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CNR : KLHC010618332026

2026:KER:87851

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 17TH DAY OF NOVEMBER 2026 / 26TH KARTHIKA, 1948

F.A (ADMIRALTY) NO. 1 OF 2026

(ORDER DATED 05.08.2026 IN IA NO.1/2025
ARISING FROM ADML.S. NO.5 OF 2024)

APPELLANT(S)/PLAINTIFF:

LIGHT HOUSE MARINE SERVICE INDIA PVT. LTD.
RPSL NO: RPSL-CHN-043, FLAT NO: A8, DRINIVASA ARCADE, NO.1/2, ARUNACHALAM ROAD, SALIGRAMAM, CHENNAI, TAMIL NADU, REPRESENTED BY ITS MANAGING DIRECTOR R. SRINGARAVADIVELAN, AGED 48, S/O. S RAMALINGAM, PIN – 600093.

BY ADVS. SRI. P. VISWANATHAN (SR.)
SRI. AJITH VISWANATHAN
SRI. SHIBU JOSEPH
SMT. VRINDA BABU
SRI. SAYED MANSOOR BAFAKHY THANGAL
SRI. M. SRIRAM

RESPONDENTS/DEFENDANTS:

1 CHARTERER AND PARTIES INTERESTED IN THE VESSEL MT OCEAN FAYE, IMO NO: 9321689, A VESSEL HAVING THE FLAG OF COOK LSLANDS ALONG WITH HER HULL, TACKLE, BOATS, MACHINERY, EQUIPMENT, APPURTENANCES AND ALL OTHER PARAPHERNALIA, PRESENTLY AT THE PORT AND HARBOUR OF COCHIN, WITHIN TERRITORIAL WATERS OF LNDIA AND WITHIN THE ADMIRALTY JURISDICTION OF THIS HON'BLE COURT, REPRESENTED BY ITS MASTER, PIN – 682003.

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2 STAR VOYAGES SHIPPING SERVICES LLC,
MOHAMMED HAMED SAIF AL RUMHI BUILDING, 902-0,
PROPERTY NO: 204-D4, DUBAI, UNITED ARAB EMIRATES,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, PIN – 204666.

3 ONE MOON MARINE SERVICES LLC,
ADELAHMED AL WAHEDI BUILDING, AL MARARR 273-0,
PROPERTY NO.802, DUBAI, UNITED ARAB EMIRATES, PIN – 202002.

4 THE DEPUTY CONSERVATOR,
COCHIN PORT TRUST, WILLINGTON LSLAND, KOCHI, PIN – 682003.

BY ADVS.
SRI.JIKKU SEBAN GEORGE
SMT.LATHA ANAND
SRI.JOY THATTIL ITTOOP
SMT.DEEPTI SUSAN GEORGE
SMT.ANJANA WILSON
SRI.SANTHOSH MATHEW (SR.)
SRI.BIJISH B.TOM
SMT.BABY SONIA
SRI.A.G.ADITYA SHENOY
SMT.NEVIS CASSANDRA L CAXTON LORETTA
SRI.GOVIND VIJAYAKUMARAN NAIR
SRI.KARUN MAHESH
SMT.AGNES SABU
SRI.K.S.ARAVIND
SMT.SREELAKSHMI SHIBU
SMT.ROSHNI MANUEL
SRI.KRISHNA KUMAR T.K.

THIS FIRST APPEAL (ADMIRALTY) HAVING BEEN FINALLY HEARD ON 10-11-2026, THE COURT ON 17.11.2026 DELIVERED THE FOLLOWING:

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JUDGMENT

Dated this the 17th day of November, 2026

Soumen Sen, C.J.

The appeal raises an interesting point with regard to a maritime claim and a maritime lien in respect of a vessel which is neither a sister vessel nor a vessel in respect of which there exists any privity of contract between the first defendant and the plaintiff.

2. The appeal arises out of a judgment and order passed by the learned Single Judge on an application filed by defendant Nos.1 to 3 in the admiralty suit, seeking, *inter alia,* withdrawal of the order of arrest of the vessel, a direction for refund of the security furnished by the applicants along with accrued interest, dismissal of the suit on the ground that the order of arrest and invocation of the admiralty jurisdiction were wrongful.

