deposited before the Admiralty Court, which determines their distribution in accordance with established maritime priorities. This necessity for a specialized judicial remedy is underscored by the limitations on non-judicial self-help. Enforcement of security under laws like the SARFAESI Act, 2002, which typically allows secured creditors to take

[28] Judicial Insolvency Network (JIN), *Keynote Address – New York Conference (Sept. 2018)*, https://jin-global.org/content/jin/pdf/2018-sept-jin-keynote-address-new-york.pdf (last visited Oct. 27, 2025)
[29] Admiralty Practice, *[Title of PDF if available]*, https://www.admiraltypractice.com/pdf/32.pdf (last visited Oct. 27, 2025).
[30] Bhatt & Joshi Associates, supra note 1.

possession and sell assets without court intervention, is usually restricted once a CIRP application is admitted against the debtor. This reinforces the specialized *in rem* process as the primary, effective mechanism for realizing security interest in ships during insolvency.

Priority of Claims: Reconciling Admiralty Act (Section 9) and IBC (Section 53)

After the asset is realized through an Admiralty judicial sale, a conflict arises between the distribution priority stipulated by the Admiralty Act, 2017, and the general waterfall mechanism within Section 53 of the IBC.[1] The Admiralty Act, following time-honoured international custom, assigns priority based on the importance of the claim to the vessel's operation and preservation, often ranking maritime liens (e.g., crew wages, salvage) as *supra-mortgage* claims.[16]

The judicial resolution confirmed that certain maritime claims, specifically those holding the status of maritime liens, maintain their superiority in the distribution of the vessel sale proceeds.[10] This practice ensures that crew wages, salvage claims, and certain statutory dues are paid first.[17] The upholding of maritime lien superiority aligns India's legal practice with key international jurisdictions such as the Singapore and United Kingdom , thereby strengthening global confidence in India's maritime enforcement framework.[16]

Crucially, this resolution establishes a *de facto* substantive carve-out for maritime asset realization. The specialized nature of maritime risk is respected by allowing the Admiralty Act to govern the sale and distribution of proceeds and the sale thereof up to the value of the maritime claims. Any residual equity from the sale, after all preferred maritime claims are settled, is then remitted to the liquidator to be distributed according to the general IBC waterfall.

Priority of Preservation Costs

An additional tier of priority serves to uphold the functional integrity of the legal process. The costs incurred for the custody of the vessel and for its maintenance and preservation while under arrest, often referred to as the Sheriff's or Marshal's expenses, are accorded the absolute highest priority.[31] Indian courts have explicitly equated these expenditures with Resolution

[31] Admiralty Practice, *[Title of Document]*, https://www.admiraltypractice.com/pdf/32.pdf (last visited Oct. 28, 2025).

Professional Costs or Liquidation Costs under the IBC, their payment precedes all other disbursements from the sale proceeds.[32] This priority is paramount, as the ability to maintain the asset and protect the crew is essential to realizing any value at all.

4.4 Cross-Border Insolvency, Admiralty Discretion, and 'Comity'

The conflict between *Lex Rei Sitae* and *Lex Concursus* becomes even more complex when the shipowner is subject to foreign insolvency proceedings. This introduces the principle of comity, the extent to which an Indian court will respect and enforce the orders of a foreign jurisdiction.

India's Cross-Border Framework Vacuum

By mid-2025, the UNCITRAL Model Law on Cross-Border Insolvency (UML) has not yet been adopted by India.[33] The existing IBC framework contains Sections 234 and 235, which theoretically permit cooperation with foreign courts, but they rely entirely on the prior existence of reciprocal agreements. Since India has not signed any such agreements, these provisions remain ineffective in practice.[34]

This regulatory vacuum leaves India without a standardized mechanism for recognizing foreign main proceedings (FMPs). Consequently, India remains a passive recipient of recognition abroad without offering commensurate legal certainty to foreign investors or practitioners operating within its jurisdiction.

