IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2019
In R/ADMIRALTY SUIT NO. 8 of 2019
WITH
R/ADMIRALTY SUIT NO. 8 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	Yes
2	To be referred to the Reporter or not?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment?	No.
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder?	No

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MV SILVIA GLORY (IMO 9622942
Versus
DAN BUNKERING (SINGAPORE) PTE LTD

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Appearance:
MR ZARIR BHARUCHA, ADVOCATE with MR DHAVAL M BAROT for the PETITIONER(s) No.
MR SAURABH SOPARKAR, SR.ADV. with MS PAURAMI B. SHETH for the RESPONDENT(s) No.

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CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**

Date: 21/08/2020

IA JUDGMENT

1. Applicant original defendant is the owner of the vessel

M.V. Silvia Glory. He seeks an order and direction that the order of arrest of vessel passed on 06.02.2019 be vacated and the security deposited by the applicant for obtaining the release of the vessel be returned and the applicant be compensated for the losses suffered by it and the legal cost incurred by it due to arrest of vessel. It is urged that the opponent original plaintiff suppressed documents and the materials and miss-stated the facts and *mala fidely* obtained the order of arrest.

2. The applicant has already filed its written statement in response to the plaint, which is urged to be treated as part and parcel of the present applicant to urge further that the opponent has failed to make out a case for arrest of the vessel. There are no triable issues and no occasion for the matter to proceed for trial. It is lamented further that the plaint is full of bald assertions, unsubstantiated and unsupported averments and invalid allegations. The respondent has manufactured the bogus claim against the vessel and the plaint is maliciously drafted so as to be treated as if there is something to be investigated. It is the case of the plaintiff that it has legitimate maritime

claim/lien against the vessel arising out of unpaid bunker supplied to the vessel on 07.06.2018 at the behest of the applicant. According to the plaintiff opponent one Bo Hai Marine Corporation Limited ("Bo Hai" for short) placed an order for supply of bunkers at the behest of the applicant on 17.05.2018. This amount had remained unpaid and opponent, therefore, claimed that this gives rise to legitimate maritime claim/ lien against the vessel.

3. The applicant defendant emphasized that it is a trite law that in order for a vessel to be arrested *in rem,* the person liable for the debt should be the owner of the vessel. The opponent has failed to make out an arguable *prima facie* case that the owner of the vessel is liable for the debt. According to the applicant, the opponent is fully aware that the applicant was not liable for the debt and the arrest order has been obtained by misleading this Court.

4. The applicant had time chartered the vessel to Lianyi Shipping Corporation ("Lianyi" for short). The onus to purchase and pay for the bunkers was on the time charterers, as was provided in the time charter

agreement. Lianyi also expressly admitted and confirmed its liability to make payment of bunkers. This has been deliberately suppressed by the opponent. It is also urged that Bo Hai, which was the agent of Lianyi, the time charterer of the vessel,was acting solely on behalf of Lianyi and not on behalf of the defendant vessel or its owner. Bo Hai, which never acted on behalf of the vessel or its owner and yet it is wrongly alleged by the opponent that the owner of the vessel is liable *in personam*. For the opponent to proceed *in rem* against the vessel there has to be a privity of contract between the parties. The arrest on the basis of maritime lien is legally untenable. The Indian law also does not create any maritime lien on the vessel for supply of bunkers and no contractual provision can supersede the legislation. The time charter party between the owner of the Lianyi expressly provided that the liability to pay for the bunkers supplied to the vessel during the charter period was that of Lianyi alone.

5. The time charter party agreement with Lianyi was concluded on 07.02.2018 by the fixture recap exchanged over e-mail. The fixture recap incorporated the terms of

earlier charter party dated 25.05.2017 entered into by the applicant in connection of the vessel M.V.Silvia Glory. The terms of which stood in turn incorporated on 25.05.2017. The defendant applicant had chartered the vessel to Lianyi and the terms of time charter party between applicant and Lianyi, particularly Clause 2 unmistakably provided that the charterers were contractually obliged to pay for bunkers stemmed on board of the vessel m.v.Silvia Glory. It is emphasized that the responsibility was on the charterer to provide bunkers for voyage and ensure that bunker quality at the end of the charter period should match the bunker quality at the beginning of the voyage.

6. It is further the say of the applicant that when it was discovered that the plaintiff had arranged off-spec bunkers, the defendant owner addressed a communication to Lianyi through its broker Bromar. The email dated 20.07.2018 was sent by the applicant owner to Bromar to pass on to Lianyi putting it to notice that it would be responsible for all losses incurred on account of having arranged for supply of off-spec bunkers. A series

of email communications exchanged between lawyers representing Lianyi and lawyers representing the opponent (original plaintiff) demonstrated that the opponent was fully aware that the liability to make payment for bunkers was that of Lianyi. The lawyers of Lianyi approached the opponent's lawyers for settlement of the unpaid bunkers vide email dated 16.01.2019. They expressly admitted that Lianyi alone was liable for the unpaid bunkers. The lawyers of Lianyi also made a mention in their email dated 19.01.2019 that they, as a time charterer of the vessel, arranged for the supply of bunkers to the vessel through Bo Hai. At no point of time, this fact has been disputed by the plaintiff opponent. It is further the say of the applicant that yet another email dated 23.01.2019 provides that they admitted of having consumed all the bunkers and will pay in full without requesting for any discount. Even in email dated 21.01.2019, the opponent itself had offered to lift the caveat against the release of vessel in exchange for payment by Lianyi. It is, therefore, urged that against the applicant, maritime claim is legally untenable and the

arrest of the ship putting forth the claim of maritime lien is legally untenable and unsustainable. The Indian law does not create any maritime lien on vessel for supply of bunkers. It is, therefore, urged that the present suit is an abuse of process of Court and it is entitled to damages for the losses incurred by it due to arrest of the vessel. Insisting, therefore, that the Opponent should furnish security for USD 100,000/- with a liberty to request for enhancing the said amount as and when required.

7. It has also denied all the averments set out in the plaint one by one. It is, more emphasized that it is wrong to say that the bunkers were supplied on faith and credit of the vessel. The applicant also denied that Bo Hai had any authority to bind the applicant. It also denied the claim amount of USD 409,105. Resultantly, it is urged to vacate the order of arrest dated 02.01.2019 and the security furnished by the applicant to be returned along with the accrued interest, the order with a legal cost of USD 20,000/- and to secure the legal cost under Order 25 Rule 1 of the Civil Procedure Code. It has also sought direction that the applicant defendant be compensated

towards the losses suffered by the applicant on account of this arrest and pending the hearing of this application, sought to furnish the security of USD 100,000/-.

8. The affidavit-in-reply for and on behalf of the plaintiff is filed by the authorized representative of original plaintiff Shri Raju Prabhatbhai Desai, wherein at the outset, he reiterated the contents of the plaint and denied all the allegations and contentions raised in the application. It is urged that the application is completely misconceived and deserves to be rejected *in limine* with heavy cost. No case is made out for vacating the order of arrest or return of security, as the plaintiff has a very strong case on merits.

9. It is further urged that all the disputes raised for on behalf of the applicant regarding the alleged existence of charter party would require finding of facts and law and would insist on full-fledged trial upon evidence being led in this regard.

10. It is urged that the plaintiff was approached by one Bo Hai on behalf of the owners of the defendant vessel. The sale order confirmation clearly records that bunkers were

for and on behalf of M.V.Silvia Glory and/or Master and/or Owners and/or Charterers and/or Operators and/or Bo Hai. The order confirmation, which was issued to the vessel provided that the contract for sale of bunkers would be governed by the plaintiff's standard terms and conditions effective from December, 2017 and, therefore, the plaintiff was contracted on behalf of the vessel by Bo Hai, who had authority from the owners to requisition bunkers and hold owners/vessel liable for the same. This fact cannot be displaced by producing the purported charter party with Lianyi. Assuming that the charter party existed as averred, it is the internal arrangement between the owner and the charterers, where the plaintiff has nothing to do with the same and it is an issue to be decided at the time of trial after evidence is led. Whether a charter party existed as alleged, cannot be decided at an interlocutory stage. Moreover, Lianyi which is the purported charter party is not before this Court. It is the say of the opponent plaintiff that it supplied the credit of bunkers as requisitioned and the same had been accepted by the Master/Chief Engineer of

the vessel without raising any demur or protest. He acknowledged the receipt of bunkers by issuance of receipt "we received the above quantity in good condition". Thus, the owner/ Master confirmed the bunkers supplied to the vessel by the plaintiff in good condition. There was no claim regarding quantity supplied. It is urged that the applicant is, therefore, barred from raising the frivolous grounds to challenge the arrest of the vessel. It is further the say of the plaintiff that the demand on the part of the opponent of damage to the tune of USD 100,000 is unsustainable inasmuch as the defendant vessel was standing off Deendayal port since 07.11.2018 on account of the dispute relating to cargo on board of the vessel. The said delay of 02 months was on account of dispute between Nava Investment Pte Limited and Torq Commodities LLC regarding cargo laden on the defendant vessel. The vessel was already under arrest when the plaintiff applied for arrest of the vessel. Therefore, it cannot attribute any loss to the present suit. The applicant failed to mitigate the alleged losses and now is trying to fasten the liability on the plaintiff for

which there exists none.

11. According to the plaintiff, the bunkers were supplied to the faith and credit of the defendant vessel and consumed by her. It is the supply chain and the liability to pay cannot be refuted. In private arrangements between the vessel owner and the other party is not supposed to be within the knowledge of the plaintiff and, therefore, does not bind it. All allegations and contentions have been denied specifically para wise. It is the say of the opponent that any communication between Lianyi and the plaintiff lawyer cannot fortify the case of the applicant. The plaintiff even did not know what was Lianyi's role in the chain of supply. It is urged that Lianyi and the applicant are hand in gloves with each other and had colluded to defeat the plaintiff's claim. According to the plaintiff, it was not even aware, who Lianyi was, let alone being aware of the defendant's liability to pay for the bunkers supplied. It is urged that in the very material dated 19.01.2019 it appears that the applicant with Lianyi, is misleading the Court.

12. It is denied specifically that order of bunkers,

according to the applicant, was solely on account of Lianyi or that the opponent plaintiff was in knowledge of the same. It is urged that the plaintiff has a contractual maritime lien on the defendant vessel. It has a maritime lien as per the bunkers supply contract. In short, the original plaintiff opponent has denied all the contentions and urged that it has a strong case on merits and, therefore, civil application deserves to be dismissed, continuing the relief granted at the time of arrest.

13. Power of attorney holder of the applicant filed rejoinder affidavit. The defenses are absolutely devoid of reason and it is a futile attempt to divert the attention of the Court. The suit is completely vexatious and is without any legal foundation.

14. According to the applicant defendant, to say that Bo Hai placed the order for bunkers and the same have been consumed by the ship giving a right *in rem* to the plaintiff's arrest of the vessel, is unsustainable proposition. According to the applicant, the contentions of the plaintiff is in complete disregard and in ignorance of the Admiralty Act, 2017, which mandates that the

owner of the ship must be liable *in personam* for a right *in rem* to exist against the vessel. It is further the say of the applicant that the charter party dated 07.02.2018 along with fixture note dated 07.02.2018 *prima facie* establishes that Lianyi was the charterer of the vessel. It is further the say of the applicant that the identity of the owners had been noticed from no lien clause on the bunker and delivery receipt. The bunkers were supplied on the credit of charterer Lianyi.

15. According to the applicant, the opponent has suppressed the information and the Court could construe it as a futile attempt on the part of the opponent to divert the attention of this Court to immaterial information. There are other suppressions also. According to the applicant, the vessel was stranded at Deendayal port, which are not attributable to the applicant and notwithstanding the fact of the vessel being stranded at Deendayal port, it cannot prevent the applicant from seeking to release its vessel from the wrongful arrest or absolve the opponent of its liability to compensate the applicant for the losses incurred due to wrongful arrest.