3. In short, it was a demurrer application questioning the jurisdiction of the Court to try and decide

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the admiralty suit filed by the plaintiff against the applicants.

4. The learned Single Judge allowed the application, *inter alia,* holding that, for a vessel to be arrested as a sister vessel under Section 5(1)(a) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (for short "the Admiralty Act, 2017"), common ownership is required and that common management by a ship manager is insufficient to attract the jurisdiction of the Court. It was further held that a maritime lien for wages under Section 9(1)(a) of the Admiralty Act, 2017, should be in respect of the vessel where such employment was undertaken and the claim arose.

5. This order is under challenge in the appeal.

6. The learned Senior Counsel appearing on behalf of the appellant, at the outset, has fairly conceded that the claim is not arising out of a maritime lien. However, strenuous arguments have been made with the regard to

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the applicability of Section 4(1)(o) and (p) read with Section 5(2) of the Admiralty Act, 2017.

7. It is submitted that the second defendant appointed the plaintiff as its manning agent with effect from 10th June 2023 based on a manning agency agreement. According to the terms of the agreement, the wages payable to the Officers and Ratings were to be paid by the second defendant. It is stated that the agreement envisages that in the event the second defendant is unable to make such payments towards wages as aforementioned, the plaintiff was to affect such payments on behalf of the second defendant and the same shall be reimbursed to the plaintiff by the second defendant at the earliest opportunity. It is alleged that although the plaintiff paid the wages to the crew of three vessels operated by the second defendant, namely, MT Eastern Pearl, MT Fast Kathy, MT Sea Fidelity for the month of June, 2023 upon the request of the second defendant, the second defendant failed to reimburse the

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said amount to the plaintiff despite repeated demands. In the meanwhile, financial sanctions were imposed on the second defendant by countries including the United Kingdom for transporting Russian Oil and to evade such sanctions, the second defendant transferred their vessels to the third defendant. The claim of the plaintiff is a maritime claim under Section 4(1)(p), (o) and (w) and is also secured by a maritime lien under Section 9(1)(a) of the Admiralty Act, 2017.

8. In the said proceeding, a learned Single Judge had passed an ex parte order of arrest dated 31st May, 2024, against the first defendant vessel and thereafter released the first defendant vessel upon furnishing security by order dated 6th June, 2024. This order of arrest is now sought to be vacated, along with the other reliefs as claimed in I.A.No.1 of 2025, at the behest of respondent Nos.1 to 3.

9. The learned Senior Counsel has fairly admitted that there is no commonality of interest between the first

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defendant and the owners or the charterer of three vessels operated by the second defendant, in respect of which the claim arose on account of non-payment of the wages of the crew, as advanced by the plaintiff. However, it is contended that by reason of Section 4(1)(o) and (p) of the Admiralty Act, 2017, a claim has arisen against the first defendant where the second defendant was also working as its Manager. It is further submitted that Section 5(2) of the Admiralty Act, 2017, is not limited to the vessel in respect of which the second defendant was acting as a Manager, and that an order of arrest can be made in respect of any other vessel for the purpose of providing security for a maritime claim arising under Section 4(1)(o) and (p) of the Admiralty Act, 2017.

10. The learned Senior Counsel has referred to the manning agency agreement between the plaintiff and the second defendant and submitted that in terms of Clause 1.3.1, a maritime claim has arisen in favour of the plaintiff,

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although admitting that there is no privity of contract between the plaintiff and the first defendant, nor there is any claim on account of maritime lien.