The Admiralty Court's Discretion and Comity

In the absence of codified cross-border insolvency law, Indian Admiralty Courts rely on the principle of judicial comity under common law, demanding respect for foreign judicial orders unless they contravene Indian public policy.[35] When a foreign-registered vessel, owned by an entity undergoing insolvency abroad (as seen in cases involving major shipping failures like

[32] Admiralty Practice, *Ship Arrest in India and Admiralty Laws of India*, https://www.admiraltypractice.com/pdf/32.pdf (last visited Oct. 28, 2025).
[33] Scott Atkins, *The Model Law on Cross-Border Insolvency Turns 25*, Norton Rose Fulbright (May 2022), https://www.nortonrosefulbright.com/en-in/knowledge/publications/87d4ce21/the-model-law-on-cross-border-insolvency-turns-25 (last visited Oct. 28, 2025).
[34] Nishant Singh, *Recognition Without Reciprocity: Why Indian Insolvency Law Must Catch Up*, Legal 500, https://www.legal500.com/developments/thought-leadership/recognition-without-reciprocity-why-indian-insolvency-law-must-catch-up/ (last visited Oct. 28, 2025).
[35] Tranzission, *Foreign Creditors' Claims in Indian Insolvency Cases*, https://tranzission.in/foreign-creditors-claims-in-indian-insolvency-cases/ (last visited Oct. 28, 2025).

Hanjin or OW Bunker [36]), is arrested in India, the Admiralty Court must determine whether to recognize the foreign stay and halt the Indian *in rem* action.

Given the firm domestic judicial precedent established by *Barge Madhwa*, the prevailing public policy in India is to prioritize the *Lex Rei Sitae*, that is, maintaining territorial control over the *res* to allow maritime claimants to perfect their security interest. The argument that the *action in rem* is concerns the asset itself rather than the foreign corporate debtor, remains potent regardless of the existence of an FMP. The Indian court, therefore, retains significant discretion to order the arrest and judicial sale of the vessel, even if a foreign court has imposed a general stay.

This judicial tendency to uphold local territorial enforcement over the centralized goals of foreign insolvency signals a strategy of "reverse territoriality." By providing a reliable local enforcement mechanism, irrespective of the owner's global financial status, the Indian judiciary mitigates the regulatory fragmentation caused by the lack of UML adoption and ensures that India remains an attractive jurisdiction for international maritime creditors.

International Comparison

The Indian approach stands in stark contrast to that of jurisdictions like the United States, where the UML has been adopted, under Chapter 15 of the U.S. Bankruptcy Code, recognition of an FMP generally initiates an automatic stay with extraterritorial effect.[37] However, U.S. courts often temper this universalism by granting relief to creditors who possess pre-existing vessel arrests, recognizing those claims as secured claims, thereby providing a path for harmonization.

Critically, the experience of some UML jurisdictions illustrates the potential pitfalls of unspecialized adoption. For instance, in Montenegro, the implementation of the UML did not explicitly exclude the *actio in rem* from the automatic stay provision. This omission resulted in courts ordering the automatic stay of maritime lien enforcement procedures and surrendering

[36] Insolvency Law Academy, *Maritime and Insolvency Laws v4*, https://insolvencylawacademy.com/wp-content/uploads/2024/04/MARITIME-AND-INSOLVENCY-LAWS-v4.pdf (last visited Oct. 28, 2025).
[37] Koichiro Sato, *Does a Chapter 11 Bankruptcy Have Extraterritorial Effects?*, Masuda Funai (Sept. 29, 2025), https://www.masudafunai.com/articles/does-a-chapter-11-bankruptcy-have-extraterritorial-effects (last visited Oct. 28, 2025).

jurisdiction over the ship to the foreign bankruptcy court.[38]

