IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(ADMIRALTY JURISDICTION)

Present:
Justice Sikder Mahmudur Razi

Admiralty Suit No. 29 of 2022

IN THE MATTER OF:

Global Radiance Ship Management
Pte. Lte. Ltd.
... Plaintiffs-Decree holders-applicants.

VERSUS

The vessel M.T. ARIANA (Ex: ARIANA IMO NO. 9189952, FLAG: Palau and others.

... Defendants.

Ms. Anita Ghazi Rahman, Sr. Adv. with
Mr. Manzur-al-Matin, Adv. with
Mr. Tapos Banhu Das, Adv. with
Mr. Sameera Mahmud, Adv.
…. For the defendant-applicant.
Mr. Sajed Sami Ahammad, Adv. with
Mr. Mohammad Iftekhar Jonaed, Adv. with
Mr. Shaker Uddin Ahmed, Adv.
…For the plaintiff-opposite party.

The 24th February, 2026

1. The instant admiralty suit has been fixed today for passing order on the application filed by the defendant no.3 for rejection of plaint as well as on the application filed by the plaintiff for amendment of the plaint.

2. Factual matrix of the instant suit in a nutshell are that the plaintiff, Global Radiance Ship Management Pte Ltd., is a professional ship management company engaged in providing technical management, crew management, and allied maritime services to various categories of vessels, including oil tankers, chemical tankers, bulk carriers, and general cargo

vessels. The plaintiff is duly certified, holds a valid Document of Compliance, and operates through experienced personnel and internationally recognized management systems.

On 20.05.2021, the plaintiff entered into a standard Ship Management Agreement with Defendant No. 5, namely Desero Shipping Corporation, the then owner of the defendant vessel M.T. ARIANA (IMO No. 9189952), whereby the plaintiff was appointed to provide technical management and crew management services and to provide necessaries in respect of the said vessel. In connection with the operation of the vessel, the plaintiff also entered into several Business Collaboration Agreements with Defendant Nos. 4 and 5, under which the plaintiff undertook, inter alia, to make direct payments towards crew wages, manning expenses, vendor liabilities, and other operational costs, subject to reimbursement by the vessel owner.

It is the case of the plaintiff that, in discharge of its contractual obligations, it duly managed the vessel, arranged and paid crew wages, met travel and manning expenses, settled vendor liabilities, and rendered management services strictly in accordance with the terms of the agreements. No allegation of deficiency or breach of duty was ever raised by Defendant No. 5 during the subsistence of the management relationship.

Despite such performance, Defendant No. 5 failed to reimburse the plaintiff for substantial sums advanced on behalf of the vessel and also failed to pay agreed management and termination fees. Under the Ship Management Agreement alone, the outstanding dues were quantified at USD

461,667, comprising unpaid crew wages, travel expenses, manning invoices, vendor liabilities, management fees and termination fees.

In addition thereto, under the Business Collaboration Agreements, the plaintiff claims to have paid further amounts towards crew wages, manning fees, pre-operating expenses, management fees, regular vendors, legacy creditors, and legal costs, aggregating to USD 565,623.

Accordingly, the total claim of the plaintiff against the defendants stands at USD 1,027,290, inclusive of contractual dues and legal costs.

It further transpires that while the plaintiff's dues remained unpaid, Defendant No. 5 sold the vessel on 23.02.2022 to Defendant No. 3, purportedly for demolition. The crew of the vessel signed off at Curaçao on 09.03.2022, at which time assurances were given that the plaintiff's dues would be settled from the sale proceeds. However, no payment was made thereafter. Subsequently, the vessel arrived at Chattogram OPL on 19.06.2022, awaiting beaching for demolition.

The plaintiff asserts that the sale of the vessel and the attempt to send her for demolition were undertaken with the mala fide intention of defeating lawful maritime claims. It is contended that unless the vessel is arrested and secured, the plaintiff's claim would be irretrievably lost, as the defendants have no other attachable assets within the jurisdiction.

On the legal aspect, the plaintiff maintains that its claims arise out of payment made for crew wages, maritime services rendered to the vessel and constitute enforceable maritime claims, giving rise to admiralty jurisdiction.

The plaintiff has invoked both action in rem against the vessel and action in personam against Defendant No. 5, relying on sections 3 and 4 of the Admiralty Court Act, 2000. It is further contended that the provisions of the Ship Breaking and Recycling Rules, 2011 do not oust or curtail the jurisdiction of this Court where a maritime lien or enforceable maritime claim exists and the vessel is still afloat within Bangladeshi waters.

Repeated demands and communications made by the plaintiff for settlement of the outstanding dues having failed, the plaintiff was constrained to institute the present admiralty suit seeking arrest, detention, and sale of the defendant vessel and realisation of its lawful dues from the sale proceeds. It is also stated that no part of the claim is barred by limitation and that the cause of action is continuing so long as the dues remain unpaid and the vessel remains within jurisdiction.

3. In the application for amendment of the plaint the plaintiff sought to add the following paragraphs:

> (a) That the instant Admiralty Suit has been validly instituted as an action in rem against the vessel M.T.ARIANA under Sections 3 and 4 of the Admiralty Court Act, 2000. The Plaintiff's claim arises from unpaid crew wages, which constitute a maritime lien under Section 3(2)(n/Dh) of the Act-an enforceable charge of the highest priority that attaches to the vessel itself and invokes the jurisdiction of this Hon'ble Court.
>
> (b) That a maritime lien for crew wages remains attached to the vessel regardless of any subsequent sale or transfer of ownership. The lien survives the change in title and Continues to be enforceable against the ship in rem, irrespective of who the current beneficial owner may be. Accordingly, Defendants remain liable for the Plaintiff's claim.