11. The learned Senior Counsel has submitted that the test to be applied under Section 5 of the Admiralty Act, 2017, has been clearly elucidated by a learned Single Judge of the Bombay High Court in ***Siem Offshore Redri AS v. Altus Uber***[1] in which the learned Single Judge has drawn a distinction between the vessels which can be classified as the contract vessel/offending vessel, and any other vessel, namely, the securing vessel. It is held that in an appropriate case, the securing vessel can be arrested for the purpose of providing security in respect of the maritime claim of the plaintiff. The learned Senior Counsel has relied on paragraphs 71 to 73 of the said judgment which are reproduced below:

> *"71. The test under Section 5 is "whether the Court has reason to believe". The above documents and*

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particularly the failure of MEDS to even disclose the alleged bareboat charter-party under which they claim to be the demise charterers, is sufficient to demonstrate prima facie that MEDS are the owners. MEDS, however, denies that they are owners but say that they are the demise charterers of the vessel. This makes no difference to the arrest of defendant vessel. Plaintiff is entitled to arrest defendant vessel even if MEDS is the demise charterer of the vessel as contended by them and not the owner. This appears on a plain reading of Section 5(2) of the Admiralty Act, 2017 read with Section 5(1)(b) of the said Act. The powers of arrest are set out in Section 5 of the Admiralty Act, 2017. For the purposes of plaintiff's claim Section 5(2) of the Admiralty Act, 2017 is relevant. Section 5(2) provides for arrest of any other vessel in lieu of the vessel against which a maritime claim has been made. This means that two different vessels need to be involved to satisfy the requirement of S. 5(2) viz.,

a. *"The vessel" with respect to which the dispute originally arose – the contract vessel or offending vessel;*

b. *"any other vessel" to be arrested to secure the claims in respect of "the vessel" - the securing vessel.*

Note:"Securing Vessel" cannot be the "Contract vessel/offending vessel". They are different vessels.

72. Since Section 5(2) is subject to the provisions of sub-section (1), the relevant provisions pertaining to a claim against a demise charterer are contained in sub-section 5(1)(b) which provides as follows:— "the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected."

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> *73. For 5(1)(b) to respond to 5(2), we must identify the contract vessel/offending vessel and the securing vessel which is being arrested as follows:—*
>
> *a. "The Vessel" - (contract vessel/offending vessel) (i.e. 'SEIM MARLIN) of which the demise charterer is MEDS at the time when the maritime claim arose and is liable for the claim.*
>
> *b. "any other vessel"- (securing vessel) (i.e. ALTUS UBER) of which MEDS is the demise charterer or the owner when the arrest is effected.*
>
> (emphasis supplied)

12. The learned Senior Counsel has also submitted that the learned Single Judge could not have dismissed the suit, as the matter did not involve a pure question of law but also involved questions of fact. In this regard, he has referred to Order XIV Rule 2 of the Code of Civil Procedure, which is reproduced as under:

> *Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.*
>
> *2. Court to pronounce judgment on all issues.—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.*
>
> *(2) Where issues both of law and of fact arise in the*

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same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

(emphasis supplied)

13. Per contra, Mr. Santhosh Mathew, the learned Senior Counsel appearing for the first defendant, has submitted that in the absence of any privity of contract and now having conceded to the position that the plaintiff is not making his demand or based his claim on maritime lien, the appeal must fail. It is submitted that the plaintiff is not entitled to recover any advances made by the plaintiff to the second defendant for payment of wages in respect of the crew members of the three vessels, which admittedly do not include the vessel of the first defendant. The learned Senior

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Counsel has referred to the manning agency agreement between the plaintiff and the defendant and submitted that Clause 1.3.1 does not cover a situation such as the present one and as such, reliance upon the said clause is misplaced. The learned Senior Counsel has submitted that an action in rem for arrest of a ship would not lie against a vessel and a ship owned by a person who is not responsible for payment of such dues, as held by the Hon'ble Supreme Court in ***Sunil B. Naik v. Geowave Commander***[2]. The learned Senior Counsel has submitted that in the aforesaid judgment, a clear distinction was drawn between the beneficial ownership of a ship and the charterer of a ship. In this regard, he has relied upon the observations of the Hon'ble Supreme Court in paragraphs 64 to 68 of the said judgment, which read as follows:

> *"64. The successor to the 1956 Act is the Supreme Court Act of 1981. Section21(4) of that Act of U.K. recognizes the discussion in view of Robert Goff, J. by the following provision:*