The Indian judicial position, by preserving the *in-rem* action against the stay, effectively operates as a Model Law jurisdiction that implicitly *excludes actio in rem* for its domestic policy goals. However, the reliance on judicial discretion and common law comity, rather than formalized UML protocols, injects significant unpredictability concerning the precise outcome of cross-border recognition efforts, potentially leading to costly parallel proceedings a scenario that contradicts the universalist aim of cross-border restructuring. This uncertainty encourages foreign maritime creditors to engage in a "race to the res," seeking swift arrest in India to secure local jurisdiction before any potentially recognized foreign stay can be enforced.[39]

4.5. Strategic Recommendations

Synthesis of the Indian Harmonization Model

The intersection between the Admiralty Act and the IBC in India has been resolved through a nuanced judicial harmonization that recognizes the specialized nature and global demands of the maritime sector. The precedent set by the Bombay High Court established that an action *in rem* directed against the vessel is legally independent of proceedings instituted against the corporate debtor. This distinction prevents the generalized insolvency moratorium from frustrating the core objectives of Admiralty Law: swift asset preservation, perfection of specialized security interests, protection of crew welfare, and enforcement of internationally recognized lien priorities.

The resulting framework creates a powerful, self-executing mechanism: the Admiralty Court, as the specialized forum, retains control over the realization and distribution of the vessel's sale proceeds, thereby maintaining global confidence in Indian maritime enforcement. The realization process operates largely independent of the IBC, with the Liquidator's interest confined to the residual equity.

[38] Maja Radunović, *The Relationship Between Maritime and Insolvency Law*, Comité Maritime International, https://comitemaritime.org/wp-content/uploads/2019/09/MAJA-RADUNOVIC-DISSERTATION.pdf (last visited Oct. 28, 2025).
[39] Judicial Insolvency Network, *Keynote Address – New York Conference (Sept. 2018)*, https://jin-global.org/content/jin/pdf/2018-sept-jin-keynote-address-new-york.pdf (last visited Oct. 28, 2025).

Strategic Guidance for Stakeholders

For **Maritime Creditors**, the analysis confirms that swift initiation of an *in rem* action remains the most effective tool for security perfection against an insolvent or distressed shipowner. This ability is robust, surviving the commencement of CIRP/Liquidation and acting as a strong countermeasure against potential foreign insolvency stays.

For **Resolution Professionals and Liquidators**, the judgment defines a clear jurisdictional limitation, the arrested vessel is effectively carved out from the general insolvency estate for the purpose of realization, In relation to the vessel, the insolvency professional's role is altered from that of primary controller to that of an interested party, who is required to cooperate with the Admiralty Court in matters of asset preservation and the eventual claim to surplus proceeds.

Legislative and Policy Recommendations

While the judicial harmonization has provided much-needed certainty domestically, the international dimension remains fraught with potential conflict due to the non-attendance of a standardized legal framework.

1. **Codification of Cross-Border Insolvency:** India ought to accord urgent priority to enacting the UNCITRAL Model Law, thereby advancing beyond the inadequate and impractical framework provided under Sections 234 and 235 of the IBC.[40] This step is critical to providing legal certainty and predictability required by the international shipping and finance community.

2. **Explicit Exclusion of *Actio In Rem*:** Any future Indian cross-border insolvency legislation adopting the UML must explicitly include a provision ensuring that the *actio in rem* is excluded from the mandatory automatic stay. This legislative decision would codify the established domestic judicial policy, preventing the unintended surrender of jurisdiction over a maritime asset, as has occurred in other Model Law jurisdictions that failed to provide this crucial exception.

Section V: The Judicial Sale Lottery: Conflicts of Lien Priority and Title Certainty

The core mechanism of the judicial sale lottery, which benefits the distressed debt investor, is

[40] Singh, supra note 19.

rooted in the significant variances among national laws regarding the priority hierarchy of maritime claims, specifically concerning the juxtaposition of the preferred mortgage against trade related statutory claims as stated by the Bombay High Court, that beneficial ownership and lien hierarchy are essential for valid arrest and claim enforcement[41]. In India there is a clear act put in place for avoiding any confusions, **Admiralty Act, 2017**[42]