It has been denied that the applicant fabricated the documents. Forgery is a serious charge and warrants proper pleading and proof. The bald assertions have been made. It is denied that the vessel can be arrested for the liabilities incurred by the time charterer of the vessel. On the break down of vessel on 30.06.2018, according to the applicant, the sample test of the bunker quality established that the bunkers were off-spec in terms of water and were heavily contaminated with chemicals. Lianyi was immediately put on notice for any consequential losses in supply of off-spec fuel on board. Therefore, when the vessel broke down, the applicant informed Bromar, the broker between the owners and the time charterers Lianyi. It is also the say of the applicant that non-raising of any protest or demur by the Master/Chief Engineer in no way can be construed to mean that the Lianyi has fortified the rights to claim compensation for the damage caused to the vessel due to the inferior quality of bunkers supplied. Lianyi has every right to claim for the losses caused to the vessel due to inferior quality of bunkers.

16. The affidavit-in-sur-rejoinder also has been filed reiterating the earlier stand, wherein it has averred that the applicant used Lianyi as its front to negotiate settlement with the plaintiff and now the very correspondence is used to distance itself from the plaintiff's claim.

17. The detailed written submissions have been submitted by the applicant defendant. It is urged that the plaintiff's averment that the contractual lien entitled it to arrest the ship is both as a matter of fact and law incorrect. No contractual lien is applicable to the facts of the present case, as the plaintiff's own argument is that it has no privity of contract with the owner of the ship nor do they require any privity of contract with the owner. It is the case of the plaintiff that it is entitled to arrest the ship without any contract with the owner or without any liability of the owner. Clause 13.1 of the plaintiff's general terms and conditions of sale confers lien on it for unpaid supplies. However, under Clause 13.3, the lien is inapplicable, if the plaintiff receives 12 hours advance notice of the supply that the owner is not responsible for

payment of the bunkers. It is urged that, as a matter of fact, no action *in rem* is maintainable on the basis of the contractual lien. The contractual lien is only actionable *in personam.*

18. The Court has heard learned advocate Mr.Zarir Bharucha with Mr. Dhaval Barot for the applicant and Mr. Saurabh Soparkar, learned Senior Advocate appearing with Ms. Paurami Sheth for the opponent defendant.

19. According to Ld.Advocate Mr.Bharucha,what amounts to maritime lien is made clear in the case ***of Epoch Enterrepots vs. M.V. Won Fu***, **AIR 2003 SC 24**, wherein the Apex Court held thus:-

> "19. We have in this judgment herein before dealt with the attributes of maritime lien. But simply stated maritime lien can be said to exist or restricted to in the event of (a) damage done by a ship; (b) salvage; (c) seamen's and master's wages; (d) master's disbursement; and (e) bottomry; and in the event a maritime lien exists in the aforesaid five circumstances, a right in rem is said to exist. Otherwise, a right in personam exists for any claim that may arise out of a contract."

20. The very findings of ***Epoch Enterrepots*** (supra), according to the learned counsel, has been expressly approved by the Apex Court in the case of ***Chrisomar***

Corporation vs. MJR Steels Private Limited, **AIR 2017 SC 5530**. It is also argued that section 5(1)(3) of the Admiralty Act, 2017 authorizes the Court to arrest the ship only for maritime lien, as defined under section 9, given that a contractual lien is not contemplated by section 9. It appeals that a contractual lien is not actionable *in rem* under section 5 of the Act. It is further urged that ***ECO Maritime Ventures Ltd vs. ING Bank NV.,*** in **SLP No. 33865 of 2016** decided by this Court in Civil Application (OJ) no. 234 of 2016 in Admiralty Suit No. 27 of 2016 on 27.06.2016 did not endorse the Gujarat High Court's judgment on ***Eco Maritime*** (supra) on merits and has only dealt with the form of security and directed the release of ship of the owner passing Club LOU. It emphasizes that the decision rendered in ***Chrisomar Corporation*** (supra) on 14.09.2017, holds the field. It is urged that section 17(1)(b) of the Admiralty Act, 2017 repeals the Admiralty Courts Act, 1861 and section 5(1) of the Admiralty Act mirrors Article 3(1)(a) of 1999 the International Convention on the Arrest of the Ship, Geneva. It is thus submitted that the Gujarat High

Court judgements, which are sought to be relied upon by the plaintiff applied legal provisions that were completely different and distinguished from the provision of Admiralty Act, 2017.

21. It has also urged at length that test for determining the arrest/release of her ship is based on the Apex Court's judgment in **Videsh Sanchar Nigam vs. Kapitan Kud and others**, **1996 SCC (7) 127** that as long as the plaintiff's case is not hopeless or unarguable, the arrest should be maintained in determination of whether the order liable to the qua plaintiff is to be deferred or postponed till the trial. According to the applicant decision rendered in ***Videsh Sanchar Nigam Videsh Sanchar Nigam*** *(supra)* precedes the Admiralty Act, 2017. It also followed the judgment of ***Schwarz & Co. [Grain] Ltd. v. St. Elefterio EX Arion [Owners]***, **[(1957) Probate Division 179] =1957 LLR (1) 283**, which in turn was based on section 3(4) of the English Administration of Justice Act, 1956. The expression used in section 3(4) of this enactment was "whether the owner would be liable *in personam".* This provisions made no

mention of expression "reason to believe", whereas section 5(1) requires the Court to have reason to believe that the owner is liable. The wording of section 5(1)(a) is materially different to that of section 3(4) of the English Administration of Justice Act. The legal test, therefore, under the Admiralty Act, 2017 is that the arrest of a ship can only be granted, if the Court has reason to believe that the owner is liable and such determination cannot be deferred or postponed to trial as erroneously submitted by the plaintiff. The legislative intent is clear that the arrest of a ship is a drastic remedy and disturbs the international trade and commerce and whether erroneous prejudice influences their parties such as charterers, shippers, the cargo interest, crew, mortgage and port authorities. Thus, the arrest of a ship is not permissible, unless the Court is satisfied, at the outset, that the owner is liable and such a determination must be made at the stage of granting of arrest. The arrest order is not deferred to trial, as wrongly submitted by the plaintiff and if the plaintiff's submissions are accepted, it would result in no arrest being set aside, as it would be

difficult to characterize any case as hopeless or beyond arguable. It is further urged that there is no reason to apply different criteria for setting aside the arrest of the ship. If the Court grants the arrest at the interlocutory stage and is of a *prima facie* view of the plaintiff's case then similar test and consideration would govern for setting aside the arrest. It is, therefore, urged that if the Court is not satisfied on a *prima facie* view of the matter that the vessel owner is liable to the plaintiff, the arrest has to be set aside, since there would be no justification for continuation of the arrest.

22. It is also urged that the Court is required to inquire how the bunker supplier was to ascertain the identity of a ship owner, if the arrest of the ship was contingent on a personal liability of the ship owner. The applicant, therefore, has urged that the bunker supplier knew prior to the supply on 29.05.2018 that the owner was not placing the order and that the owner has expressly disclaimed the liability for payment and objected to creation of any lien on the ship as security for the bunker supplied. Despite express knowledge of owner's identity

and no lien clause, the plaintiff proceeded to supply bunkers to the charterer (Lianyi/ Bo Hai) shipping on 30 day credit. In such circumstances, no liability can be thrusted upon the owner as that would amount to a serious miscarriage of justice. On charterer's default, innocent ship owner cannot be dragged into litigation, as such an approach would embolden bunker suppliers to give credit to charterers with full knowledge that the owner was not liable for payment, as that would also encourage unscrupulous charterers to default on payment, confident that the owner would be accountable and liable for rents. A prudent bunker supplier, who does not know the identity of the party ordering the supplies or is not having the knowledge of the owner of the ship or of the party placing the order and liable for payment, who either on demand immediate payment and not give credit to the charterer or seek security from the charterers before making the supply and granting the credit. This aspect was considered comprehensively in the case of **"*The Yuta Bondarovskaya*"** reported **in [1998] Vo.2 Lloyd's Law Reports 357**. The relevant paragraphs are

reproduced as under:-

> "It is plain on the evidence that bunker suppliers do their utmost to contract on terms which bind the ship. However, it does not seem to me to follow that timer charterers cannot obtain bunkers except on such terms. To take a simple example, a time charterer could give the supplier security or pay in advance.
> If a shipowner or demise charterer were asked at the time that the time charter was made whether he agreed that the time charterer could order bunkers on his behalf because that was the only way that bunkers could be obtained, he would have said no. He would have appreciated that the only time that his vessel would be likely to be arrested would be if the time charterer either would not, or could not, pay for the bunkers, and that he would be left paying for the bunkers. In those circumstances no shipowner would, in my judgment, have agreed to the time charterer having such authority.
> xxx xxx xxx
> xxx xxx xxx
> "Postscript
>
> It may be objected that the conclusion reached above is unfair to bunker suppliers. I entirely sympathize with the position of bunker suppliers. IN some countries, including I think the United States of America, a bunker supplier has a maritime lien over the vessel. That my, indeed, be the reason for the formulation of cl.11 of the terms and conditions of IMS, which are of course, governed by the law of the United States of America, although precisely which such law may be less clear.
>
> In England, however, as in some other countries no doubt, the position is different. It thus appears to me that if a bunker supplied wishes to ensure payment, and is not willing to give a time charterer

> credit, he should obtain the consent of the ship owner or demise charterer, as the case may be, before the contract is made, or he should insist on payment in advance or upon security from the time charterer. There is, however, no warrant for holding a shipowner or demise charterer personally liable without his consent.
>
> These conclusions make it unnecessary to consider in detail a further point made by Miss Ambrose, that the affidavit to lead the warrant did not contain the grounds of the defendants' belief that Scanarctic would be liable on the claim in an action in personam, or at least that it does not contain the grounds now relied upon in Mr. Blacker's affidavit. There is, in my judgment, some force in that submission, but since it is not necessary to do so I shall say nothing further about it."

23. It is urged that the identity of the owner of the vessel can easily be ascertained by referring to the provisions of the Merchant Shipping Act, 1958, which incumbents upon Registrar to enter into the register, the proof in respect of the ship, which includes the name of the ship and the name of the port to which he belongs. If there are more owners than.. one, the number of ships owned by each of them. Sections 31 and 34 of the said Act are reproduced as under: -

> "31.Entry of particulars in register book.—As soon as the requirements of this Act preliminary to registry have been complied with the registrar shall enter in the register

> book the following particulars in respect of the ship:—(a) the name of the ship and the name of the port to which she belongs;
> [(aa) the ship identification number;]
> (b) the details contained in the surveyor‟s certificate;
> (c) the particulars respecting her origin stated in the declaration of ownership; and
> (d) the name and description of her registered owner or owners, and, if there are more owners than one, the number of shares owned by each of them.
> xxx xxx xxx
> xxx xxx xxx
> 34.Grant of certificate of registry.—On completion of the registry of an Indian ship, the registrar shall grant a certificate of registry containing the particulars respecting her as entered in the register book with the name of her master."

23.1. These details are publicly available from the Registrar of Indian Shipping.

24. It is also urged that the plaintiff has suppressed the material correspondence between the Lianyi and obtained an *ex parte* order of arrest on the basis of false pleading and averments and suppression of correspondence by the plaintiff and the charterers was deliberate. The reliance is placed on the decision of the Apex Court in the case of ***Ramrameshwari Devi and others vs. Nirmala Devi and others***, **(2011) 8 SCC 249**, wherein it has been ruled that *ex parte* interim order is obtained on the

basis of false pleadings and suppression of false documents, it must be immediately set aside and vacated.

25. According to the Learned Senior Advocate Mr. Soparkar appearing for the Opponent/plaintiff, the suit has been filed against the defendant vessel and the ownership of the vessel has not been changed as per the Equasis report since 20120). The Best Excellence Corporation Limited ("the Best Excellence" for short) is shown as a registered owner in the said report and not as a head owner. So far as the claim of the applicant that the vessel was given to Lianyi as charterer, the plaintiff is not aware about the same.