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21. (4) In the case of any such claim as is mentioned in Section 20(2)(e) to (r), where

(a) the claim arises in connection with a ship; and

(b) the person who would be liable on the claim in an action in personam ("the relevant person") was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against -

i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

(ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

65. There is a clear distinction between a beneficial ownership of a ship and the charterer of a ship.

66. In the aforesaid context, now turning to the Arrest Convention of 1999, Article 1 specifies that the maritime claim means a claim inter alia arising out of an agreement relating to use or hire of "the ship." The connotation of "the ship" would mean the 16 trawlers or the Orion Laxmi and not the Respondent ship. Thus, there is no maritime claim against the Respondent ship. Article 3 deals with the exercise of rights of arrest and the eventualities are specified thereunder. In terms of Clause (2) of Article 3 (these Articles are reproduced in paras 25 to 27 above), the arrest is permissible of any other ship (which would connote the Respondent ship), which, when the arrest is effected is owned by the person who is liable for the

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maritime claim. The liability of the maritime claim is Reflect Geophysical and not the owners of the Respondent ship. In terms of Sub-clause (b) of Clause (2) of Article 3, a demise charterer, time charterer or voyage charterer of that ship is liable. The ship in question, as noticed above, is not the Respondent but the 16 trawlers or the Orion Laxmi. In view of the discussion aforesaid, really speaking Reflect Geophysical cannot be said to be the beneficial owner in the capacity of a demised charterer of the Respondent ship. Reflect Geophysical is not the owner of the Respondent ship and the owner cannot be made liable for a maritime claim, which is against the trawlers and Orion Laxmi.

67. We may also note that in the 2017 Act in India Clause 5(b) states as under:

> *5. Arrest of vessel in rem.--(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that--*
>
> > *xxxx xxxx xxxx xxxx xxxx*
> >
> > *(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or*

68. The aforesaid is in consonance with Article 3 of the 1999 Convention and, thus, must be read in that context (incidentally the Bill was introduced on 21.11.2016 and passed by the Lok Sabha and the Rajya Sabha on 10.3.2017 and 24.7.2017 respectively. It was published in the Gazette on 9.8.2017 but is still not notified). The incident in this question is, thus, prior to beginning of this exercise. The expression "the vessel", "owner" and "demise charterer", thus, must be read in the aforesaid context and the maritime claims in respect of 16 trawlers and Orion

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Laxmi cannot be converted into a maritime claim against the Respondent ship not owned by Reflect Geophysical."

14. The learned Senior Counsel has submitted that in the aforesaid judgment, it is categorically stated that in the interest of international comity, though India is not a signatory to the Convention of 1999, the principles of the same are being followed and applied to appropriate situations to determine whether a "maritime claim" as understood in the international context has arisen and whether the same warrants the arrest of the vessel in question as per its provision.

15. The learned Senior Counsel has also referred to the three Judge Bench decision of the Hon'ble Supreme Court, presided over by the Hon'ble the Chief Justice of India, in ***Owners and Parties Interested in M.V. Nereus Progress v. Om Freight Forwarders Ltd***.,[3] wherein, in paragraphs 31 and 32, the Hon'ble Supreme Court has explained the scope, ambit and extent of applicability of the

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said provisions concerning the arrest of a vessel, which may be a sister vessel or a securing vessel. The said paragraphs read as follows:

> *31. It may be seen that Section 5(1)(b) of the Admiralty Act permits arrest of a vessel where "the demise charterer of the vessel at the time when the maritime claim arose is liable for such claim and is the demise charterer or the owner of the vessel when the arrest is effected." Section 5(2) extends this power to permit arrest of a sister vessel "in lieu of" the vessel against which the maritime claim has actually arisen, but expressly makes this power subject to the provisions of sub-section (1). The effect of this qualification is that the jurisdictional pre-conditions of Section 5(1)(b) must be independently satisfied qua the vessel sought to be arrested.*
>
> *32. Applied to the case at hand, for the arrest of the Vessel to sustain under Section 5(2) read with Section 5(1)(b), the Respondent was required to demonstrate: (i) that Nereides was the demise charterer of the Vessel, as distinct from M.V. Bharadwaj, at the time the Respondent's maritime claim arose; and (ii) that Nereides continued to be the demise charterer of the Vessel on 04.12.2025, the date on which the arrest was effected.*
>
> (emphasis supplied)

16. The impugned order has to be examined in the light of the aforesaid context and submissions made on

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behalf of the parties. Before entering into the merits of the matter, it is necessary to refer to a few provisions of the Admiralty Act, 2017 for their proper appreciation and understanding.