“ Section 9 codifies the *inter se priority* of maritime liens:

- (a) Crew wages and repatriation costs
- (b) Personal injury and loss of life
- (c) Salvage claims
- (d) Port and pilotage dues
- (e) Tort based claims from vessel operation”[43]

5.1. Hierarchy of Claims: The Universal Baseline

In admiralty jurisprudence, the distribution of the sale proceeds from an arrested vessel follows a predetermined hierarchy of claims, since the available funds are frequently inadequate to discharge the liabilities of all creditors.[44]

“In many jurisdictions, the sale proceeds are distributed according to a strict ranking of claims, with crew wages and salvage often taking precedence.” [45]

- **Custodia Legis Expenses:** These are paramount. Costs incurred for the maintenance, care and operation of the ship while it is under the court's possession (e.g., U.S. Marshal fees, dockage, substitute custodian wages) are paid first, as they preserve the asset and

[41] *MV Sea Success I v. Liverpool & London Steamship Prot. & Indem. Ass’n Ltd.*, AIR 2002 Bom 151 (India).
[42] Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, Acts of Parliament, 2017 (India), https://www.indiacode.nic.in/bitstream/123456789/2256/5/A2017-22.pdf..
[43] Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, https://www.indiacode.nic.in/bitstream/123456789/2256/5/A2017-22.pdf (India).
[44] See Wentworth J. Marshall Jr., *Maritime Lien Priority*, 9 Clev.-Marshall L. Rev. 577 (1960); *Basic Overview: Maritime Liens and Rank*, Bohonnon Law Firm, https://www.bohonnon.com/firm-news-and-articles/basic-overview-maritime-liens-and-rank/ (last visited Oct. 23, 2025).
[45] *Ship Arrests*, supra note 10

create the fund for distribution [41, 43, 44].

- **True Maritime Liens:** Certain claims are universally recognized as privileged quasi-proprietary rights, ranking superior to the preferred ship mortgage. These include:
    - **Crew Wages:** Accorded the highest priority among maritime liens, reflecting the policy of compensating seafarers for their labour.
    - **Salvage and General Average:** These claims incentivize the rescue of vessels and cargo. Under the principle of "last in time, first in right," the most recent salvage operations typically take precedence.
    - **Maritime Torts:** Claims stemming from harm occasioned by the vessel, including collision-related damages or personal injury liabilities. [46].

5.2. Case Study: Strategic Forum Shopping in *Piraeus Bank v Posidon*

To fully illustrate the strategic advantage conferred by legal fragmentation, we can examine a scenario mirroring the Singapore High Court decision in Piraeus Bank case[47] (involving the vessels *Posidon* and *Pegasus*). This case demonstrates how a senior secured creditor strategically selects a jurisdiction whose priority regime subordinates operational claims, maximizing their own recovery.

The Forum Shopping Decision: The Power of the *Lex Fori*

The secured creditor, Piraeus Bank, holding a Preferred Mortgage over the vessels, chose to arrest and sell the vessels in Singapore. This choice was strategic because, as the Court affirmed, "*The order of priorities and the distribution of the sale proceeds of a vessel in an action in rem between competing claimants against the same fund is a question governed by the law of the forum*"[48].

This principle of *lex fori* grants the choice of jurisdiction immediate and decisive power over the distribution. The conflict arose between the Mortgagee and the Operational Creditors

[46] See J*udicial Sales of Ships: CMI Questionnaire Summary*, Comité Maritime Int'l (Nov. 2018), https://comitemaritime.org/wp-content/uploads/2018/11/Annex-7c-1.pdf..
[47] P*iraeus Bank SA v. Owners of the Vessel "Posidon"*, [2017] SGHC 138 (High Ct. of Singapore), https://www.elitigation.sg/gd/s/2017_SGHC_138..
[48]*Piraeus Bank SA*, *supra* note 20, [2017] SGHC 138 at [12].