26. It is further stated by the plaintiff that it is a suit filed for recovery of the unpaid amount for bunker supply made to the vessel, where on behalf of the defendant vessel/ Master and owners, the supply for the vessel was requested and accordingly the bunkers were supplied at the instance of the owner at the faith and credit of the vessel, which admittedly has been utilized and consumed by the vessel, which were necessaries for its voyage. It is further the say of the plaintiff that it is required to establish that it has

maritime claim. The sale confirmation dated 17.05.2018 clearly mentioned the name of the buyer as Bo Hai. According to the plaintiff, it is wrong to state that new Admiralty Act, 2017 changes everything. The position remains the same and the chart produced before this Court demonstrates that there has been no change in the provisions of law. There is no change in 1999 convention and Section 5(1)(a) of the new Act. The only words added in the new Act are "reason to believe" which were earlier not there and nothing turns out on these words 'reason to believe' as the question is whether the owner is liable or not.

27. It is argued fervently that the decisions of the Supreme Court and Sikkim High Court on this aspect of "the Court has reason to believe" are in context of Income Tax Act. While interpreting the words 'reason to believe' in the context of issuance of notice by Income Tax Officer, the same cannot be applied in the instant case. The plaintiff has also not admitted existence of any charter party since that is the internal arrangement between the contractual parties. The intimation to the plaintiff via email on 29.05.2018 will

have no bearing since the plaintiff would not supply bunkers unless it is ordered by the head owner.

27.1. It is also urged that in series of decisions, the Division Bench of this Court also has held that the supply of bunkers constituted maritime claim, since it is necessary for the operation and maintenance of the vessel, which is treated as juridical entity and when the bunkers are supplied at the faith and credit of the vessel, the proceedings can be initiated against the vessel being the action *in rem* and the vessel and her owner would be liable to pay and the plaintiff is not required to establish privity of contract.

27.2. The following are the decisions sought to be relied upon by the plaintiff: -

Searenown V/s. Energy Net (S.J.)

Searenown V/s. Energy Net (D.B.)

M.V. Lucky Field V/s. Universal Oil. IV Om Shipping V/s. Glender

Eco Maritime V/s. ING Bank (SJ). VI Echo maritime (DB)

Echo maritime (Supreme Court)

Amoy Fortune (Bom HC)

28. These decisions according to the plaintiff lay down that when the bunkers are supplied at the faith and credit of the defendant vessel, the vessel and her owner would be liable. It has also relied on the decision of ***ECO Maritime*** (supra), where the Supreme Court has not, in any manner, changed or reversed the view taken by the Division Bench of this Court to urge that the same would be binding to the Court. It is also the say of the plaintiff that the decision of ***Chrisomar Corporation (supra)*** was rendered essentially in the context of change of ownership of the vessel pending the litigation. If the ownership is changed, the plaintiff cannot look at the vessel. The same also was the position in case of **M.V. Elisabeth And Ors. Vs. Harwan Investment And Trading** [**1993 AIR 1014**], where it is clearly mentioned that a maritime lien is a privileged claim against the ship or a right to a part of the property in the ship, and it "travels" with the ship. However, in the instant case, according to the plaintiff,

there is no change of ownership of the vessel and it is the defendant owner who is liable. The supply of bunkers to the vessel was made at the faith and credit of the vessel and therefore, the owner is liable and the plaintiff certainly can look towards the vessel for the purpose of securing the dues.. It is also the say of the plaintiff that once the supply is at the faith and credit of the vessel, the plaintiff is entitled to claim action *in rem* against the vessel and owner who is liable.

29. According to the plaintiff, the earlier decisions would bind this Court as some of them are rendered by the Division Bench of this Court. It is further the say of the plaintiff that ***in Eco Maritime*** decision, on the aspect of action of suppression, the Court held that the same cannot be decided on the basis of the documents produced by the defendant and requires proof.

30. It is also stated on the part of the applicant that Clause 5.5 of the Standard Terms and Conditions is misplaced. If the same is closely looked at, where the seller may grant credit deferring payment beyond the period stated in clause 5.4, in which case, the credit

period shall be stated on the Order Confirmation. It is the discretion of seller to grant credit and demand immediate payment if the Seller has reason to alter its assessment of the credit risk.

31. Having thus heard both the sides and also having perused the law on the subject, at the outset, it is necessary to consider some of the vital provisions of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (hereinafter referred to as 'Admiralty Act').

32. The Admiralty jurisdiction is defined under Section 2(A) under the definition clause which is to be exercised by the High Court under Section 3, in respect of maritime claims specified under this Act.

33. Section 2(1)(C) speaks of "arrest" which means 'the detention or restriction for removal of a vessel by order of the High Court to secure a maritime claim including seizure of a vessel in execution or satisfaction of judgment or order.'

33.1. Section 2(1)(e) defines the High Court in relation

to the Admiralty proceedings which includes also the High Court of Gujarat.

33.2. 'Maritime claim' would mean claim referred to in Section 4, which provides *thus:*

"4. Maritime claim.—
(1) The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any—
(a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;
(b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;
(c) mortgage or a charge of the same nature on a vessel;
(d) loss or damage caused by the operation of a vessel;
(e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;
(f) loss or damage to or in connection with any goods;
(g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;
(h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;
(i) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;
(j) towage;
(k) pilotage;
(l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the

vessel for its operation, management, preservation or maintenance including any fee payable or leviable;

(m) construction, reconstruction, repair, converting or equipping of the vessel;

(n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;

(o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958 (44 of 1958);

(p) disbursements incurred on behalf of the vessel or its owners;

(q) particular average or general average; 4

(r) dispute arising out of a contract for the sale of the vessel;

(s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;

(t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;

(u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken

or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;
(v) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and
(w) maritime lien."

33.3. Section 2(g) defines 'Maritime lien' which means Maritime claim against the owner, demise Charters, manager or operator of the vessel referred to in clauses (a) to (e) of subsection (1) of section 9 which will continue to exist under subsection (2) of that section. It would be apt to reproduce the entire provision at this stage:

"9. Inter se priority on maritime lien.—
(1) Every maritime lien shall have the following order of inter se priority, namely
(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
(c) claims for reward for salvage services including special compensation relating thereto;
(d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory

dues related to the vessel;
(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.
(2) The maritime lien specified in sub-section (1) shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court:
Provided that for a claim under clause (a) of sub-section (1), the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.
(3) The maritime lien referred to in this section shall commence—
(a) in relation to the maritime lien under clause (a) of sub-section (1), upon the claimant's discharge from the vessel;
(b) in relation to the maritime liens under clauses (b) to (e) of subsection (1), when the claim arises, and shall run continuously without any suspension or interruption:
Provided that the period during which the vessel was under arrest or seizure shall be excluded.
(4) No maritime lien shall attach to a vessel to secure a claim which arises out of or results from—
(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to any law for the time being in force;
(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste."
The term 'Territorial water" shall have the same meaning as assigned to it in the territorial waters, continental shelf, exclusive economic zone and

other Maritime zones act 1976 , as defined under section 2 (k)of the Act.

33.4. Section 3 provides for Admiralty jurisdiction and maritime claims.

"3. Admiralty jurisdiction.—Subject to the provisions of sections 4 and 5, the jurisdiction in respect of all maritime claims under this Act shall vest in the respective High Courts and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act: Provided that the Central Government may, by notification, extend the jurisdiction of the High Court up to the limit as defined in section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976)."

33.5. It is apparent from section 3 that jurisdiction in respect of all maritime claims under this Act, subject to sections 4 and 5 of the said act, vests in the respective High Courts and be exercisable over the waters up to and including the territorial waters of their respective jurisdictions in accordance with the provisions contained in this Act. The Central Government, of course, has power by notification to extend the jurisdiction of the High Court up to the limit as defined in section 2 of the territorial waters, Continental

shelf, Exclusive Economic zone and other Maritime zones act, 1976.

33.6. Under section 4, the High Court is given the discretion to exercise jurisdiction to hear and determine any questions on a maritime claim against any vessel. It defines maritime claims from clauses (a) to (w). Section 4(1)(w) under the Maritime claim provides maritime lien, which are of five kinds and defined under Section 9 of the Act.

33.7. Apt would be to reproduce once again Section 4 (1)(g) of the Act which states thus;

"4. Maritime claim.—(1) … (g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise; " It relates to an agreement relating to the carriage of goods and passengers on board a vessel, whether contained in a Charter Party or otherwise.

33.8. *Section 4(1) (h) reads thus: "4. Maritime claim.—(1) … (h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise; (i) salvage services, including," This provision relates to an agreement relating to the*

use or hire of the vessel, whether contained in the Charter Party or otherwise.

33.9. Section 5 permits the High Court to order arrest of any vessel in rem which is within its jurisdiction for the purpose of providing security against a maritime claim, which is the subject of Admiralty proceeding where the Court has reason to believe that the person, who owned the vessel at the time when the maritime claim arose is liable for the maritime claim and is the owner of the vessel when the arrest is affected.

33.10. Section 5(1)(a) of the Admiralty Act, 2017 thus clearly provides that the Court having the jurisdiction to arrest the ship should have reason to believe "that the owner is liable to pay to the plaintiff."

34. It would be necessary at this stage to refer to the decision of the Apex Court sought to be relied upon by the plaintiff rendered in case of **Videsh Sanchar Nigam Ltd** (supra), where the Apex Court has held

that the arrest should be maintained, if the case of the plaintiff is not hopeless and whether the owner is liable to the plaintiff, should be determined at the time of trial. As rightly pointed out by the learned Counsel of the applicant, the decision of ***Videsh Sanchar Nigam Ltd*** (supra) followed the judgment of ***Schwarz & Co. [Grain] Ltd. vs. St. Elefterio EX Arion [Owners].*** **[(1957) LLR Volume 1, 283]** based on the English Administration of Justice Act, 1956 and particularly Section 3(4) of the said Act, which provides that what is required to be considered is whether "the owner would be liable in personam", there is no reference or expression, whether the court has a reason to believe with regard to the liability of the owner as is found in Section 5(1)(a) of the Admiralty Act. Thus, what emerges is that the arrest of the ship, as per the Admiralty Act, 2017 should be permitted when the Court has 'reason to believe' that the owner is liable to the plaintiff. This remedy of arrest of a vessel concerns international trade and commerce and it is a remedy having serious consequence and having far reaching

effects on various agencies and therefore, the satisfaction of court at the time of grant of arrest that the owner is liable, is quite necessary and a must, before the arrest is made and is maintained. However, if the Court has reason to believe that the vessel owner is liable, then the further investigation at the time of trial shall be required. It is quite obvious that unless, *prima facie*, the Court has such reason to believe, no point would be sub-served continuing the arrest. The Court has also, in agreement with the submissions of learned advocate Mr. Bharucha that unless comes the *prima facie* finding that the Court has reason to believe that the owner would be liable to the plaintiff for the outstanding amount, continuation of the arrest of the ship will not amount to striking a balance. Territorial jurisdiction for the arrest of the vessel cannot be permitted to be misused by anyone since under the local laws of the concerned countries, the suits are even otherwise maintainable. Therefore, it is not a case that the party would become remediless in the event of non-entertainment of the suit. At the same time, there

has to be very serious triable issues, which would not make it possible for the Court to conclude anything at the stage of interim protection and the matter would necessarily warrant trial. In such eventuality, it would not be possible for the Court to vacate the order of stay and terminate the litigation without availing any full-fledged opportunities to the parties. The party once shows the substance that there is a *prima facie* material having come on the record, the Court surely can exercise the jurisdiction of directing the arrest of the ship for the amount claimed by the plaintiff.

35. What would amount to 'reason to believe' shall need to be considered from some of the decisions sought to be relied upon.