(c) That at the time of the vessel's acquisition and transfer of title of the Defendant vessel, outstanding maritime claims, including those arising from unpaid crew wages, had not been discharged. In such circumstances, any party acquiring the Defendant vessel is legally and commercially obligated to conduct thorough due diligence to ensure that no maritime liabilities subsist.

(d) That proper due diligence in a vessel purchase entails obtaining verifiable records demonstrating that all crew-related and maritime claims have been fully cleared. Such documentation includes payroll summaries, bank transaction records, signed receipts, or no-objection certificates from port or flag authorities. A general, unverified certificate or undertaking issued by the Defendant(s) cannot suffice to extinguish a maritime lien or defeat the Plaintiff's in rem claim-especially where no independent proof of payment exists. The legal burden to acquire the Defendant vessel free of encumbrances cannot be satisfied through unilateral declarations by any of the Defendants.

4. On the other hand, defendant no. 3 by filing an application for rejection of plaint (application dated 02.11.2025) asserts as follows:

The applicant is the present owner of the defendant vessel M.T. ARIANA, having been impleaded as Defendant No. 3 in the instant admiralty suit. Pursuant to the orders passed by this Court, the applicant furnished a bank guarantee amounting to Tk.4,79,74,463/- for securing the release of the vessel.

The defendant-applicant raises an objection as to the maintainability of the suit, contending that on a plain and meaningful reading of the plaint, the suit discloses no cause of action cognizable under admiralty jurisdiction as well as the suit is barred by law, and is therefore liable to be rejected.

The defendant-applicant states that the plaintiff is admittedly a ship management service provider company**.** The plaintiff entered into a Ship Management Agreement dated 20.05.2021 with Defendant No. 5**,** the then owner of the vessel, for technical and crew management services. The plaintiff further entered into Business Collaboration Agreements with Defendant Nos. 4 and 5. The entire monetary claim of USD 1,027,290 arises solely out of alleged unpaid dues under those contractual arrangements, comprising management fees, reimbursement of crew-related payments made by the plaintiff, vendor liabilities, and termination fees. The plaintiff seeks to enforce those contractual dues by instituting an action *in rem* against the vessel**,** notwithstanding the absence of any contractual relationship with the present owner, Defendant No. 3.

4.1 The learned advocate for the defendant-applicant submitted that these admissions, appearing on the face of the plaint, clearly demonstrate that the dispute is purely contractual in nature, and that the suit has been framed as an admiralty action *in rem* only to avail the extraordinary remedy of arrest of the vessel.

The learned advocate contended that under the Admiralty Court Act, 2000, an action *in rem* can be maintained only if the claim falls strictly within one of the statutory categories, namely:

- Section 4(2) read with section 3(2)(Ka) to (Ga) and (Da);
- Section 4(3), where the claim is secured by a maritime lien or other statutory charge;

- Section 4(4), in cases where the person liable in an action in personam was the beneficial owner of the vessel or any other ship is under the beneficial ownership of the said person, at the time of institution of the suit.

The learned advocate further submitted that, by the plaintiff's own pleadings, the claim does not fall under any of the heads enumerated in section 3(2)(Ka) to (Ga) or (Da), nor does the plaint disclose any factual foundation attracting section 4(4) of the Act. Even the subsequent stance of the plaintiff, attempting to bring the present claim, so far as it relates to crew wages, within the purview of a maritime lien, is not sustainable, inasmuch as, although the plaintiff in the amendment application, in the proposed paragraph No. 16, stated that "the plaintiff's claim arises from unpaid crew wages," it is an admitted fact that the crew wages have already been paid. Consequently, the person or company who paid such crew wages is not entitled to claim a maritime lien under section 4(3) of the Admiralty Court Act, 2000.

The learned advocate further submitted that the scope of maritime lien in Bangladesh is exhaustively governed by sections 477, 478 and 479 of the Bangladesh Merchant Shipping Ordinance, 1983, which recognize maritime liens only in respect of:

- Wages of seamen**,** and
- Wages and disbursements of the master.

The learned advocate further submitted that a ship management company does not fall within the statutory definition of a “seaman” or “crew”. Persons employed, paid, or deployed by a ship manager pursuant to a management contract do not acquire the legal status of seamen merely by categorization. Consequently, management fees, reimbursement claims, or advances made by a ship manager do not constitute maritime liens under Bangladeshi law.

The learned advocate emphasized that the plaint nowhere pleads, nor could it legally plead, that the plaintiff itself is a seaman or master of the vessel. Therefore, even accepting the plaint in its entirety including the amendment petition, no maritime lien arises in law so as to sustain an action in rem.

The learned advocate further submitted that the plaint itself discloses that the Ship Management Agreement is governed by English law and contains an arbitration clause providing for arbitration in London under the English Arbitration Act, 1996. The Business Collaboration Agreements are also governed by English law, with disputes referable to arbitration under the Singapore International Arbitration Centre (SIAC)**.**

In such circumstances, the learned advocate submitted that the present suit is barred by law, as the plaintiff has deliberately bypassed the agreed arbitral forums and has sought to invoke admiralty jurisdiction solely for the purpose of securing the vessel.