(World Fuel Services), which were asserting statutory claims for unpaid bunkers (necessaries):

- Singapore's Priority Rule (The Subordination Rule): Following the common law, Singapore's rule dictates that "The mortgage claim takes precedence over a claim for necessaries supplied… an established priority ranking that is usually adhered to".[49]

- **The US Priority Rule (The PML Rule):** If the creditor had chosen the United States, the necessaries claim, as a potential Preferred Maritime Lien, would likely rank above the Mortgage Claim.

The Outcome: Judicial Resistance to Equitable Reordering

In the Singapore judicial sale, the Mortgagee successfully relied on the established priority rules. The necessaries provider attempted to argue for an equitable reordering of priorities based on the bank's knowledge or "benefit" from the supplies. However, the Court upheld the integrity of the established hierarchy, setting a high bar for such intervention:

"The established order of priorities should only be disturbed if there is a 'powerful reason' to do so. There must be truly exceptional or special circumstances and the departure must be essential to prevent an obvious injustice."[50]

The Court then outlined the demanding tripartite test for equitable reordering, requiring:

1) awareness of the mortgagor's insolvency,

2) the mortgagee knowing *in advance* of the expenditure,

3) the expenditure providing a tangible benefit to the mortgagee[51] As these conditions were not met, the default priority stood.

The financial consequence is clear: the majority of the sale proceeds were allocated to the distressed investor, partially satisfying its massive mortgage debt. This decision reinforces that the fragmentation of priority law creates a powerful incentive for the senior secured creditor to conduct strategic forum shopping, ensuring their claim is enforced in a jurisdiction that

[49] *Piraeus Bank SA*, *supra* note 20, [2017] SGHC 138 at [14].
[50] *Piraeus Bank SA*, *supra* note 20, [2017] SGHC 138 at [24])
[51] *Piraeus Bank SA*, *supra* note 20., [2017] SGHC 138 at [27].

subordinates the operational debt, thereby transforming the distribution into a lottery loss for the trade creditors.

5.3. Comparative Analysis: Preferred Mortgage vs. Statutory Necessaries Claims

The critical point of contention that allows for the strategic manipulation of enforcement is the treatment of claims for "necessaries" goods and services essential for the ship's operation, such as bunker fuel, supplies, and repairs in relation to the Preferred Ship Mortgage[52].

5.3.1. The UK/Singapore/Commonwealth Position: Subordination

In jurisdictions adhering to the English common law tradition, such as the UK and Singapore, claims for necessaries generally grant the claimant only a statutory right of action *in rem*, not a true lien.

Financial implication of this legal distinction is profound, since a statutory right of action *in rem* does not attach axiomatically to the vessel in the manner of a true maritime lien, it is typically subordinated to the legally registered Preferred Ship Mortgage[53].

- **Singapore Precedent:** The subordination was reaffirmed in cases such as *Piraeus Bank SA v. World Fuel Services*, where the court determined the preferred mortgagee's claims took priority over the statutory claims of the bunker suppliers (necessaries providers)[54].

This legal reality means that when a distressed debt investor enforces their mortgage in a jurisdiction following this model, the pool of funds available to satisfy the mortgage is protected from most trade creditors, who are consequently exposed to potentially complete loss. The operational creditors (the bunker supplier, the repair yard) become highly vulnerable, as their recovery depends entirely on where the senior creditor chooses to liquidate the asset.

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[52] See *Crunch Time: Maritime Lien Enforcement in the U.S.*, Nicholas Walsh Law Firm, https://nicholaswalsh.com/crunch-time-maritime-lien/ (last visited Oct. 23, 2025).
[53] See *Chrisomar Corp. v. MJR Steels Pvt. Ltd.*, Civil Appeal No. 1930 of 2008, Supreme Court of India (Sept. 14, 2017), https://api.sci.gov.in/supremecourt/2006/29967/29967_2006_Judgement_14-Sep-2017.pdf; *The Union of India v. The Owners and Parties Interested in the Vessel "M.V. Southern Star",* [2017] SGHC 138 (High Ct. of Singapore), https://www.elitigation.sg/gd/s/2017_SGHC_138..
[54] *The Posidon* and another matter, [2017] SGHC 138 (High Ct. of Singapore), https://www.elitigation.sg/gd/s/2017_SGHC_138.