35.1. The Apex Court in case of **Aslam Mohammad Marchant vs. Competent Authority and Another [(2008) 14 SCC 186],** as to what amounts to 'reason to believe' that the statute provides such expression, it held that it is a trite law that either the reasons should appear on the face of the notice or they must be available on the

material which is placed before the Court/Authority. The findings and observations of the Apex Court on the subject are as follows: -

"REASON TO BELIEVE

50. This brings us to the next question as to what does the term "reason to believe" mean. We may in this behalf notice some precedents operating in the field.

51. In the context of the provisions of Section 147 of the Income Tax Act, this Court in Phool Chand Bajrang Lal Vs. ITO : [1993] 203 ITR 456] held:-

"25. From a combined review of the judgments of this court, it follows that an Income-tax Officer acquires jurisdiction to reopen an assessment under section 147(a) read with section 148 of the Income-tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assesses to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming

this belief is not for the court to judge but it is open to an assesses to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non- specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."

(See also Income Tax Officer Vs. Lakshmani Mewal Das [(1976) 103 ITR 437].

In Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. [2007 (8) SCALE 396], interpreting the term `reason to believe' as used under Section 247 (a) of the Income Tax Act, 1961, it was opined :

"To confer jurisdiction under Section 247(a) two conditions were required to be satisfied firstly the AO must have reason to believe that income profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either (i) omission or failure on the part of the assesses to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under Section 148 read with Section 147(a). But under the substituted Section 147 existence of only the first condition suffices. In other words, if the assessing officer for whatever reason has reason to believe that income has escaped assessment, it confers jurisdiction to reopen the assessment."

35.2. The Sikkim High Court, in case of **Sikkim Subba Associates vs. Union of India (UOI) and Others**, in Civil Writ Petition No. 10 of 2004, Dated: 31.05.2005 explaining the term 'reason to believe', which according to it, the genuine satisfaction arrived at upon honest and reasonable evaluation of information coming to authority and there has to be a reasonable nexus between and satisfaction and the situation contemplating in any of the clauses, as the matter before the Sikkim High Court was under the Income Tax Act, 1961. This, according to the Court, must be based on the 'information' which is 'in possession of' the officer and 'reason to believe' is opined to be stronger than satisfaction, thus, there is a live link between information and formation of belief. Relevant findings and observations of the Sikkim High Court reads thus:

"'29. It is further well-settled that the expression "reason to believe" as decided by the apex Court means a genuine satisfaction arrived at upon a honest and reasonable evaluation of information

coming to authority. Furthermore, there must be a reasonable nexus between the satisfaction and the situation contemplated in any of the Clauses (a), (b) and (c). Meaning of the expression "reasons to believe" is stronger than satisfaction. There should be reasons to believe and such reasons to believe must be on the basis of the "information" which is "in the possession of" the concerned officer. It is further well-settled that there must be live link between the information and the formation of belief. In Sheo Nath Singh v. AAC and Ors. (1971) 82 ITR 147 (SC) at p. 153, it was held in para 10 that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. In ITO and Ors. v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC) at pp. 437-438, it was held that the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief and rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of his belief and the live link or close nexus which should be there between the material before the ITO in the present case and the belief which he was to form. Further, in Ganga Saran & Sons (P) Ltd. v. ITO and Ors. (1981) 130 ITR 1 (SC), it was held that the AO must have reasons to believe which is stronger than the word "satisfied" and that the belief must not be arbitrary and irrational. In Calcutta Discount Co. Ltd. v. ITO and Anr. (1961) 41 ITR 191 (SC) it was held that the belief must not be based on mere suspicion but should be based on information.

30. It is further well-settled that the Courts can interfere if information is non-existent or irrelevant or the belief is dishonest. In ITO v. Seth Bios,

(supra), it was held that if the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the Court. In Vindhya Metal Corporation and Ors. v. CIT (supra) at p. 239 approved by apex Court in (1997) 224 ITR 614 (SC) (supra), it was held that the existence or otherwise of condition precedent to exercise of power under these provisions is open to judicial scrutiny and the absence of the condition precedent would naturally have the effect of vitiating the authorization made by the CIT and the proceedings consequent thereto. It was further held that the existence of information and its relevance to the formation of the belief can undoubtedly be gone into by the Court. Further, in Ganga Prasad Maheshwari and Ors. v. CIT (supra) at pp. 1053-4 it was held that if action has been taken by the public authorities without there being actual reasons to believe about the existence of relevant facts, such action is without jurisdiction and it is open to the person impugning the action to question the very existence of the belief and to contend that the authority actually did not entertain any such belief.1

31. It is thus well-settled that under Article 226 of the Constitution, the High Court while exercising its jurisdiction examines the existence of the information on which belief is said to be formed and as to whether the information was of such a nature that there was a live link or a rational connection between the "information" and the formation of the belief. In this jurisdiction, the Court examines the satisfaction of the concerned authority on the information in his possession and does not substitute its own satisfaction by evaluating the information and/or material before it."

35.3. Thus, on the basis of reliable, relevant and specific information and the details furnished to

the Court, it needs to have a reason to believe that the owner is liable to the plaintiff and for arriving at such satisfaction, evaluation of information and the material is a must and as pointed out that the information would be such that would provide a live link or a rational connection between the information and the formation of belief. Thus, unless the Court is satisfied that the owner is liable, the arrest of the ship would not be permissible being a very serious remedy. It shall be examined while adverting to the facts whether the information and material placed before this court contained were relevant and specific to arrive at belief that the applicant/ defendant is prima facie liable for the claim advanced by the plaintiff while seeking the arrest.

36. Before venturing into that area, for now, what is vital at this stage is to refer as to what amounts to maritime claim and maritime lien as mentioned herein above in the definition clause, which has been made

abundantly clear as to what under the new regime of Admiralty Act, 2017 would amount to maritime claim. The arrest of the ship is permissible if there exists a contractual lien. It is a trite law that no action *in rem* is maintainable on the basis of contractual lien. The contractual lien is only actionable *in personam*. The Apex Court also in case of **Epoch Entrepots** (supra) has made it extremely clear. It would be worthwhile to reproduce relevant paragraph of the said judgment: -

"19. We have in this judgment hereinbefore dealt with the attributes of maritime lien. But simply stated, maritime lien can be said to exist or restricted to in the event of (a) damage done by a ship; (b) salvage; (c) seamen's and master's wages;
(d) master's disbursement; and (e) bottomry; and in the event a maritime lien exists in the aforesaid five circumstances, a right in rem is said to exist. Otherwise, a right in personam exists for any claim that may arise out of a contract."

36.1. The power to arrest the ship *in rem* is provided under Section 5 of the Admiralty Act, 2017, which authorizes the Court to arrest the ship for maritime lien, as provided under Section 9 of the said Act. Contractual lien is not contemplated under Section 9 of the new Act.

36.2. As the Plaintiff has insisted on the binding effect of the decision of this court in case of ***Eco Maritime*** *(*supra), it is to be mentioned that the decision of M.V. Won Fu (supra) was not placed before the Court, where the Court held that contractual lien is a maritime lien. Again, such proposition shall need to be considered, in wake of the change in the law, particularly, Section 5(1)(e) when read with Section 9 of the Admiralty Act. It is true that the said decision had travelled up to the Apex Court and the Apex Court did not in any manner favoured the owner of the ship, however, as can be noticed that the Court dealt with the form of security and directed the release of the ship. This alone can not be a guiding factor nor can this court overlook the subsequent changes in the law and the authority on the subject.

37. This Court cannot be oblivious of the fact that the very Act of 2017 is subsequent to the said decision and the decision in case of **Chrisomar Corporation** (supra)

has been rendered on 14.09.2017 and the same would bind this Court not only being a later decision, but also being a decision directly on the subject and interpreting the very provisions. The earlier decisions of this Court, which are relied upon by the plaintiff are essentially based on the Admiralty Court Act, 1861 and Article 3 of the Brussels Arrest Convention, 1952. It is also pointed out to this Court that the Arrest Convention of 1999 was not taken into consideration by the Court, which requires *in personam* liability of the owner for the arrest of the vessel.Assuming that the same is also regarded, what is far more important is the governing statute presently.

38. Section 17(1)(b) of the Admiralty Act, 2017 repeals the Admiralty Court's Act, 1861 and Section 5(1)(a) of the Admiralty Act, 2017 is taking care of Article 3(1) of Geneva Arrest Convention, 1999. Apt would be refer to Article 3(1)(a) of the International Convention on the Arrest of Ships, 1999:

"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; or

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

(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or

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

(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for."

39. Apt would be to refer to the decision of **Chrisomar Corporation** (supra) as the relevant findings and observations of the Apex Court since clinches the issue so far as the maritime claim and maritime lien are concerned. It also refers to Article 3(1)(a) of the 1999 convention. Profitably the relevant paragraphs are reproduced as under:

""13. The Republic of India has finally woken up to the need for updating its admiralty law. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 has been made by Parliament and has received the assent of the President on 9.8.2017, though it has

not yet been brought into force. In this Act, "maritime claim" is defined in Section 2(1)(f) as being a claim referred to in Section 4 and a "maritime lien" is defined in subsection (g) of 2(1) as follows:

"2. Definitions (1) In this Act,—

(g) "maritime lien" means a maritime claim against the owner, demise charterer, manager or operator of the vessel referred to in clauses (a) to (e) of sub- section (1) of section 9, which shall continue to exist under sub-section (2) of that section;" Section 4 reads as follows:

"4. Maritime Claim (1) The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any—
(a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;
(b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;
(c) mortgage or a charge of the same nature on a vessel;
(d) loss or damage caused by the operation of a vessel;
(e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;
(f) loss or damage to or in connection with any goods;
(g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;
(h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;
(i) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;
(j) towage;
(k) pilotage;
(l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;

(m) construction, reconstruction, repair, converting or equipping of the vessel;
(n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;
(o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958;
(p) disbursements incurred on behalf of the vessel or its owners;
(q) particular average or general average;
(r) dispute arising out of a contract for the sale of the vessel;
(s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;
(t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;
(u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;
(v) costs or expenses relating to raising, removal,

recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and
(w) maritime lien.

Explanation.—For the purposes of clause (q), the expressions "particular average" and "general average" shall have the same meanings as assigned to them in sub-section (1) of section 64 and sub-section (2) of section 66 respectively of the Marine Insurance Act, 1963.
(2) While exercising jurisdiction under sub-section (1), the High Court may settle any account outstanding and unsettled between the parties in relation to a vessel, and direct that the vessel, or any share thereof, shall be sold, or make such other order as it may think fit.
(3) Where the High Court orders any vessel to be sold, it may hear and determine any question arising as to the title to the proceeds of the sale.
(4) Any vessel ordered to be arrested or any proceeds of a vessel on sale under this Act shall be held as security against any claim pending final outcome of the admiralty proceeding." Under Section 5 of the Act, the High Court may order for the arrest of a vessel which is within its jurisdiction for the purpose of providing security against a maritime claim. Under Section 6 of the said Act, the High Court may also exercise admiralty jurisdiction by an order in personam in respect of the maritime claims referred to in Section 4.

Section 9 of the Act sets out the inter se priority of maritime liens, but in so doing also informs us that they are restricted to five subject matters only. Section 9 reads as follows:

"Sec. 9 Inter se priority on maritime lien (1) Every maritime lien shall have the following order of inter se priority, namely:—
(a) claims for wages and other sums due to the master,

officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;
(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
(c) claims for reward for salvage services including special compensation relating thereto; (d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel;
(e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

(2) The maritime lien specified in sub-section (1) shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court: Provided that for a claim under clause (a) of sub- section (1), the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.

(3) The maritime lien referred to in this section shall commence—
(a) in relation to the maritime lien under clause (a) of sub-section (1), upon the claimant's discharge from the vessel;
(b) in relation to the maritime liens under clauses (b) to (e) of sub-section (1), when the claim arises, and shall run continuously without any suspension or interruption: Provided that the period during which the vessel was under arrest or seizure shall be excluded.