As against the application for amendment of plaint, the learned advocate further submitted that the proposed amendment directly contradicts the

original pleadings contained in the plaint. Further, mere re-labelling of contractual dues as “crew wages” cannot alter the true legal nature and character of the claim. The learned advocate further contended that even if such amendment is allowed, it would not cure the fundamental defect as to maintainability, since the claim would still arise out of a contractual relationship. The learned advocate further submitted that the term “other charges” as mentioned in sub-section 3 of Section 4 of the Act, 2000 essentially refers to any other statutory charge standing on the same legal status of a maritime lien i.e. creating a trust on the *res* i.e. the vessel. The plaint does not disclose any such charge. The learned advocate further added that under customary International Law an action in rem is available for maritime charges, which generally includes, port charges, pilotage, wharfage, harbour dues, other port charges.

The learned advocate further submitted that under customary international maritime law and the International Convention on Maritime Liens and Mortgages, 1993**,** maritime liens are confined to limited and well-defined categories, such as:

- wages due to the master, officers and other members of the vessel’s complement in respect of their employment on the vessel including costs or repatriation and social insurance contributions payable on their behalf;
- claims in respect of the loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel.

- Salvage,
- Port, canal and other waterway dues and pilotage dues; and
- Claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessels.

The learned advocate concluded by submitting that the plaint discloses no enforceable maritime lien rather the claim is purely contractual and subject to arbitration and the statutory requirements for maintaining an action *in rem* under the Admiralty Court Act, 2000 are not satisfied and as such the suit is destined to fail. It has further been contended that continuation of the suit would cause undue hardship to the applicant, particularly in view of the substantial bank guarantee already furnished pursuant to interim orders of this Court.

With these submissions, the learned advocate contends that the plaint is liable to be rejected and the bank guarantee be released**,** in accordance with law.

4.2 Per contra, the learned advocate for the plaintiff submitted that the application for rejection of plaint proceeds on a fragmented and selective reading of contractual clauses while ignoring the plaint as a whole, its annexed schedules, and the governing statutory framework of admiralty law.

The learned advocate submitted that when the plaint is read meaningfully and in its entirety, it will appear that the same discloses a valid cause of action under sections 3 and 4 of the Admiralty Court Act, 2000.

The learned advocate next submitted that the defendant's contention regarding arbitration clauses contained in the Ship Management Agreement and the Business Collaboration Agreements is legally untenable. According to the learned advocate, admiralty jurisdiction is statutory, *sui generis*, and independent of private contractual arrangements, and such jurisdiction cannot be ousted or curtailed by arbitration clauses agreed between parties.

The learned advocate next submitted that neither English law governing clauses nor arbitration agreements extinguish the statutory right to proceed *in rem* against a vessel. The learned advocate placed his reliance on well-established principles recognized in English, Indian, and Bangladeshi jurisprudence to the effect that the right to arrest a vessel for a maritime claim subsists notwithstanding the existence of arbitration agreements or foreign governing law clauses. The learned advocate further contended that this Court has also consistently reaffirmed that admiralty jurisdiction cannot be defeated by private agreement between the parties.

The learned advocate next submitted that the present suit is not a mere contractual dispute but a statutory action *in rem*. The plaint clearly pleads that the services were rendered when Defendant No. 5 owned the vessel and Defendant No. 4 operated it, and that Defendant No. 3 subsequently acquired Defendant No. 1 vessel with knowledge of outstanding liabilities. Relying on *The Bold Buccleugh (Harmer v Bell (1851) 7 Moo PC 267)*, the learned advocate submitted that a maritime lien attaches to the vessel from the moment the claim arises and travels with the vessel irrespective of change of ownership. Further, relying on *M.V. Elisabeth v. Harwan*

Investment & Trading Co. (AIR 1993 SC 1014), the learned advocate submitted that claims relating to wages, necessaries and services rendered to a vessel are maritime claims enforceable in rem, squarely covering the Plaintiff's claims.

The learned advocate next submitted that the statutory provisions relied upon by the defendant, particularly sections 477 to 479 of the Bangladesh Merchant Shipping Ordinance, 1983, in fact reinforce rather than negate the plaintiff's case. Those provisions expressly recognize maritime liens for seafarers' wages and accord them the highest priority over all other liens or charges. It has further been contended that crew wage claims are not ordinary commercial claims but are maritime liens of the highest order, and that services necessary for the operation, manning, and maintenance of a vessel fall squarely within the ambit of maritime claims enforceable in rem.

Refuting the defendant's argument that a ship management company lacks *locus standi* to maintain an action *in rem*, the plaintiff relied on *Kyung Hae Maritime Co. Ltd. vs. BF Glory (Ex-Kunai), reported in 21 BLC (AD) 40* where claims by ship management companies were recognized as maintainable in admiralty. Relying on that judgment the learned advocate further submitted that claims arising from crew wages and related services could be enforced *in rem* against the vessel, irrespective of the absence of a direct contractual relationship with the registered owner.

The learned advocate further contended that the factual matrix of the present case is materially similar, inasmuch as the plaintiff rendered ship

management and operational services including deployment of crew, payment of crew wages and travel expenses, manning services, settlement of essential vendor liabilities, and management and termination services, all of which bear a direct and proximate nexus to the operation and upkeep of the defendant vessel.

The learned advocate concludes by submitting that, the application under Order VII Rule 11 is mala fide, vexatious, and intended to delay the proceedings and evade liability, rather than raising any genuine jurisdictional or legal bar apparent on the face of the plaint.

5. Heard the learned advocate of the respective parties, perused the plaint, amendment application, application for rejection of plaint, the written objections as well as the materials on record.

5.1 Before entering into any disquisition on the legal aspects of the matter, it would be quite apposite to examine the relevant provisions of the Management, Collaboration, and other agreements entered into between the plaintiff and defendant Nos. 4 and 5.