5.3.2. The Indian Position (Admiralty Act, 2017)

India's admiralty law, it was formalized by the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (AJSC Act), confirms immense priority of true maritime liens (wages, loss of life, salvage). Registered mortgages rank second, superior to "all other claims".

Influenced by Commonwealth legal heritage and domestic case law (e.g., *M.V. Elisabeth*), Indian courts generally align with the UK/Singapore model regarding necessaries. Claims for the supply of necessaries are recognized as statutory rights of action *in rem*, not true maritime liens, and are thus subordinated to the registered mortgage. This confirms that even in this major developing economy jurisdiction, the legal framework provides structural leverage favouring the sophisticated financial mortgagee over the localized trade creditor.

5.3.3. The US Position: Protection of Preferred Maritime Liens (PMLs)

The United States system, governed by the CIMLA Act[55], provides a powerful counter example by blurring the distinction between true maritime liens and certain necessaries.

- **PML Status:** CIMLA grants a "Preferred Maritime Lien" (PML) to certain necessaries (e.g., fuel, repairs, supplies) provided to a vessel, provided these services were supplied *before* the preferred ship mortgage was properly recorded[56].

- **Inversion of Priority:** This statutory mechanism creates a crucial inversion: these PMLs rank ahead of the Preferred Ship Mortgage. This exposure forces US lenders to monitor operational liens aggressively or obtain contractual waivers and subordinations from suppliers, an often-difficult process.

5.4. Jurisdictional Forum Shopping: Executing the Strategy

The systematic differences in priority ranking translate directly into a strategic imperative for the secured creditor. Distressed debt investors holding discounted preferred mortgages engage

[55] See Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, No. 22 of 2017, Acts of Parliament, 2017 (India), https://www.indiacode.nic.in/bitstream/123456789/2256/5/A2017-22.pdf..
[56]See Michael F. Sturley, *Maritime Law and the Supreme Court: A Quarter Century of Reappraisal*, 25 Mich. J. L. Reform 457 (1992), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1132&context=mjlr..

in calculated "forum shopping" to maximize their net recovery from the judicial sale[57].

The strategy involves directing the vessel to, or arresting it in, a jurisdiction whose priority rules structurally favour the preferred mortgage by subordinating competing claims. A typical preference is for common law forums like Singapore or the UK, where the mortgagee's position is secured against the majority of trade creditors who lack a true maritime lien. Conversely, a mortgagee may avoid US jurisdiction if there is a perceived risk of substantial pre-mortgage PMLs absorbing a significant portion of the sale proceeds. The resulting financial outcome for the lower-ranking, often local, trade creditors is purely contingent upon this strategic choice of jurisdiction, validating the assessment that the judicial sale is a zero sum lottery for them.

The following comparative table summarizes these deterministic priority conflicts at the point of judicial sale:

The consistent subordination of necessaries claims in major common law jurisdictions (UK, Singapore, India) demonstrates a system that structurally favours the financial creditor (mortgagee) in liquidation scenarios. These trade creditors, essential for the routine operation of the global fleet, are effectively functioning as high risk, unsecured lenders in these jurisdictions, operating without the protection of a true maritime lien against a later enforced mortgage[58]. This legal framework provides the leverage that distressed investors seek: by strategically choosing the enforcement forum, they minimize the potential leakage from the sale proceeds pool before their senior claim is satisfied, ensuring maximization of their discounted recovery.

Section VI: Mitigating the Lottery: The Road to International Recognition

While jurisdictional fragmentation over lien priority remains a challenge, the international community has recently sought to address the related structural flaw of title uncertainty in judicial sales.