17. Admiralty jurisdiction is defined under Section 2(a) of the Admiralty Act, 2017. Section 3 confers jurisdiction on the High Court to hear and determine maritime claims in accordance with the provisions of the Act. The expression 'maritime claim', as defined under Section 2(f), means a claim referred to in Section 4. The maritime claims in respect of which the High Court is empowered to exercise its jurisdiction to hear and determine questions against any vessel are enumerated in Section 4 (1) (o) & (p) of the Admiralty Act, 2017, which read as follows:

> *"4. Maritime Claim-(1) xxxxx*
> *xxxxxx*
> *(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 the due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any*

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> *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."*

18. We are not referring to the other provisions of the Admiralty Act, 2017, as the claim in the present appeal is restricted to the aforesaid provisions. It is also not necessary to refer to the definition of 'maritime lien' under Section 2(g) of the Admiralty Act, 2017, as the appellant has fairly conceded that the plaintiff does not have a claim founded on a maritime lien. Even in the absence of such a concession, it is evident from the facts that the plaintiff's claim does not fall within the purview of Section 9 of the Admiralty Act, 2017.

19. Section 5 of the Admiralty Act, 2017 refers to Arrest of vessel in *rem*. A ship can be arrested for the

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purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the Court has reason to believe *inter alia*, that the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in Section 9.

20. Section 6 of the Admiralty Act, 2017, refers to exercise of admiralty jurisdiction by High Court in *personam*, in respect of any maritime claim referred to in Clauses (a) to (w) of sub-section (1) of Section 4.

21. On a plain reading of Section 4(1)(o), it would appear that the crew agreement must relate to the vessel on which the crew members are presently employed and not to any other vessel. Similarly, the disbursements incurred must be in relation to the vessel on which such crew members were working. The provision also covers the owners under whom such crew members are employed. In the instant case, admittedly, neither of these conditions are

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fulfilled.

22. We have carefully perused the plaint and find that it has been clearly and unequivocally stated that the claims relating to the crew members pertain to three vessels, none of which is of defendant No. 1. There is no averment in the plaint that the owners of the said three vessels have any commonality of interest with Defendant No. 1. Moreover, the owners of those vessels have not been impleaded as parties to the suit. In our view, this constitutes a fatal defect and leaves little room for a proper and fair adjudication of the dispute and for the plaintiff to succeed.

23. We now turn to Section 5(e) of the Admiralty Act, 2017. The said provision permits the arrest of a vessel in respect of a claim, *inter alia,* against the Manager, provided that such claim is secured by a maritime lien as provided under Section 9. In view of the fact that the concept of maritime lien has no application to the facts and

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circumstances of the present case, Section 5(e) of the Admiralty Act, 2017 is not attracted. However, the Act also permits admiralty jurisdiction in *personam*, which is subject to Section 7 and is exercisable only in respect of maritime claims falling within clauses (a) to (w) of sub-section (1) of Section 4. As we have held that no maritime claim arises under clauses (o) and (p) of Section 4 of the Admiralty Act, 2017, the said provisions cannot be pressed into service.