From the “Standard Ship Management Agreement” dated 20.05.2021 entered into between the plaintiff and the previous owner of the vessel i.e. defendant no. 5 it appears that the said agreement was in respect of “Technical Management” and “Crew Management”. The terms and conditions relating to Technical Management have been incorporated in Part II, Section 2, Clause 4. Clause 4(h) provides that-

4. The Manager shall provide technical management which includes, but not limited to, the following services:

(h) in accordance with the Owners instructions, supervising the sale and physical delivery of the vessel under the sale agreement. However, services under this Sub-clause 4(h) shall not include negotiation of the sale agreement or transfer of ownership of the vessel;

The terms and conditions relating to Crew Management and Crew Insurance have been incorporated in Part II, Section 2, Clause 5. Clause 5 (a)(i) provides that-

5(a). Crew Management

The Manager shall provide suitably qualified Crew who shall comply with the requirements of STCW 95. The provision of such crew management services includes, but not limited to, the following services:

(i) selecting, engaging and providing for the administration of the Crew, including, as applicable, payroll arrangements, pension arrangements, tax, social security contributions and other mandatory dues related to their employment payable in each Crew member's country of domicile, in consultation with the owners.

The owner's obligations have been incorporated in Section 3 Clause-9 of the Agreement. Some notable owner's obligations are that-

(a) The Owners shall pay all sums due to the Managers punctually in accordance with the terms of this Agreement. In the event of payment after the due date of any outstanding sums the manager shall be entitled to charge interest at the rate in Box.13

(b) ---

(c) ---

(d) Where the Managers are providing crew management services in accordance with Sub-clause 5(a) the owners shall-

(i) Inform the Managers prior to ordering the Vessel to any excluded or additional premium area under any of the Owner's Insurances by reason of war risks and/or piracy or like perils and pay whatever additional costs may properly be incurred by the Managers as a consequences of such orders including, in necessary, the costs of replacing any member of the Crew. Any delays resulting from negotiation with or replacement of any member of the Crew as a result of the Vessel being ordered to such an area shall be for the Owners' account. Should the Vessel be within an area which becomes an excluded or additional premium area the above provisions relating to cost and delay shall apply.

(ii) *agree with the Managers prior to any change of flag of the Vessel and pay whatever additional costs may properly be incurred by the Managers as a consequence of such change. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 22(e) and*

(iii) *Provide, at no cost to the Managers, in accordance with requirements of the law of the Flag State or higher standard, as mutually agreed, adequate Crew accommodation and living standards.*

Clause 18, Section 4 of the agreement incorporated provisions of "General Administration" one of which are as follows:

(b) The Managers shall handle, and subject to owner's approval settle, all claims and disputes arising out of the Management Services, hereunder, unless the Owners instruct the Manager otherwise. The Managers shall update on monthly basis the owners throughout the handling of such claims and disputes.

Clause 22, Section 4 of the agreement incorporated provisions of "Termination". One of such termination is "Extraordinary Termination" which runs as follows:

(c) Extraordinary Termination

This Agreement shall be deemed to be terminated in the case of the sale of the Vessel or, if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss or is requisitioned or has been declared missing or, if bareboat chartered, unless otherwise agreed, when the bareboat charter comes to an end.

Sub-clause (j) of Clause 22 provides as follows:

(j) The termination of this Agreement shall be without prejudice to all rights accrued due between the parties prior to the date of termination.

The said agreement in clause 23 of Section-4 also incorporated provisions for BIMCO Dispute Resolution Clause and provides that the agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996.

The plaintiff has further placed before the court the "Business Collaboration Agreement" dated 22.05.2021. From the said agreement it appears that it was executed between Saint James Shipping Ltd (in short STJMS) i.e. defendant no. 4 and Global Radiance Ship Management Pte (in short GRSM) i.e. the plaintiff. From the said agreement it appears that Saint James Shipping Ltd (STJMS) operates 6(six) vessels of Inlustrem Maritime Ltd, Radilucis Maritime Ltd., Trieste Marine Limited, Samnium Maritime Ltd and Desero Shipping Corporation.

From the said agreement it further appears that the plaintiff i.e. Global Radiance Ship Management Pte (GRSM) agreed to pay directly crew and vendors/suppliers owed monies arising from operation of the vessels and the paying of those monies was guaranteed and governed by the provisions of the Collaboration agreement.

Subsequently additional “Business Collaboration Agreements” were executed between the parties on 29.05.2021, 24.06.2021, 10.07.2021, 23.07.2021 and 29.09.2021 with similar terms.

The laws of England and Wales were the governing laws of all the Business Collaboration Agreements. Any dispute arising out of or in connection with the contracts were made arbitral disputes and to be administered by the Singapore International Arbitration Centre. The seat of arbitration was fixed in Singapore. It was further incorporated that any dispute between the parties under or in relation to the business collaboration agreements shall be referred to the jurisdiction of the courts of Singapore. The parties irrevocably consent to the jurisdiction of the Singapore Courts.