[57] *Maritime Bankruptcies, Foreclosures, and Workouts*, Holland & Knight LLP, https://www.hklaw.com/en/services/practices/transportation/maritime-bankruptcies-foreclosures-and-workouts
[58] See *Don't Lien on Me: Identification and Mitigation of Maritime Lien Risks in Marine Lease/Loan Transactions*, King & Jurgens, https://www.kingjurgens.com/news-Dont-Lien-on-Me-Identification-and-Mitigation-of-Maritime-Lien-Risks-in-Marine-Lease-Loan-Transactions

6.1. The Economic Consequence of Title Uncertainty

The failure of sovereign states to guarantee the universal, binding effect of a foreign judicial sale historically eroded confidence in the entire maritime enforcement system[59]. The risk that a vessel, once sold, could be re-arrested by residual creditors in a third jurisdiction due to non-recognition of the clean title inevitably led prospective purchasers to introduce significant discounts into their bids[60]. This depressed sale price, in turn, reduced the final distribution fund, harming all creditors, including the senior mortgagee, and undermining the very purpose of the judicial disposal as a debt-realization mechanism[61].

6.2. The United Nations Convention on the International Effects of Judicial Sales of Ships (The Beijing Convention, 2022)

The Beijing Convention, embraced on December 2022, is the direct international legislative effort to remedy this systemic risk and establish clear international effects for judicial sales.

- **Central Objective and Mechanism:** The Convention seeks to ensure that in every contracting state, a purchaser is assured of receiving a certificate of judicial disposal and an unencumbered title, provided the stipulations laid down by both the Convention and the issuing authority are duly met. Its central aim lies in fostering a harmonised legal structure for judicial sales. Upon the completion of such a sale, the competent court furnishes a certificate attesting that the transfer has conferred a clean title under national law and that the sale was carried out in accordance with the procedural mandates established by the Convention.

- **Benefits for Enforcement:** By removing the legal uncertainty and the risk of re-arrest for pre-existing claims in other signatory states, the Convention aims to increase the confidence of purchasers, thereby establishing a positive impact on the price realized at judicial sale. This guarantees a maximal fund for distribution, benefiting all creditors involved in the liquidation proceedings. The Convention directs that courts in state

[59]See Aldo Chircop, *A Newcomer to Maritime Law: The Beijing Convention on the International Effects of Judicial Sales of Ships*, 72 Int'l & Comp. L.Q. 409 (2023), https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/newcomer-to-maritime-law-the-beijing-convention-on-the-international-effects-of-judicial-sales-of-ships/E518EF839BCBB14CF5906FA6A1251C53..

[60]See *The Beijing Convention on the Judicial Sale of Ships*, Int'l Bar Ass'n, https://www.ibanet.org/beijing-convention-judicial-sale-ships

[61] *Chircop, Beijing Convention*, supra note 25.

parties must dismiss applications to arrest the ship for claims appearing prior to the judicial sale.

Guarantee of a higher auction price provided by the Beijing Convention resolves a crucial vulnerability for the distressed debt investment model. While the Convention does not dictate the priority ranking (leaving the underlying legal fragmentation untouched), it stabilizes the value of the asset being liquidated. By ensuring the asset realizes its true market value, it maximizes the pool of funds available to satisfy the senior secured claim of the distressed debt investor.

6.3. Remaining Challenges and Enforcement Gaps

Despite its ambitious goals, the Beijing Convention faces two primary challenges related to its ultimate efficacy.

- **The Public Policy Exception:** A narrowly framed exception is set forth under Article 10, whereby recognition of clean title may be refused if the judicial sale's consequence is deemed to be "manifestly contrary to the public policy of the state." The inclusion of the term "manifestly" imposes a stringent threshold, aimed at discouraging baseless objections. Nonetheless, differing interpretations of what constitutes 'public policy'—especially between civil and common law jurisdictions—perpetuate a residual degree of legal uncertainty surrounding the conclusiveness of title, which may be tactically leveraged to hinder recognition or enforcement.