(4) No maritime lien shall attach to a vessel to secure a claim which arises out of or results from—
(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which

compensation is payable to the claimants pursuant to any law for the time being in force;
(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste."

15. Section 12 states that the Code of Civil Procedure is to apply in all proceedings before the High Court insofar as it is not inconsistent or contrary to the provisions of the Act. By Section 17, the Admiralty Court Acts of 1840 and 1861 and the Colonial Courts of Admiralty Acts of 1890 and 1891 stand repealed. Also, the Letters Patent of 1865, insofar as it applies to the admiralty jurisdiction of the Bombay, Calcutta and Madras High Courts, also stands repealed.

16. An admiralty action in the courts of India commences against a vessel to enforce what is called a "maritime claim". Though India is not a signatory to the Brussels Convention of 1952, a long list of maritime claims is given in Article 1 thereof. Suffice it to say that sub-clause (k) of Article 1 states that important materials wherever supplied to a ship for her operation or maintenance would fall within the definition of a maritime claim. A maritime lien, on the other hand, attaches to the property of the vessel whenever the cause of action arises, and travels with the vessel and subsists whenever and wherever the action may be commenced. In The Bold Buccleugh, (1852) 7 Moo PCC 267, Sir John Jervis defined maritime lien as follows:- "[A] maritime lien is well defined … to mean a claim or privilege upon a thing to be carried into effect by legal process … that process to be a proceeding in rem.… This claim or privilege travels with the thing into whomsoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and, when carried into effect by legal process by a proceeding in rem, relates back to the period when it first attached."

17. This judgment was referred to in M.V. Elisabeth and others v. Harwan Investment and Trading Private

Limited, 1993 Supp. (2) SCC 433 at 462, paragraph 56 and Epoch Enterrepots v. M.V. Won Fu (2003) 1 SCC 305 at 311, paragraph 13. In M.V. Al Quamar v. Tsavliris Salvage (International) Ltd. and others, (2000) 8 SCC 278 at 301, the Supreme Court observed as follows:-

"33. Be it noted that there are two attributes to maritime lien: (a) a right to a part of the property in the res; and (b) a privileged claim upon a ship, aircraft or other maritime property in respect of services rendered to, or injury caused by that property. Maritime lien thus attaches to the property in the event the cause of action arises and remains attached. It is, however, inchoate and very little positive in value unless it is enforced by an action. It is a right which springs from general maritime law and is based on the concept as if the ship itself has caused the harm, loss or damage to others or to their property and thus must itself make good that loss. (See in this context Maritime Law by Christopher Hill, 2nd Edn.)."

18. Only a small number of claims give rise to maritime liens as was noted in M.V. Won Fu (supra). Paragraph 19 of the said judgment states as follows:-

"19. We have in this judgment hereinbefore dealt with the attributes of maritime lien. But simply stated, maritime lien can be said to exist or restricted to in the event of (a) damage done by a ship; (b) salvage; (c) seamen's and master's wages; (d) master's disbursement; and (e) bottomry; and in the event a maritime lien exists in the aforesaid five circumstances, a right in rem is said to exist. Otherwise, a right in personam exists for any claim that may arise out of a contract." (at pages 314-315)

19. In an illuminating judgment of the Calcutta High Court Justice Mrs. Ruma Pal, as she then was, dealt with an action in rem filed in the admiralty court jurisdiction in Calcutta. With respect to the plaintiffs claim of the price of bunkers supplied to the shipowners, the Court held that the supply of necessaries to a vessel does not create a maritime lien. In Bailey Petroleum

Company v. Owners and parties interested in the vessel M.V. Dignity, (1993) 2 CHN 208 at 213-214, the learned Judge held:"16. It has been established by a wealth of decisions that the supply of necessaries does not create a maritime lien. Indeed the point was conceded by the counsel for the plaintiff at the hearing. It is only necessary to refer to two authorities on the point to emphasize the fact that this Court does not base its conclusion on the concession of the plaintiff's counsel but on the authorities cited.

17. It is not disputed that the jurisdiction of this court is governed by the Admiralty Court Act 1861 (Imp). Section 5 of the 1861 Act provides:

"5. The High Court of Admiralty shall have jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales: Provided always, that if in any such cause the plaintiff do not recover twenty pounds, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court."

18. In the case of Laws and others and Smith: the "Rio Tinto": 9 PD 356, the plaintiff had supplied necessaries to the vessel. The Trial Court held that the necessaries were supplied on the credit of the vessel and that the plaintiff had a right to a maritime lien and that, therefore, in spite of the fact that the vessel had been transferred subsequent to the supply of necessaries, the ship was liable. Sir James Hannen who delivered the opinion of the Privy Council held that the phrase "the court shall have jurisdiction" simply gave the Court jurisdiction but did not create any lien. A distinction was drawn between a provision for proceedings by arrest of the ship and the express creation of a lien. The Court held: "The Admiralty Court Act, 1861 (24 Vict. c. 10) and the decisions upon it must next be considered. By the 5th section it is enacted that the High Court shall have jurisdiction over a claim for necessaries supplied to any ship elsewhere than in the port to which the ship

belongs, unless it is shown to the satisfaction of the court that, at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales. The words 'the High Court of Admiralty shall have jurisdiction', mean only what they purport to say, neither more nor less, that is, that the court shall take judicial cognizance of the cases provided for. The conclusion [is] that there is nothing from which it can be inferred that by the use of the words "the court shall have jurisdiction" the Legislature intended to create a maritime lien with respect to necessaries supplied within the possession."

19. In Shell Oil Co. v. The Ship "Lastrigoni" 3 ALR 399 the plaintiff had filed a suit for enforcement of the claim on the ground of bunkers provided by the plaintiff under a contract between the plaintiff and the agents of the time charterer. The contract provided that the sale and delivery of inter alia necessaries would be made on the faith and credit of the vessel. The arguments before the Court were that the supply of fuel itself created maritime lien to which the ship was subject and which could be enforced by an action in rem in admiralty. The second was that, in the circumstances, an action in rem lay notwithstanding the absence of any contractual liability on the part of the owners to pay for the bunkers supplied and that this was so by virtue of section 6 of the Admiralty Court Act 1840 (Imp), and section 5 of the Admiralty Court Act 1861 (Imp), either with or without the aid of cl. 6.4 of the Bunker Fuel Oil Contract. Menzies, J. held: "The matter was, I think, put at rest by the decision of the Privy Council in the Rio Tinto (1884) 9 APP Cas 356, by which it was decided that no maritime lien attaches to a ship in respect of coals or other necessaries supplied to it." In Saba International Shipping and Project Investment Private Limited v. Owners and parties interested in the Vessel M.V. Brave Eagle, previously known as M.V. Lima-I and others, (2002) 2 CHN 280 at 287-288 and 289-290, another single Judge of the same High Court differentiated between a maritime claim and a maritime lien and held as follows:

"20. Now the issue is what is a maritime claim and what is a maritime lien. These questions are to be answered in this proceeding before continuation of the interim order or passing any further interim order.

21. All cases of maritime lien are based on maritime claims but all maritime claims do not give rise to a maritime lien on the ship. Normally a lien in the general law is a rather limited right over some one else's property. It is a right to retain possession of that property usually to receive a claim. But a maritime lien differs from other liens in one very important respect. Liens generally require possession of the 'res' before they can come into effect. As an example an innkeeper has a lien over his guest's luggage against the payment of the bill, but if the guest is smart enough to remove his luggage, the innkeeper is left without a lien. But a maritime lien does not require prior possession for its creation. In a fit and proper case a claimant on the strength of his maritime lien can secure the arrest of a ship which then comes under the possession of the court and she cannot be moved without the court's order.

22. 'No Indian Statute defines a maritime claim' is the clear finding of Supreme Court in M.V. Elisabeth (AIR 1993 SC 1014, para 85, page 1040). But our Supreme Court followed the provisions of the Supreme Court Act 1981 of England where maritime claims have been listed on the basis of Brussels Convention of 1952 on the Arrest of Sea Going Ships. Under Article 1 of the said Convention various maritime claims have been catalogued. Out of which 1(k) answers the description of the claims of the plaintiff in this proceeding. Article 1(k) reads "goods or materials whether supplied to a ship for her operation or maintenance". Even though India is not a signatory to the Brussels Convention, but the Supreme Court held that the provisions of these Conventions should be regarded as part of International Common Law and these provisions 'supplement' and 'complement' our maritime laws and fill up the lacunae in The Merchant Shipping Act.

23. But in Elisabeth, the Hon'ble Supreme Court did not notice any convention on maritime lien. However the Hon'ble Supreme Court accepted in para 57 of Elisabeth the judicial determination of the concept of 'maritime lien' by English courts and which I quote as follows:
"A maritime lien is a privileged claim against the ship or a right to a part of the property in the ship, and it "travels" with the ship. Because the ship has to "pay for the wrong it has done", it can be compelled to do so by a forced sale. (See The Bold Buccleugh, (1852) 7 Moo PCC 267)."

24. A definition of maritime lien has also been given in Stroud's Judicial Dictionary, 5th Edition page 1466 to the following effect:
"A maritime lien may be defined as a right specifically binding a ship, her furniture, tackle, cargo, and freight, or any of them, for payment of a claim founded upon the maritime law and entitling the claimant to take judicial proceedings against the property bound to enforce, or to ascertain and enforce, satisfaction of his demand; thus, a salvor has a maritime lien on the property saved for such an amount as a court exercising admiralty jurisdiction shall award. Maritime lien are distinguished from all other liens in these two chief particulars: (i) they are in no way founded on possession or property in the claimant, (ii) they are exercised by taking proceedings against the property itself in a form of action styled an action in rem (The Glasgow Packet, 2 Rob. W. 312; The Repulse, 4 Notes of Cas. 170), and, from this and their secret nature, they closely resemble the species of security known to Roman law under the name of hypotheca (Dig. xiii). Interest, if any allowed, and the costs of enforcing a claim for which a maritime lien exists, will be included in such lien (The Margaret, 3 Hagg. Adm. 240)."

25. According to the well known treatise of Thomas on maritime lien, the following claims may give rise to maritime lien namely:
"(a) Damage done by a ship

(b) Salvage
(c) Seamen's wages
(d) Master's wages and disbursements
(e) Bottomry and respondentia".

26. The aforesaid passage from Thomas has been approved by the Division Bench of Calcutta High Court in Mohammed Saleh Behbehani & Company v. Bhoja Trader, reported in (1983) 2 Calcutta Law Journal 334. At 344 of the report, the learned Judges of the Division Bench referred to maritime liens as representing 'a small cluster of claims' and referred to the aforementioned passage from Thomas.

(27) and

(28) xxx xxx xxx

29. Counsel for the respondent also relies on a passage from Roscoe on The Admiralty Jurisdiction and Practice, 5th Edition. While dealing with necessaries, the learned author has stated as follows:
"Persons who have supplied a ship, whether British or foreign, with necessaries have not a maritime lien upon her, and the vessel does not become chargeable with the debt till the suit is actually instituted; consequently there can be no claim against a ship which has been sold, even with notice of such a claim in respect of which an action has not been commenced, and a want of caution in supplying the necessaries may, it would seem, cause a postponement of claims to others more carefully begun. The necessaries claimant is not a secured creditor until the moment of arrest."

30. There is a direct judgment on this point by a learned Judge of this court in Bailey Petroleum, referred to above.

31. Relying on the judgment of the Privy Council in Rio Tinto, reported in 1884 (9) Appeal Cases 356 and the judgment in Shell Oil Co. v. The Ship Lastrigoni, reported in 1974 (3) All England Reports 399, the

learned single Judge held in Bailey Petroleum that a claim arising out of the supply of necessaries may give rise to a statutory right of action 'in rem' under section 5 of Admiralty Court Act, 1861 but it does not give a rise to maritime lien. Paragraphs 23 and 24 of the judgment in Bailey Petroleum make it clear and I quote them in extenso:

"23. Whereas a maritime lien attaches to the res and travels with it and may be enforced against a subsequent purchaser of the res, a statutory right of action in rem is defeated by a change of ownership. This later principle follows from the nature of the right described in the preceding paragraph.