Subsequently, another deed of agreement was executed on 02.03.2022 between Saint James Shipping Ltd (in short STJMS) and Global Radiance Ship Management Pte (in short GRSM) (Page 23 of the list of documents supplied by the plaintiff being entry no.4256 dated 30.06.2022). From the said agreement it appears that GRSM extended 6 (six) loans to STJMS relating to 6 (six) vessels in the amount of US$ 6,535,000.00 (Loan) and pursuant to the terms of the ship management agreements an amount of US$631,667.00 is owing to GRSM (SMA Liabilities). As STJMS failed to

repay the said amount the said agreement was executed. In the said agreement STJMS agreed to, “not enter into any transaction or making any significant commercial decision (in respect of the matters set out within cl 3.3) without the written approval of GRMS until such time that the Loan and SMA liabilities are discharged which approval shall not be unreasonably withheld”. Clause 3.3 of the agreement provides as follows:

> *3.3 Without limiting the scope of decisions covered by clause 3.1 GRSM Permission will be required for any decision regarding:*
>
> *(a) chartering of the vessels,*
>
> *(b) drydocking of the vessels,*
>
> *(c) dealing with the ownership of the vessles,*
>
> *(d) the sale of the vessels*
>
> *(e) the purchase of any new vessel, or*
>
> *(d) the refinance of any significant loan facility held by STJMS.*

The laws of England and Wales were the governing laws of the said agreement. Any dispute arising out of or in connection with the contract was made arbitral disputes and to be administered by the Singapore International Arbitration Centre. The seat of arbitration was fixed in Singapore. It was further incorporated that any dispute between the parties arising under or in relation to this Agreement shall be referred to the jurisdiction of the courts of Singapore, and the parties irrevocably consent to the exclusive jurisdiction of the Singapore courts.

5.2 From record (page- 174 of list of documents filed by the plaintiff being entry no.4256 dated 30.06.2022 as well as list of documents filed by the defendant no. 3 being entry no. 5028 dated 11.08.2022) it further appears that there was a "Memorandum of Agreement- M.V. Arina" dated 23.01.2022 for sale of the vessel in favour of Messrs. Last Voyage DMCC i.e. defendant no. 3. As per clause 6 of the said agreement the Vessel shall be deemed ready for delivery upon arrival of the Vessel and after the Vessel is ready in all respects for physical delivery as per this agreement when the Sellers tender a valid and/or legal- Notice of Readiness (NOR) to the Buyers at the port of delivery by written notice, telex, email, or Telefax. NOR must by tendered within business hours (Local Time) and after the familiarization process is completed.

It was further stipulated that the Sellers/ Sellers' Agent shall accompany the valid Notice of Readiness along with certain certificates which includes "certificate from Master and the crew that they have no further claims against the vessel or her owners at the time of delivery" and "certificate from Sellers Agents at the port of delivery that they have no further claims against the vessel or her owners at the time of delivery".

From defendant's list of documents (Page- 12 & 14 of the list of documents being entry no. 5028 dated 11.08.2022) it appears that there were two addendums of the said agreement one was dated 23.02.2022 and another dated 07.03.2022. Finally the "Bill of Sale" was executed on 07.03.2022 (Page-18 of the list of documents being entry no. 5028 dated 11.08.2022) and Master of the vessel on behalf of the crews issued NOC (Page 19 of the

list of documents being entry no. 5028 dated 11.08.2022) stating that, "....on behalf of my crew confirm that I and my crew have no claim against the vessel at the time of delivery."

On 07.03.2022 the seller of the vessel issued a letter to the buyer (Page-20 of the list of documents being entry no. 5028 dated 11.08.2022) stating that, We, hereby, certify that the vessel at the time of delivery is free from al encumbrances, maritime liens and any other debts and liabilities of any description whatsoever and we unconditionally confirm that we will indemnify the Buyers against consequences of any claims which have been incurred prior to the time of delivery of the vessel."

Thereafter, on 09.03.2022 the Seller issued Protocol of "Delivery and Acceptance" (Page- 21 of the list of documents being entry no. 5028 dated 11.08.2022).

6. Now, as to the legal aspects, it is beyond dispute that claims for seamen's wages constitute a maritime lien, which attaches to the vessel from the moment the cause of action arises, travels with the vessel irrespective of any private change of ownership, and may be enforced through an action *in rem*, unless extinguished by a judicial sale. This principle is well recognized both in statutory law and in classical Admiralty jurisprudence. Claims for wages of the master or seamen are expressly recognized under Section 3(2)(n) of the Admiralty Court Act, 2000, reflecting Article 1(1)(m) of the 1952 Arrest Convention, and are historically traceable through the Admiralty Court Act 1861, the Supreme Court of Judicature (Consolidation)

Act, 1925, and the Senior Courts Act, 1981. Academic authority has consistently affirmed that such wage claims give rise to a maritime lien on the vessel. Our Hon'ble Appellate Division has also reaffirmed the said position in the case of *Kyung Hae Maritime Co. Ltd. vs. BF Glory (Ex-Kunai), reported in 21 BLC (AD) 40*. Now, in the facts and circumstances of the instant case, the question is, whether the plaintiff is entitled to reimbursement of the amount paid towards crew wages by an action *in rem* in admiralty jurisdiction of this court, and the same shall be considered and determined in a later section of this order.

6.1 Now, as to the ship management services it appears that it typically encompasses crew management, technical supervision, and operational administration. Under Section 3(2)(l) of the Admiralty Court Act, 2000, claims for "goods or materials supplied to a ship for her operation or maintenance" are recognized as maritime claims. Similarly, Section 3(2)(o) covers claims for "disbursements made on account of or for the purpose of a ship by the Master, shipper, charterer, or agent".

While these services are essential, they do not attract a maritime lien. English and Bangladeshi courts have consistently held that the supply of "necessaries", a term often used interchangeably with management disbursements, creates only a statutory right to arrest the vessel, provided that the ownership remains unchanged at the time the suit is filed.