- **Ratification Dependency:** As with previous maritime conventions, the ultimate success and impact of the Beijing Convention are entirely contingent upon widespread ratification by the world's leading trading nations, flag states, and enforcement jurisdictions. Until such adoption is achieved, purchasers and creditors must continue to rely on existing, non-uniform national laws concerning the recognition of align judicial disposal.

Section VII: Conclusion

7.1. Recapitulation of the Distress Paradox

The analysis validates the thesis that maritime judicial sales function as a strategic, jurisdiction-

dependent lottery that structurally favours sophisticated financial creditors. The high cyclical volatility inherent in the capital-intensive shipping industry ensures a reliable supply of distressed assets. Following the post-2008 regulatory retreat of traditional banks, distressed debt investors entered the market, utilizing the Preferred Ship Mortgage as their strategic instrument of choice.

The fragmentation of international maritime law provides the necessary legal leverage for this strategy. While arrest conventions seek harmonization, they deliberately abstain from unifying the critical issues of priority ranking and the effect of the judicial sale itself, leaving these outcomes to the law of the arresting court. This jurisdictional flexibility allows the senior secured creditor to systematically choose forums (such as the UK, Singapore, or India) where their Preferred Mortgage structurally subordinates trade claims for necessaries. This legal architecture minimizes the financial leakage from the liquidation proceeds, thereby maximizing the recovery for the distressed debt investor, while simultaneously relegating operational creditors essential to the vessel's trade to the status of high-risk, largely unsecured claimants whose recovery is determined purely by the senior creditor's strategic choice of jurisdiction.

7.2. They Way Forward

- It is essential to reduce the systemic risks created by jurisdictional fragmentation and to promote stability within the global maritime finance ecosystem, thereby ensuring conditions that are fairer and more predictable for all parties involved. The following interventions may serve as measures to achieve this objective

- **Uniformity in Lien Priority:** States should initiate steps toward aligning their national priority schedules with the principles established in the LMC 1993[62]. Specifically, addressing the subordination of key statutory *in rem* claims for operational necessaries is paramount. Reducing the extreme variations in priority between jurisdictions minimizes the incentive for exploitative forum shopping and stabilizes the commercial relationship between trade creditors and vessel financiers.[63]

[62] International Convention on Maritime Liens and Mortgages, art. 4, May 6, 1993, U.N. Doc. A/CONF.162/7.
[63] See Martin J. Davies, *Liens for Necessaries—A U.S. Perspective*, 36 Roger Williams U. L. Rev. 1 (2021), https://docs.rwu.edu/cgi/viewcontent.cgi?article=1790&context=law_ma_jmlc..

- **Accelerated Ratification of the Beijing Convention:** Immediate and widespread ratification of the Beijing Convention of 2022[64] by major maritime nations is essential. This is the clearest and most direct route to ensuring title finality, which will boost auction prices, increase the recovery fund for all classes of creditors, and eliminate the destabilizing risk of re-arrest by residual claimants[65].

- **Increased Transparency for Non-Possessory Liens:** Given the "secret" nature of most maritime liens[66], policymakers should explore standardized, internationally accessible mechanisms for the voluntary or mandatory logging of non-possessory operational liens. Such a framework would reduce information asymmetry, particularly for subsequent purchasers or financiers, and provide a clearer risk picture, promoting transparency without necessarily eroding the priority of established true maritime liens.

[64] Judicial Sales Convention supra note 15
[65] See Chircop, supra note 25; Brian Maloney, *Understanding the Potential Scope of the Public Policy Exception to the Beijing Convention on the International Effects of Judicial Sale of Ships*, Int'l Bar Ass'n (Aug. 19, 2024), https://www.ibanet.org/beijing-convention-judicial-sale-ships..
[66] See *Maritime Liens and Ship Mortgages: Enforcement and Priorities*, Holland & Knight LLP (Feb. 7, 2009), https://www.hklaw.com/files/Uploads/Documents/Alerts/Maritime/02-07-09.pdf..