24. This view of the law is supported by a catena of decisions."

21. In fact, the International Convention on Maritime Lien and Mortgages, 1993 defines maritime liens in Article 4 as follows:-

"Article 4: Maritime liens I. Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for the salvage of the vessel;

(d) claims for port, canal, and other waterway dues and pilotage dues;

(e) 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 vessel.

2. No maritime lien shall attach to a vessel to secure claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from:

(a) damage in connection with the carriage of oil or

other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or
(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste."

22. Article 8 then states that the characteristics of such liens are as follows:- "Article 8: Characteristics of maritime liens Subject to the provisions of article 12, the maritime liens follow the vessel, notwithstanding any change of ownership or of registration or of flag." It is, thus, clear that a claim for necessaries supplied to a vessel does not become a maritime lien which attaches to the vessel.

23. Shri Divan, however, cited U.S. case law in support of his submission that a claim for necessaries raises a maritime lien. We are afraid that given the Indian case law on the subject read with the various international Conventions referred to above, the U.S. seems to stand alone in considering that claims for necessaries would amount to maritime lien enforceable against the vessel as such wherever it goes. It is clear that in our country at least claims for necessaries, though maritime claims, do not raise a maritime lien.

24. What arises next, therefore, is the manner of enforcement of maritime claims in our Courts. In M.V. Elisabeth (supra) at 459- 462, this Court laid down, in some detail, the basic features of the admiralty jurisdiction in this country, and how maritime claims are to be enforced. The Court held:
"Admiralty Law confers upon the claimant a right in rem to proceed against the ship or cargo as distinguished from a right in personam to proceed against the owner. The arrest of the ship is regarded as a mere procedure to obtain security to satisfy judgment. A successful plaintiff in an action in rem has a right to recover

damages against the property of the defendant. "The liability of the shipowner is not limited to the value of the res primarily proceeded against …. An action … though originally commenced in rem, becomes a personal action against a defendant upon appearance, and he becomes liable for the full amount of a judgment unless protected by the statutory provisions for the limitation of liability".' (Roscoe's Admiralty Practice, 5th ed. p. 29) The foundation of an action in rem, which is a peculiarity of the Anglo-American law, arises from a maritime lien or claim imposing a personal liability upon the owner of the vessel. A defendant in an admiralty action in personam is liable for the full amount of the plaintiff's established claim. Likewise, a defendant acknowledging service in an action in rem is liable to be saddled with full liability even when the amount of the judgment exceeds the value of the res or of the bail provided. An action in rem lies in the English High Court in respect of matters regulated by the Supreme Court Act 1981, and in relation to a number of claims the jurisdiction can be invoked not only against the offending ship in question but also against a 'sistership' i.e., a ship in the same beneficial ownership as the ship in regard to which the claim arose.

"The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner …." (Per Justice Story, The United States v. The Big Malek Adhel [43 US (2 How) 210, 233 (1844)])." xxx xxx xxx A ship may be arrested (i) to acquire jurisdiction; or

(ii) to obtain security for satisfaction of the claim when decreed; or (iii) in execution of a decree. In the first two cases, the court has the discretion to insist upon security being furnished by the plaintiff to compensate the defendant in the event of it being found that the arrest was wrongful and was sought and obtained maliciously or in bad faith. The claimant is liable in damages for wrongful arrest. This practice of insisting upon security being furnished by the party seeking arrest of the ship is followed in the United States, Japan and other countries. The reason for the rule is that a

wrongful arrest can cause irreparable loss and damages to the shipowner; and he should in that event be compensated by the arresting party. (See Arrest of Ships by Hill, Soehring, Hosoi and Helmer, 1985).
The attachment by arrest is only provisional and its purpose is merely to detain the ship until the matter has been finally settled by a competent court. The attachment of the vessel brings it under the custody of the Marshal or any other authorized officer. Any interference with his custody is treated as a contempt of the court which has ordered the arrest. But the Marshal's right under the attachment order is not one of possession, but only of custody. Although the custody of the vessel has passed from the defendant to the Marshal, all the possessory rights which previously existed continue to exist, including all the remedies which are based on possession. The warrant usually contains a monition to all persons interested to appear before the court on a particular day and show cause why the property should not be condemned and sold to satisfy the claim of the plaintiff.

The attachment being only a method of safeguarding the interest of the plaintiff by providing him with a security, it is not likely to be ordered if the defendant or his lawyer agrees to "accept service and to put in bail or to pay money into court in lieu of bail". (See Halsbury's Laws of England, 4th edn., Vol. 1, p. 375 etc.).

xxx xxx xxx A personal action may be brought against the defendant if he is either present in the country or submits to jurisdiction. If the foreign owner of an arrested ship appears before the court and deposits security as bail for the release of his ship against which proceedings in rem have been instituted, he submits himself to jurisdiction.
An action in rem is directed against the ship itself to satisfy the claim of the plaintiff out of the res. The ship is for this purpose treated as a person. Such an action may constitute an inducement to the owner to submit to the jurisdiction of the court, thereby making himself liable to be proceeded against by the plaintiff in

personam. It is, however, imperative in an action in rem that the ship should be within jurisdiction at the time the proceedings are started. A decree of the court in such an action binds not merely the parties to the writ but everybody in the world who might dispute the plaintiff's claim.

It is by means of an action in rem that the arrest of a particular ship is secured by the plaintiff. He does not sue the owner directly and by name; but the owner or any one interested in the proceedings may appear and defend. The writ is issued to "owners and parties interested in the property proceeded against". The proceedings can be started in England or in the United States in respect of a maritime lien, and in England in respect of a statutory right in rem. A maritime lien is a privileged claim against the ship or a right to a part of the property in the ship, and it "travels" with the ship. Because the ship has to "pay for the wrong it has done", it can be compelled to do so by a forced sale. [See Bold Buccleaugh (The) [Harmer v. Bell, (1851) 7 Moo PC 267 : 13 ER 884]]. In addition to maritime liens, a ship is liable to be arrested in England in enforcement of statutory rights in rem (Supreme Court Act 1981). If the owner does not submit to the jurisdiction and appear before the court to put in bail and release the ship, it is liable to be condemned and sold to satisfy the claims against her. If, however, the owner submits to jurisdiction and obtains the release of the ship by depositing security, he becomes personally liable to be proceeded against in personam in execution of the judgment if the amount decreed exceeds the amount of the bail. The arrest of the foreign ship by means of an action in rem is thus a means of assuming jurisdiction by the competent court."

25. The Court went on to hold that though Indian statutes lag behind international law in this context, the principles in these Conventions derived from the common law of nations, will be treated as a part of the common law of India. Paragraph 76 in this behalf reads as under:-

"76. It is true that Indian statutes lag behind the

development of international law in comparison to contemporaneous statutes in England and other maritime countries. Although the Hague Rules are embodied in the Carriage of Goods by Sea Act, 1925, India never became a party to the International Convention laying down those rules (International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels, 1924). The Carriage of Goods by Sea Act, 1925 merely followed the (United Kingdom) Carriage of Goods by Sea Act, 1924. The United Kingdom repealed the Carriage of Goods by Sea Act, 1924 with a view of incorporating the Visby Rules adopted by the Brussels Protocol of 1968. The Hague-Visby Rules were accordingly adopted by the Carriage of Goods by Sea Act 1971 (United Kingdom). Indian legislation has not, however, progressed, notwithstanding the Brussels Protocol of 1968 adopting the Visby Rules or the United Nations Convention on the Carriage of Goods by Sea, 1978 adopting the Hamburg Rules. The Hamburg Rules prescribe the minimum liabilities of the carrier far more justly and equitably than the Hague Rules so as to correct the tilt in the latter in favour of the carriers. The Hamburg Rules are acclaimed to be a great improvement on the Hague Rules and far more beneficial from the point of view of the cargo owners. India has also not adopted the International Convention relating to the Arrest of Seagoing Ships, Brussels, 1952. Nor has India adopted the Brussels Conventions of 1952 on civil and penal jurisdiction in matters of collision; nor the Brussels Conventions of 1926 and 1967 relating to maritime liens and mortgages [(a) International Convention relating to the Arrest of Seagoing Ships, Brussels, May 10, 1952 (IMC); (b) International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, Brussels, May 10, 1952 (IMC); (c) International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision, Brussels, May 10, 1952 (IMC); and (d) International Conventions for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages, Brussels, April 10, 1926, and the Revised Convention on Maritime Lines and

Mortgages, Brussels, May 29, 1967 (IMC).] India seems to be lagging behind many other countries in ratifying and adopting the beneficial provisions of various conventions intended to facilitate international trade. Although these conventions have not been adopted by legislation, the principles incorporated in the conventions are themselves derived from the common law of nations as embodying the felt necessities of international trade and are as such part of the common law of India and applicable for the enforcement of maritime claims against foreign ships." (at pages 469-470) A list of maritime claims was then referred to in paragraph 84 and the Brussels Convention relating to the Arrest of SeaGoing Ships, 1992 was referred to and followed.

26. The next important aspect that was argued was that the ownership of the vessel to enforce a maritime claim has to be seen at the stage of institution of the suit and not at the stage of arrest. The general rule that is contained in our country as to what crystallises on the date of a suit is reflected in Rameshwar and others v. Jot Ram and others, 1976 1 SCR 847 at 851-52. This Court held:-

"In P. Venkateswarlu v. Motor & General Traders [(1975) 1 SCC 770, 772 : AIR 1975 SC 1409, 1410] this Court dealt with the adjectival activism relating to post-institution circumstances. Two propositions were laid down. Firstly, it was held that [SCC p. 772, para 4] 'it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding.' This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because, as explained earlier, had the court found his facts to be true the day he sued he would have got his decree. The Court's procedural delays cannot deprive him of legal justice or rights crystallised in the initial cause of action. This position finds support in Bhajan Lal v. State of Punjab [(1971) 1 SCC 34].

The impact of subsequent happenings may now be spelt

out.
First, its bearing on the right of action, second, on the nature of the relief and third, on its impotence to create or destroy substantive rights.

Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. Patterson [Patterson v. State of Alabama, (1934) 294 US 600, 607] illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow.
Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where awthere is a change in the law and it is made applicable at any stage. Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri [1940 FCR 84 : AIR 1941 FC 5] falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs — cannot deny rights — to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal, can take note of such supervening facts with fundamental impact. Venkateswarlu, read in its statutory setting, falls in this category."

27. However, the International Convention on the Arrest of Ships, 1999, in which India participated, states 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; or (b) – (e) xxx xxx xxx
(2) xxx xxx xxx
3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship."