6.2 Additionally, here in the instant suit the claim for loans must be analyzed under Section 3(2)(c), which pertains to "any claim in respect of a mortgage of or charge on a ship". If these loans were not secured by a

registered mortgage, they do not constitute a "charge" in the admiralty sense. A mere commercial loan, even if extended for the benefit of a vessel, remains a personal contractual debt unless it is a bottomry bond or respondentia under Section 3(2)(q).

If GRSM's loans were standard business loans governed by the Business Collaboration Agreement (BCA) or the Deed of Agreement dated March 2, 2022, they are categorized as statutory claims under Section 4(4) and are subject to the "relevant person" test.

Therefore, one of the most significant hurdles for GRSM in establishing the maintainability of its suit is Section 4(4) of the Admiralty Court Act, 2000. This section outlines the conditions under which an action *in rem* can be brought for claims listed in clauses (d) to (q) of Section 3(2) which include amongst others management fees, disbursements, and loans (except for payment of wages) as noted earlier.

Therefore, to maintain an action *in rem* for these statutory claims, GRSM must prove two things:

I. That the person who would be liable in an action *in personam* ("the relevant person") was the owner, charterer, or in possession or control of the ship when the cause of action arose.

II. That at the time when the suit is instituted (the date the plaint is filed), that same "relevant person" is the beneficial owner of all the shares in the ship.

In the current facts, the "relevant person" is Desero Shipping Corporation as well as Saint James Shipping Ltd (STJMS) i.e. defendant nos. 5 and 4, the party with whom GRSM i.e. the plaintiff contracted under the Ship Management Agreement (SMA) and Business Collaboration Agreement (BCA). While Desero i.e. defendant no. 5 was the owner when the liabilities were incurred, Messrs Last Voyage DMCC i.e. defendant no. 3 became the owner when the vessel was sold to it. It is to be noted that “Bill of Sale” in respect of the defendant no. 1 vessel was issued on 07.03.2022 and possession was delivered on 09.03.2022. From the averments of the plaint it also appears that the plaintiff had knowledge of such transfer. Therefore, ownership of the vessel was transferred before GRSM filed this admiralty suit in Bangladesh on 30.06.2022. As such, since the ownership has changed prior to the filing of the suit, the second limb of the Section 4(4) test is not satisfied. The statutory right to arrest the vessel has thus been extinguished upon a sale to a third party.

6.3 In this regard, it would be apposite to reproduce some relevant paragraphs from the judgment passed in the case of *Socar Turkey Petrol Enerji Dagitim Sav. Ve. Tic. A.S. Vs. MV Amoy Fortune, reported in 2018(4) Bom CR 848: MANU/MH/1140/2018*. Although the said judgment was rendered in the context of vacating an order of arrest, the discussions made therein are nevertheless relevant for a proper appreciation of the underlying issues involved in the present suit. Those paragraphs are as follows:

> *8. Apart from the judgment in the case of M.T. VALOR (Supra),the provisions of Article 3 of the International Convention on Arrest of Ships, 1999 (arrest convention) makes the position free from any*

doubt whatsoever. As held by the Apex Court in Chrisomar Corporation vs. MJR Steels Pvt. Ltd. MANU/SC/1173/2017 (paragraphs 30 and 31);

> *"Although India is not a signatory to the International Convention on Arrest of Ships 1999, yet following M.V. ELIZABETH this Convention becomes part of our National law and must therefore be followed by this Court."*

The said Convention provides in Article 3 as follows:-

> *"Article 3: Exercise of Right of Arrest:*
>
> *(1) Arrest is permissible of any ship in respect of which a maritime claim is asserted if:*
>
> *(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected".*

9. The above provision makes it clear that arrest of any ship is permissible if the person who owned the ship at the time when maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected. Thus liability of the owner of the ship is a pre-requisite to commencing an action in rem for arrest of that ship. Same is the position under the new Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. In the present case, there is no privity of contract between plaintiff and the owner of the ship and no liability of the owner in contract or otherwise towards plaintiff.

10. In the recent judgment, in m.v. Geowave Commander (Supra), the Apex Court had occasion to consider the provisions of the arrest Convention and the right of arrest set out in Article 3 thereof and applied the said provisions in considering whether plaintiff therein had a sustainable cause of action for arrest of a vessel which was owned by a third party and not the person against whom plaintiff has

a maritime claim. The Apex Court held that this was not permissible. Paragraphs 50, 51 and 70 read as under:

> *50. Mr. Naphade, learned Senior Advocate while relying on the judgment in M.V. Elisabeth & Ors. had referred to the expanding jurisdiction of a maritime claim. However, the observations made in the said judgment reproduced hereinabove in para 21 would show that the arrest of the ship is regarded as a mere procedure to obtain security to satisfy the judgment. To that extent it is distinguished from a right in personam to proceed against the owner but there has to be a liability of the ship owner and in that eventuality the legal proceedings commenced in rem would become a personal action in personam against the defendant when he enters appearance. There cannot be a detention of a ship as a security and guarantee arising from its owner for a claim which is in respect of a non-owner or a charterer of the ship.*
>
> *51. On turning to the provisions of the Convention, a maritime claim is specified as relating to use or hire of a ship whether contained in a charter party or otherwise [clause (f)]. Insofar as clause (l) is concerned they relate inter alia to services rendered to the ship. The question, however, is - which is the ship in question? Such an order of detention can be in respect of a ship where there is identity of the owner against whom the claim in personam lies and the owner of the ship. It cannot be used to arrest a ship of a third party or a non-owner.*
>
> *xxxxx*
>
> *70. The appellants have neither any agreement with the owners of the respondent vessel nor any claim against the respondent vessel but their claim is on account of their own vessels hired by the charterer of the respondent vessel. There is no claim against the owners of the respondent vessel.*

11. It is not necessary to consider the documents produced by applicant, as on plaintiff's pleaded case itself and the documents relied upon by them, it is apparent that there is no privity of contract between plaintiff and the owners of defendant vessel.