24. It is also apposite to refer to paragraphs 49 and 50 of ***Sunil B. Naik*** (supra), wherein the issue relating to the arrest and detention of a ship has been discussed in detail, which read as follows:

> *"49. On turning to the provisions of the Convention, a maritime claim is specified as relating to use or hire of a ship whether contained in a charter party or otherwise [clause (f)]. Insofar as clause (l) is concerned they relate inter alia to services rendered to the ship. The question, however, is – which is the ship in question. Such an order of detention can be in respect of a ship where there is identity of the owner against whom the claim in personam lies and the owner of the ship. It cannot be used to arrest a ship of a third party or a non-owner.*

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> *50. As an illustrative example if we consider the principles of a garnishee order where amounts held by a third party on behalf of a defendant can be injuncted or attached to satisfy the ultimate claim, which may arise against the defendant. It is not as if somebody else's money is attached in pursuance to a garnishee's order. Similarly for a claim against the owner of the vessel, a vessel may be detained and not that somebody else's vessel would be detained for the said purpose. The crucial test would be of ownership, which in the present case clearly does not vest with Reflect Geophysical and the de facto ownership under their bareboat charter cannot be equated to a de jure owner, which is necessary for an action in personam.*

25. In ***Polestar Maritime Ltd. v. M.V. Qi Lin Men***,[4] the Bombay High Court, on consideration of Article 3(2) of the Arrest Convention, has been held that a ship can be arrested in respect of a maritime claim against another ship only in the following circumstances:

> *(a) The owner of both the ships is one and the same.*
>
> *(b) In case a maritime claim exists qua the owner of a ship, which is taken on a demised charter then the liability can be recovered by restraint of*

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the ship owned by the charterer.

(emphasis supplied)

26. In the instance case, both the conditions are not fulfilled. In fact, the said judgment has been upheld by the Hon'ble Supreme Court in ***Sunil B. Naik*** (supra). In the aforesaid judgment, it is further concluded that there was no principle or authority for proposition that a maritime claim for unpaid charter hire in respect of a vessel 'A' against the hirer thereof can be enforced by arresting vessel 'B', which is on bareboat charter of the hirer of the former vessel *vis-a-vis* vessel 'A'.

27. The concept of Bareboat Charter has been discussed in some detail in ***Sunil B. Naik*** (supra), in paragraph 13, which is reproduced below:

> *"13. The charter party is defined as a contract by which an entire ship, or some principal part thereof, is let by the owner to another person for a specified time or use. The Charter can be of two kinds - (i) Charter of demise; and (ii) Contract of affreightment. In the*

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present case, we are concerned with the charter of demise by which the whole vessel is let to the charterer with the transfer to him of its entire command and possession and consequent control over its navigation. Such a charter is called a bareboat charter. It would be apposite at this stage to refer to the Mark Davis' Commentary on "Bareboat Charters" 2nd Edition where the nature and character of demised charters has been explained as follows:

> *"A fundamental distinction is drawn under English law between charter parties which amount to a demise or lease of a ship, and those which do not. The former category, known as charters by demise, operate as a lease of the ship pursuant to which possession and control passes from the owners to the charterers whilst the latter, primarily comprising time and voyage charters, are in essence contracts for the provision of services, including the use of the chartered ship. Under a lease, it is usual for the owners to supply their vessel "bare" of officers and crew, in which case the arrangement may correctly be termed a "bareboat" charter. The charterers become for the duration of the charter the de facto "owners" of the vessel, the 2018 (5) SCC 505 master and crew act under their orders, and through them they have possession of the ship."*

A statement of the hallmarks of a demise charter can be found in the judgment of Evans LJ in The Giuseppe di Vittorio [1998] 1 Lloyd's Rep 136 at p. 156:

> *"What then is the demise charter? Its hallmarks, as it seems to me, are that the legal owner gives the charterer sufficient of the rights of possession and*

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> *control which enable the transaction to be regarded as a letting – a lease, or demise, in real property terms – of the ship. Closely allied to this is the fact that the charterer becomes the employer of the master and crew. Both aspects are combined in the common description of a 'bareboat' lease or hire arrangement."*

As indicated, charter parties which do not amount to a demise or lease of a ship (Including time charters and voyage charters) are classified in English law as contracts of affreightment, pursuant to which the owners agree to carry goods by sea in return for a sum of money. Although the charterers have a right as against the owners to have their goods carried on the vessel, the ownership and the possession of the ship remains with the owners through the master and crew who remain their servants.