28. India is not a signatory to the aforesaid Convention, yet following M.V. Elisabeth (supra), this Convention becomes part of our national law and must, therefore, be followed by this Court. Article 3(1)(a) is in two parts. First, arrest is only permissible of any ship if a maritime claim is asserted against the person who owned the ship at a time when the maritime claim arose for which the owner is liable, and second, that the same ship owner should be the owner of the ship when the arrest is effected. Thus, article 3(1)(a) sets the controversy at rest because a maritime claim can be asserted only at the time the arrest is effected and not at the time of the institution of the suit. This being so, Shri Divan's reliance on English judgments to the contrary, namely Monica S. (1967) 2 Lloyd's Rep. 113 as followed in Re, Aro Co Limited 1980 1 All ER 1067, cannot be followed. Both judgments were prior to the 1999 Convention and it is this Convention that must be followed. It is, therefore, clear that the relevant date on which ownership of the vessel is to be determined is the date of arrest and not the date of institution of the suit""

40. It is thus quite clear that at the time of exercise of admiralty jurisdiction and directing the arrest of the

ship, there has to be an action *in personam*. When the question arises of as to whether there should be action *in rem* against the ship, it is only if there exists a lien then the ship can be arrested, as otherwise, *in personam* liability of the owner is a must for requirement of arrest of ship. It is also made abundantly clear from this decision that for supply of necessities to the ship, more timely and is impermissible.*claims for necessaries cannot amount to maritime lien enforceable against the vessel as such wherever it goes. It is made abundantly clear on the basis of various international conventions and plethora of decisions on the subject of Admiralty law that in this country at least claims for necessaries, though maritime claims, do not raise a maritime lien. Yet another aspect which has been held by the Apex court is that what date is relevant to know the ownership of the vessel is the date of arrest and not the date of institution of the suit.*

41. Here is a case of plaintiff that the order of bunkers has been placed at the instance of the vessel owner and

therefore, it has insisted that there is a maritime lien that exists. It is a claim for unpaid bunkers supplied to the vessel. According to the law, the unpaid bunkers supply is not a maritime lien for the purpose of Section 9 of the Admiralty Act and therefore, the arrest of the vessel is impermissible for non-payment of the ordered bunkers. The plaintiff since insists on a contractual lien on the basis of Clause 13 of the general terms and conditions of the sale and it also further urges that for unpaid bunkers, it would have a maritime claim under Section 4(1)(l) of the Admiralty Act entitling it to arrest the vessel without any requirement of establishing personal liability of the owner, it is not acceptable proposition under the law.

42. It would be appropriate at this stage to inquire about the ownership of the vessel, since personal liability of the ship owner is necessary for the arrest of a ship. The plaintiff has supplied the bunkers to the charterer, at the instance of Bo Hai on 30 days' credit. The charterer has defaulted in making payment for the bunkers supplied for the purpose of voyage. According

to the plaintiff, he is not supposed to be aware of any agreement between the ship owner and the time charterer, therefore, once the bunkers are consumed by the ship for its voyage and the master of the ship accepts it without any murmur, the responsibility is of the ship owner and whether through its conduct, the ship owner sufficiently put the plaintiff to the notice of any time charter agreement etc, is a matter of trial.

43. Whereas, according to the respondent, the identification of the owner of the ship is extremely important and a bunker supplier is also required to take adequate precautions to ascertain whether the owner of the vessel, in fact, had ordered the bunkers and there are methods for ascertaining these details. According to the applicant – defendant, prudent bunker supplier should be demanding the payment immediately and security from the charterer before making supply and granting credit. Even if in respect of creditability, one may not prove to be correct always,to ascertain the details of ownership is surely possible.

43.1. It has relied upon the decision of English Court in case of **Yuta Bondarovskaya** (supra) where the

Court has held thus: -

"It is plain on the evidence that bunker suppliers do their utmost to contract on terms which bind the ship. However, it does not seem to me to follow that time charterers cannot obtain bunkers except on such terms. To take a simple example, a time charterer could give the supplier security or pay in advance,

If a shipowner or demise charterer were asked at the time that the time charter was made whether he agreed that the time charterer could order bunkers on his behalf because that was the only way that bunkers could be obtained, he would have said no. He would have appreciated that the only time that his vessel would be likely to be arrested would be if the time charterer either would not or could not pay for the bunkers, and that he would be left paying for the bunkers. In those circumstances no shipowner would, in my judgment, have agreed to the time charterer having such authority.

In answer to the question: how then shall I obtain bunkers? he would have said pay in advance or give the bunker supplier security. There is no evidence that bunker suppliers would not supply bunkers if paid in advance. There could not sensibly be any such evidence.

In England, however, as in some other countries no doubt, the position is different. It thus appears to me that if a bunker supplier wishes to ensure payment, and is not willing to give a time charterer credit, he should obtain the .consent of the shipowner or demise charterer, as the case may be, before the contract is made, or he should insist on payment in advance, or upon security from the time charterer There is, however, no warrant for holding a shipowner or demise charterer personally liable without his consent. "

44. It can be noticed that except in United States of America where the bunker supplier has Maritime lien over the vessel, the position of the law is quite clear in other countries where the bunker supplier does not have maritime lien over the vessel and it cannot hold a ship owner personally liable without his consent or expressed agreement on the subject. As made quite clear in the decision of ***Chrisomar Corporation*** (supra) by this Court, in post 2017 period also, there could be no maritime lien for non-payment of the bunkers supplied to the vessel at the instance of the time charterer. The requisite precautions, of course, necessary before the bunkers ordered are supplied.

45. Apt would be to also refer to the provisions of Sections 31 and 34 of the Merchant Shipping Act, 1958.

> ***"31 Entry of particulars in register book. —***
> *As soon as the requirements of this Act preliminary to registry have been complied with, the registrar shall enter in the register book the following particulars in respect of the ship:—*
> *(a) the name of the ship and the name of the port to which she belongs;*
> *[18] [(aa) the ship identification number;]*
> *(b) the details contained in the surveyor's certificate;*
> *(c) the particulars respecting her origin stated in the*

declaration of ownership; and
(d) the name and description of her registered owner or owners, and, if there are more owners than one, the number of shares owned by each of them.

34.Grant of certificate of registry. —

On completion of the registry of an Indian ship, the registrar shall grant a certificate of registry containing the particulars respecting her as entered in the register book with the name of her master."

45.1. These provisions are incumbent upon the Registrar to enter into register book the name and description of the registered owner and if there are more than one names of owners, then the number of shares owned by each of them. The Registrar is also required to give the certificate of registered entry into register book with the name of master, on completion of such process of registration. Thus, every detail of registration of the ship and that of the registered ship owner is available with the Registrar of Indian Ships and as provided under Section 34, once these details are entered into register book, the certificate of registration also is available under Section 34. Therefore, it is not difficult for anyone who is

supplying bunkers or dealing with the person, who has ordered the bunkers, to ascertain as to who is the actual ship owner.

46. In the instance case, the supply of bunkers admittedly was ordered by Bo Hi at the behest of Lianyi. Bo Hi is the agent of Lianyi.

Factual analysis and issue of suppression

47. The moot question, therefore, that remains to be addressed is as to whether the correspondence which has been entered into between Lianyi and the plaintiff – opponent is sufficient to reveal clearly and unequivocally that the order of supply of bunkers was exclusively by the time charterer and after ascertainment on the part of the opponent – plaintiff, before the supply of bunkers, this deal is made. This comer needs to examine as to whether it is apparent without any detailed probe that it was having knowledge of the ship having been registered in the name of the applicant owner the plaintiff has chosen to suppress all the aspects and obtained the arrest of the ship without disclosure of this vital aspect. The law

being very clear that *in personam* liability of the ship owner is a must for the payments to be made for the bunkers supplied for the vessel, the correspondence entered into between the Lianyi and the plaintiff and some of the documents, which have been brought on the record, shall be vital for the Court to examine at this stage.

48. Apt would be to refer to the communication dated 16.01.2019 which is prior to the filing of suit between the Lianyi and plaintiff where the Lianyi had admitted the liability of bunkers supplied and also has proposed the settlement in relation to the amount of bunkers claimed. It is emphatically argued before this Court by the defendant that in the plaint, it is falsely averred that Bo Hai is an agent of the defendant and order of bunker was placed on behalf of the owner. It is also further wrongly mentioned that Bo Hai was receiving direct instructions from the head owner of the defendant and it is acting on its behalf. This, according to the defendant, is impermissible in as much as the plaintiff was aware that Lianyi had ordered the

bunkers through its agent Bo Hai and the liability was self-admitted upon Lianyi. The suppression of correspondence by the plaintiff and the charterer also was deprived to overcome the requirement of personal liability of the owner for obtaining the arrest of the ship as contemplated under the Provisions of Section 5(1)(a) of the Admiralty Act. Such nondisclosure of material is in breach of Order 11 of the Code of Civil Procedure. As provided by Commercial Courts' Act, 2015, Order 11 requires the parties at the time of filing suit or shortly thereafter, to disclose all the documents. It is not for the litigants to choose as to what to disclose and what not.

49. The decision of **Ramrameshwari Devi vs. Nirmaladevi [2011 (8) SCC 249]** is clear that *ex parte* and ad-interim orders obtained on the basis of false pleadings and suppression of facts and documents, must be immediately set aside and vacated with exemplary cost. It is not out of place to make a mention that the plaintiff has claimed that the ownership of the vessel is not changed. Best Excellence- defendant is the

registered owner of the Equasis Report. And, It is from the beginning the stand of the plaintiff that he was not aware that the vessel was given to Lianyi on charter. The plaintiff also does not admit any of the allegations of suppression. Documents when examined, they paint a different picture.

50. According to the plaintiff, the present suit is for the recovery of unpaid amount of the bunkers supplied to the defendant vessel. It is averred in the plaint (para 5) that "on or around 17.05.2018 Bo Hai on behalf of the defendant vessel and/or masters and/or owners and/or charterers and/or managers and/or operators approached the plaintiff for supply of 400 to 600 MTS fuel 380 CST--- to the defendant vessels." It is averred that the bunkers were supplied to the defendant vessel at the instance of the owner at the faith and credit of the vessel and the vessel had consumed the bunkers, which are necessary for the operation. The plaintiff is, therefore, required to consider the vessel only. Moreover, the plaintiff also pleaded the maritime lien in view of Clause 13 of its Standard Terms and

Conditions. It is further its say that the Sale Confirmation dated 17.05.2018 clearly mentions the name of buyer as Bo Hai for and on behalf of M.V.Silvia Glory. It also further provides that the standard terms and conditions of sales effective from 01.12.2017 are to apply, wherein it is stated that STCS shall take precedence over any terms that the buyer may seek to impose and replace and/or supersede any of the seller's earlier standard contractual conditions. No variation shall be binding unless agreed in writing by the seller. Thus, it is the say of the plaintiff that as per Clause 2.1 of this STCS that a binding contract comes into existence when the seller sends the order confirmation to the buyer. The Bunker Delivery Note dated 07.06.2018 is signed by the Chief Engineer and the same is issued with an Important Notice. Prior to supply, the email was sent on 29.05.2018 which has been replied to by the plaintiff on 04.06.2018 which clearly suggests that the plaintiff would not confirm what he has stated in the email dated 29.05.2018. In other words, the request for supply of the bunkers,

according to the plaintiff, solely on account of the charterer has not been accepted by the plaintiff. Moreover, there is no written confirmation of the said email or to the important notice on the bunker's note by the plaintiff, as required under the standard terms and conditions or STCS (Clause 1.2.). The Tax Invoice dated 13.06.2018 is issued by the plaintiff for the said supply to M.V.Silvia Glory, wherein it is clearly mentioned that "the supply and delivery of marine fuel is subject to our general terms and conditions of Marine Fuel Contract."

51. It can be noticed that Equasis Report shows M.V.Silvia Glory is owned by the present applicant. Hence, there is no dispute with regard to the ownership of the said vessel. Best Excellence is the registered owner since 01.04.2012. It flies the flag of Hongkong, China. The Order Confirmation dated 17.05.2018 is from the plaintiff – Den Bunkering for vessel M.V.Silvia Glory which is addressed to Bo Hai. It is on account of M.V.Silvia Glory and/or its agents

and/or owners and/or charterers and/or operators and Bo Hai. There is no reference of head owner in this.