12. M.T. Valor (Supra) correctly lays down the test of what is a reasonably arguable best case in Admiralty matters in paragraph 11 of the judgment. The Court held, in paragraph 11, that whilst considering whether plaintiff has a reasonably arguable best case;

> *"11. ... there is nothing in law to require the Court to restrict the inquiry to only the averments made in the plaint and material produced therewith and not look at the defence. ... it does not mean that only plaintiff's material should be looked at. There is a great danger in allowing plaintiff in all cases to have the vessel arrested on unilateral assertions. It may be that plaintiff suppresses important documents, which are themselves indisputable. ..." "... The requirements of the standard of 'reasonably arguable case' are satisfied if on the basis of the material before the Court, whether brought by plaintiff or defendant, plaintiff can be said to have a case to go to trial with"*

13. In Wallace Pharmaceuticals Pvt. Ltd. vs. Bunga Bidara MANU/MH/1574/2013 this Court in paragraph 22 referred to the order vacating the arrest and observed:

> *"In the matter of an admiralty action to arrest a ship, it cannot be mere averments that would support the action. It must be supported by documentary evidence to show that the goods were in fact shipped to maintain action against the vessel".*

6.4 The most contentious aspect of the present dispute involves the crew wages that has admittedly been paid by GRSM not as a volunteer but under specific terms of agreements. The learned advocate for GRSM argues that

since crew wages is recognized as maritime lien therefore, this suit against the vessel is maintainable despite of its sale prior to institution of the suit. As pleaded in the plaint, the crew wages were paid pursuant to the Ship Management Agreement (SMA) and the Business Collaboration Agreement (BCA). The question, therefore, arises as to whether the plaintiff is entitled to claim the same maritime lien as would otherwise have been available to the crew. Under section 3(2)(n) of the Admiralty Court Act, 2000, claims in respect of crew wages are expressly recognized as maritime claims, and under section 4(3) & 4(6) of the said Act, such claims are enforceable *in rem*, inasmuch as claims for crew wages traditionally carry a maritime lien. Such maritime lien is also recognized under sections 477 to 479 of the Bangladesh Merchant Shipping Ordinance, 1983, as well as by binding judicial precedent.

6.5 The learned advocate for the plaintiff heavily relied on *Kyung Hae Maritime Co. Ltd. vs. BF Glory (Ex-Kunai), reported in 21 BLC (AD) 40.* The learned advocate submitted that even in the said suit a ship management agent was the plaintiff who paid the wages of the crew and subsequently filed Admiralty Suit No. 19 of 2009. Upon perusal of the Judgment of that suit which was pronounced by the High Court Division and which has been reported in 20 BLC (2015)244 it appears that 3 (three) admiralty suits being Admiralty Suit Nos. 19 of 2009, 27 of 2009 and 28 of 2009 were filed for recovery of the amount paid for crew wages and for the unpaid amount against bunker supply and supply of other necessaries. All the suits were disposed of by a common judgment. Among them, Admiralty Suit No. 19 of

2009 concerned a claim for recovery of the amount paid towards crew wages, etc. From paragraph No. 10 of the said judgment, it appears that in that suit the crew wages, were paid by the Ship Management Agent under a contractual arrangement, which is also the factual position in the instant suit. Although the particular issue in that suit was decided against the plaintiff by the High Court Division, but on appeal the Hon'ble Appellate Division held as follows:

> *22. Therefore, the plaintiff is entitled to bring a proceeding as an action in rem under section 4(6) of the Admiralty Court Act, 2000 for realization of wages of the crews as mentioned in clause (dha) of sub-section (2) of section 3 against defendant No. 1, the Vessel and its owner, defendant No. 3, although the plaintiff-appellant has not entered into any contract with defendant No. 3. It is of course true that there was no contract between the plaintiff-appellant and defendant-respondent No. 3 even then the plaintiff appellant can sue the ship (defendant-respondent No. 1) and the owner of the ship (defendant-respondent No. 3) in an action in rem for realization of its dues in respect of wages of the crews above according to section 4(6) of the Admiralty Act, 2000.*

Therefore, as observed earlier, claims for seamen's wages constitute a maritime lien and a maritime lien is a privileged proprietary claim that arises by operation of law simultaneously with the underlying cause of action. It attaches automatically to the vessel, travels with it into whosoever's hands it may come, and survives changes of ownership except, where extinguished by judicial sale.

Accordingly, in the facts and circumstances of the present case the instant suit at the instance of the Ship Management Agent who claimed to have paid crew wages under different agreements is quite maintainable.

6.6 Now, let us turn to the next argument of the defendant-applicant, namely, that the instant suit is not maintainable in view of the arbitration clause as well as the exclusive jurisdiction clause contained in the agreements.

Undeniably the Admiralty Court Act, 2000 confers admiralty jurisdiction on the High Court Division in respect of maritime claims enumerated in section 3(2). Section 4 prescribes the modes of exercising such jurisdiction. Of particular relevance is section 4(3), which provides that in any case where a maritime lien or other charge exists on a ship or maritime property, admiralty jurisdiction may be invoked by an action *in rem* against the ship or property concerned. The statutory scheme thus clearly distinguishes maritime lien claims from other maritime claims that require satisfaction of ownership or control conditions under section 4(4). Where a maritime lien exists, the right to proceed *in rem* is independent of those limitations.

Admiralty jurisdiction *in rem* is territorially anchored in the presence of the vessel within the jurisdiction. The arrest of the vessel is not merely an interlocutory measure but the juridical foundation of the court's jurisdiction. As judicially recognized in Bangladesh, the very act of arrest constitutes the assumption of admiralty jurisdiction.

It is well settled that an action *in rem* may be commenced even where the underlying dispute has no other connecting factor with the forum. The nationality of the vessel, the domicile of the owner, or the governing law of the contract is immaterial so long as the *res* is present within territorial waters.

In Chapters 11–13 of the authoritative text *The Conflict of Laws* by Dicey, Morris, and Collins (16th edn, Sweet & Maxwell- 2023), this issue has been discussed elaborately. The quintessence and essence of the authors' commentary on this matter is that an exclusive jurisdiction clause contained in the underlying contract does not, as a matter of law, oust the statutory Admiralty jurisdiction of this Court in an action *in rem*. Jurisdiction *in rem* is conferred by statute upon the *res* itself and is exercised against the vessel as the offending instrument, independently of the personal obligations of the contracting parties. Such jurisdiction does not derive from consent, nor can it be defeated by private agreement.

Where a maritime claim falls within the heads of jurisdiction enumerated under the Admiralty Court Act, 2000, this Court is competent to entertain the suit and to order the arrest of the vessel. The existence of an exclusive foreign jurisdiction clause in the charterparty or other underlying contract does not render the institution of an action *in rem* incompetent or void. At the highest, such a clause may be relied upon as a ground, upon which the Court may be invited to consider whether it should, in the exercise of its discretion, stay further proceedings; but it cannot prevent the

assumption of jurisdiction nor preclude the arrest of the vessel at the threshold.

Moreover, an action *in rem* is directed against the *res* and serves to secure the maritime claim by the arrest of the vessel, which is an essential feature of Admiralty law and a jurisdictional remedy conferred by statute. To permit a contractual jurisdiction clause to bar arrest would be to allow party autonomy to override the legislative policy underlying Admiralty jurisdiction, a result which the law does not countenance. The Court must first be satisfied that the statutory conditions for an action *in rem* are fulfilled; only thereafter does any question arise as to the discretionary enforcement of a jurisdiction agreement between the parties.

In this regard it is pertinent to refer the case of *Topcom Holdings Ltd v Bangladesh of Bangladesh and others*, reported in (2020) 72 DLR (HCD) 380: LEX/BDHC/0156/2019 wherein it has been held that-

> *42. With the above conclusion, a pertinent question crops up as to whether the provision of arbitration clause contained in the charterparty has any overriding power over the admiralty jurisdiction. In order to find the answer, I had to go through the relevant provisions of the Arbitration Act, 2001 (the Arbitration Act) and from a concurrent reading of the provisions of sections 3 & 7 of the Arbitration Act, it appears that the jurisdiction of the Admiralty Court on a dispute, which is required to be resolved through arbitration to be held in Bangladesh, has been made subservient to the provisions of the Arbitration Act; meaning that if any of the provisions of the Arbitration Act allows the Courts to entertain legal proceedings for adjudication upon a particular issue, only for that purpose the Courts are competent to hear and determine the said*

legal proceedings. Although the provisions of section 3 of the Arbitration Act stipulates that the provisions of the Act would be applicable only for those arbitration agreement which contain that the place of arbitration is Bangladesh, but there being no ouster clause as to application of the Arbitration Act for foreign arbitration, our Courts sometimes in a fit case entertain legal proceedings only in aid of the foreign arbitration tribunal. It means that if our Court is satisfied that by entertaining a legal proceeding, the Court is not going to be trying any dispute which is pending before the foreign tribunal; rather the Court's interference is needed for the time being to help the said tribunal, our Courts, in that scenario, finds it appropriate to entertain a legal proceeding. In this suit, the charterparty stipulates that the seat of the arbitration would be either in New York in USA or London in UK and, that is why, the provisions of the Arbitration Act are apparently not applicable in this suit and, therefore, there is no legal bar for this Court to try this suit. However, had any of the defendants already been in the arbitration forum, in that scenario, upon an application by any party to the legal proceedings in this Admiralty Court, the Court might have halted the proceedings pending before it till disposal of the arbitration. Given the present scenario of the suit that none of the parties have approached the arbitration tribunal, this Court appears to be well competent to entertain and dispose of this suit.

Accordingly, an exclusive jurisdiction clause cannot, by itself, operate to defeat or nullify the Admiralty action *in rem* or the arrest of the vessel, the jurisdiction of this Court being founded upon statute and exercised against the *res*, and not upon the personal submission of the parties. Therefore, on that count as well, the instant Admiralty Suit is clearly maintainable in law.

7. In the result, the application for rejection of plaint is hereby rejected.

8. Now, turning to the application for amendment of the plaint, it appears that the proposed amendment merely incorporates certain jurisdictional statements along with some additional pleadings, which are wholly consistent with and supplementary to the existing factual matrix of the case. If such amendment is allowed, it will neither introduce any new cause of action nor alter the nature and character of the suit in any manner. Rather, the proposed amendment appears to be necessary for the proper and effective adjudication of the real issues involved in the suit. Accordingly, the application for amendment of the plaint is allowed and the same will be treated as part of the main plaint.

9. Office is directed to do the needful accordingly.

10. Let this suit be posted in the list on 29.04.2026 for examination in chief of PW-1.

(Sikder Mahmudur Razi, J:)