52. The Standard Terms and Conditions of Sale (STCS hereinafter) of Dan Bunkering dated 01.12.2017 deserve some reference at this stage. These STCS provide at Clause 2.1 that a binding Contract comes into existence when the seller sends the Order Confirmation to the buyer. Clause 2.3 provides that all orders of products are considered to be emanating from the Master of the vessel, even if relayed by the buyer to the seller and even if no written request for the Master of the vessel exists, the buyer's obligations under a contract shall be treated as a primary lien on the vessel. Clause 5.4 of such terms and conditions provides that subject to clause 5.5, payment of the price shall be due immediately upon delivery of the products or in all other cases, immediately upon an invoice being issued. Clause 5.6 provides for discretion to the seller to grant credit or to withdraw the credit at any time and demand immediate payment. Clause 13

under the head lien provides that the buyer or the vessel or its owners must notify the seller of its intention to exclude the liability of the vessel at least 12 hours in advance of the supply by sending written notice to legal site of Dan Bunkering, failing which any notice or any stamp in the Bunker Delivery Note seeking to vitiate the seller's maritime lien on the Vessel shall have no effect. It also provides that the laws of the United States, including but not limited to the Commercial Instruments and Maritime Lien Act, shall always apply with respect to the existence of a maritime lien, regardless of the country in which the seller takes legal action. Clause 18 also provides that the STCS and all Contracts are governed by the general maritime law of the United States of America.

53. Therefore, these standard terms of the plaintiff/ opponent if are considered, they according to the plaintiff bind unilaterally the owner of the vessel by obligating the buyer to send a specific notice excluding the liability of the vessel at least 12 hours in advance to its supply, for the seller to have no maritime lien on

vessel. In other words, what is sought to be urged is that even in absence of any kind of contract between the owner of the ship and the seller of bunkers , once the charterer or anyone on its behalf orders bunkers, only because the bunkers are supplied for consumption of the vessel for its voyage, lien would remain on the vessel for any unpaid consideration. Surprisingly, it stretches this to mean, if accepted, that without any responsibility of the supplier to actually find out the status of the buyer and its relationship with the vessel, onus would be of the vessel owner to own the financial responsibility for the act of the charterer. This needs to be viewed, more particularly, in the background that the Court is dealing with the issues concerning shipping industry. Unlike in other spheres of commercial world, since the concept of charterer and contracts of the owners in the shipping world is so common and the fuel for every voyage undertaken requires substantial expenditures.

54. In this background, the material on record deserves closer look. It is quite clear from the email sent on

04.06.2018 where subject is the **Order Confirmation, M.V.Silvia Glory** which shows that the head owners have a bunkers non-lien clause and they need confirmation. This has been addressed to the plaintiff, bunker seller- Dan Bunkering which provides that Bo Hai is ordering bunkers for supply at China on their account and the credit to M.V.Silvia Glory on charter. It is quite clear, thus, that as the charterer of M.V.Silvia Glory, the email has been addressed to the plaintiff where it is also made clear that the head owner has a bunker non-lien clause. It is also made clear that it is at the discretion of the charterer that the bunker was being requested for M.V.Silvia Glory.

55. It is also to be noticed that the Bunkers' Delivery Receipt specifically provided that the bunkers were acknowledged and accepted solely for the account of time charterers of Lianyi and not for the account of the said vessel or her owners. According to it, no lien for the said vessel or the owner can arise. Again, it is not a disputed fact that the Best Excellence had never sent any confirmation in the name of agent and vessel.

56. This Court noticed various correspondences which have been entered into between the plaintiff and the charterer where eventually, the offer of settlement by Lianyi is also made as dispute arose in relation to the quality of bunkers and consequently, the issue of non payment of amount of consideration to the seller. Admittedly, thus, the fuel was supplied on 07.06.2018 and on 02.07.2018 the Dan Bunkers received a message where it was mentioned that the bunker fuel caused the additional machinery to breakdown, however, Clause 11.2 provided that the claim for quality needed to be brought to the notice of Dan Bunkers not later than 15 days after the delivery, otherwise the claim shall be delayed and time barred. Thus, it is the say of the plaintiff that the claim being brought within the notification period is necessary as in the procedure set out in clause 10 of the terms, such samples retained by the seller shall be tested. It also shows that even before the claim is brought within the prescribed notification period, it could not have been allowed for deduction as per the terms of Clause

5.2. The customer cannot shield itself from its payment obligation behind the issue of quality of bunkers as referred to in the claim against Dan Bunkers, even if the claim is on purchase price. It is to be noted that the plaintiff was aware that he has supplied bunkers to the charterer. The charterer Lianyi had also complained from Houston, which according to it was an issue occurring often, of latent defect of quality of bunkers, which is detectable through normal lab test. It says that only with a view to resolve the matter and to save unnecessary dispute and extra cost, it has reached to the plaintiff for amicable settlement. This email is on dated 19.01.2019.

57. The present suit has been filed on 05.02.2019 and the order has been obtained on 06.02.2019. It is quite clear from the correspondence, which has been entered into between the plaintiff and Lianyi that the charter party contract is not having any clause of lien so far as supply of bunker is concerned, but, also had been specifically conveyed to the plaintiff that it is the charterer alone, which was responsible for the

payment of supply price of the bunkers. The parties negotiated when the dispute of quality raised of the bunker supplied and non-payment of the price. They do have a clause of Arbitration and yet an attempt was made by both the sides to settle the dispute by negotiation. It is, thus, emerging from the record that the plaintiff had been made aware emphatically by the charterer, leaving no ambiguity on the aspect of its insistence of maritime lien against the vessel.

58. Undoubtedly, on the part of the plaintiff, strenuous attempt is that any contract, which is entered between the plaintiff and buyer is governed by the terms of STCS and not by the charter party agreement. However, to say that it was unaware of the charter party agreement between the head owner and the Lianyi, and it being the third party to such a contract, its terms on payment of bunkers cannot overreach STCS, is not only wholly incorrect and unacceptable, it speaks contrary to the undisputed exchanges through emails and otherwise. And if such an averment is accepted, the same would also amount to permitting

the plaintiff to disown its own correspondence. The correspondence through email unequivocally reflects that the plaintiff not only was put to the notice by the charterer that it is not the owner and is placing order of bunkers as charterer, but also, has been made aware of the owner refusing to have any clause of lien on the vessel for unpaid bunkers supplied to the charterer or anyone on his behalf. It insisted on governing its terms so far as the supply of the bunkers is concerned. The question is that in absence of any privity of contract with the vessel and the head owner not having agreed nor having even confirmed to such proposition, how would the plaintiff insist on such contract of its with Lianyi to bind the head owner. Had it been a case of maritime lien, of course, the plaintiff can look at the vessel, not otherwise. To say that the ***Chrisomar Corporation's*** decision since was in wake of the change of the ownership, it would have no binding effect so far as this matter is concerned cannot be countenanced. In the decision ***of Eco Maritime***, the Apex Court had not made any change in the decision

of the Division Bench of this Court and therefore, the findings of the Division Bench need to be regarded overlooking the ratio in the decision of ***Chrisomar Corporation***, in view of distinct fact, also do not find favour with this Court which is mentioned herein above, is made amply clear in ***Eco Maritime's*** case. Therefore, for any contractual terms, the parties to whom the bunkers had been supplied, unless there is a privity of contract with the owner for bunker's supply, the maritime lien will not come into effect.

59. It is quite clear from the discussion held hereinabove that the plaintiff, if had chosen to invoke some of the clauses of standard terms and conditions for governing its contract with the Lianyi, it was conscious of the fact that it has a separate and independent contract. The plaintiff when stated before this Court in the plaint that it was not aware of the charter party agreement entered into between Lianyi and the ship owner, it knew that it was not revealing correct facts before the Court, which it is expected to do. It had been made very clear to the plaintiff by the

time charterer, as is revealed from the document and the correspondence that no lien can be created on the ship and it will be the sole responsibility of the time charterer to pay for the bunkers, which had been ordered. Assuming the standard terms and conditions of the plaintiff, Dan Bunkers permitted the plaintiff to create the contractual lien, it surely cannot be with the party which is not having any contract with the plaintiff. How could the plaintiff thrust upon the owner of the Vessel any of the terms and conditions, as they at the best can govern its relationship with the party placing the order of fuel for the voyage. If it was not satisfied with the credibility of the party with whom, it entered into the contract, it could have either chosen not to go ahead with the said contract or it could have demanded the owner of the ship to be included, as one of the parties or confirming the party in the contract entered into by and between those two. It chose not to do that and confirmed the order placed by the agent of Lianyi and yet if it seeks to invoke the terms for raising the demand of outstanding sum, which according to

Lianyi, was on account of serious questions raised by the quality of the goods supplied, the plaintiff cannot be permitted to chase the owner of the ship in such circumstances.

60. This is one case, where, as rightly pointed out to this Court, the very basic fact that Lianyi is a time charterer and having sole responsibility to pay for the bunkers, as may be supplied to it, had become absolutely clear prior to the plaintiff having initiated any actions against the applicant defendant. As in other cases, none of these details is in the realm of any question, raising any triable issues, this being virtually a clear case of knowledge of the plaintiff as to who is responsible for the demand of outstanding sum of the price of the bunker, it cannot be permitted to drag the third party into the litigation. It is also to be noted that by the time the present suit came to be filed, the new Admiralty Act of 2017 has already come into being and the Court is not in agreement with the submission of the plaintiff that it has changed nothing, as it is in agreement with the its submission that the ratio laid

down in the case of ***Chrisomar Corporation*** (supra) will have no applicability in the present set of facts, since that can operate where there is a question of change of ownership, whereas in the instant case, all through out, from the year 2012, the ownership of the ship has continued with the applicant defendant. The report of Equasis is also quite clear and leaves no doubt nor ambiguity in respect of the ownership of the vessel. The plaintiff would have been perfectly justified in stating that it was unaware of the terms of the contract entered into between Lianyi and head owner of the ship, had the correspondence prior to the arrest of the ship, which sailed within the jurisdiction of this Court, had not been entered into, this stock argument would have convinced this Court to allow the order of arrest to continue. It is, of course, not for the third party to go into the nitty-gritty of the contract of time charterer, but, as discussed hereinabove, the strong reliance is placed on some of the authorities and the provisions, which would enable the parties to ascertain, who in fact, is the real owner of the vessel

and hence, the plaintiff being in this business for a long time, would be expected to ascertain those details before dealing with any party. Moreover, the standard terms of contract, which governed the relationship of the plaintiff and the Lianyi also provides that a course is always open for the plaintiff for demanding the outstanding sum or for resolving the disputes, which both the sides have raised. A clear notice on the part of Lianyi to the plaintiff of absence of any responsibility of the head owner and its having also attempted of the amicable settlement in respect of the dispute of outstanding sum and the quality of the product, are the documents which unequivocally lead this Court to hold that the order of arrest, which is a discretionary relief given to the plaintiff cannot be continued in wake of these glaring facts, which have emerged on record with clear knowledge and understanding of the plaintiff/Opponent . Continuing any financial liabilities upon the applicant only because the plaintiff may require it for jurisdictional purpose can hardly furnish the reason. Moreover, the plaintiff has very effective

remedy available against the Lianyi in terms of clause of arbitration in their contract and even otherwise unless the Court is satisfied and has a reason to believe on the strength of convincing and reliable materials that arrest needs to be effected, the monetary conditions imposed can continue. In absence of even disclosure of basic necessary facts and in wake of complete absence of the liability of the applicant under the law, this order cannot be continued.

Operative order

61. Resultantly, this application is allowed. The order of arrest passed on 06.02.2010 and modified on 26.02.2020 stands vacated and set aside. The amount of security deposited by the applicant defendant shall be refunded to the applicant Defendant within six weeks from the date of receipt of copy of this order with accumulated interest, as may have accrued till the date of payment. The entire amount, which had been directed to be invested in the fixed deposit with cumulative effect in the name of Registrar, High Court

of Gujarat, shall be refunded by way of RTGS or NEFT in the account of the applicant with accrued interest , the details of which shall be furnished by the applicant to the Registry for the purpose of refund.

62. Admiralty Suit No. 8 of 2019, being of the year 2019 even otherwise requires the adjudication. It is expected to be placed before the appropriate Bench by the Registry at the expiry of 10 weeks for final adjudication.

63. This application stands disposed of accordingly.

(MS. SONIA GOKANI, J.)

MISHRA AMIT V./sudhir/bhoomi