Whether or not a charter party amounts to a demise charter depends in every case upon the precise terms of the charter, taking the instrument as a whole. The test has been summarized as follows:

> *"The question depends, where other things are not in the way, upon this: whether the owner has by the charter, where there is a charter, parted with the whole possession and control of the ship, and to this extent, that he has given to the charterer a power and right independent of him, and without reference to him to do what he pleases with regard to the captain, the*

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> *crew, and the management and employment of the ship. That has been called a letter or demise of the ship. The right expression is that it is a parting with the whole possession and control of the ship."*

Thus, although time charters almost always contain words such as "let", "hire", "delivery" and "redelivery", the use of such words are inapt in such a context, and are not in any sense to be regarded as conclusive, when determining the nature of the charter.

In Sea and Land Securities v. William Dickinson MacKinnon LJ traced the origin of these words to demise charters, and at page 163 emphasised the difference between demise and time charters thus:

> *"there is all the difference between hiring a boat in which to row yourself about, in which case the boat is handed over to you, and contracting with a man on the beach that he shall take you for a row, in which case he merely renders services in rowing you about."”*

28. In ***Owners and Parties Interested in M.V. Nereus Progress*** (supra), the Hon’ble Supreme Court considered the termination of the contract qua the statutory requirement of arrest. Section 5(2), permits arrest of another

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vessel in lieu of the vessel against which the maritime claim has arisen, subject to the requirements of Section 5(1). The Court, therefore, held that Section 5(2) cannot be treated as a standalone provision and an independent source of arrest under admiralty jurisdiction unconnected with Section 5(1). The statutory conditions under Section 5(1)(b) must be independently satisfied in relation to the vessel sought to be arrested. This provision in the facts of that case would require Om Freight to establish, among other things, that Nereides was the demise charterer of Nereus Progress when the maritime claim arose and it continued to be the demise charterer of that vessel on the date of arrest.

29. The question whether termination remained incomplete until physical repossession is not the issue here.

30. The appellant has not contended that the vessel in question was taken on a demised charter or existence of any bareboat charter – party agreement.

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31. It is relevant to note that the judgments/ decisions relied upon by the appellant to make home its contentions are all relating to demise charters/bareboat charters. The appellant is neither a bareboat charterer nor a demise charterer and is only a manning agent or crew supplier who claims to have entered into an agreement to supply crew to the vessels managed by the second defendant. A manning agent who has a contractual arrangement with Ship's Manager does not stand on similar footing as a demise charter or bareboat charter qua the owner of the vessel. He is far distanced from the shipowner and his vessel and cannot, in law, aspire to arrest the vessel for his disputes and claims with the Ship's Manager.

32. The crucial test of ownership has not been established in the instant case against respondent No.1. In our considered opinion, the learned Single Judge is justified in allowing the interlocutory application. Moreover, for the

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High Court to exercise its jurisdiction under Section 5(2) in respect of any other vessel, there must be a *prima facie* satisfaction of an existence of a commonality of interest between the shipowners and a clear intention to defraud the creditor. In an appropriate case, the Court may also apply the principle of lifting the corporate veil to ascertain the real owners of the vessel and fasten liability under Section 5(2) of the Admiralty Act, 2017. To avoid prolixity, it is not necessary for us to again refer to some facts which would justify the aforesaid conclusion, as the relevant facts have already been elaborately discussed.

F.A.(Admiralty) fails and it is dismissed.

Sd/-
Soumen Sen
Chief Justice

Sd/-
Syam Kumar V.M.
Judge

ds/uu

VERDICTUM.IN

APPENDIX OF F.A (ADMIRALTY) NO. 1 OF 2026

APPELLANT'S ANNEXURES:-

ANNEXURE A1	**TRUE PRINTOUT OF SHOWING THE STATUS OF THE 1ST DEFENDANT VESSEL INCLUDING THE SANCTIONS IMPOSED ON THE SAME BY VARIOUS COUNTRIES AS ON 24-11-2025 OBTAINED FROM OFFICIAL WEBSITE WAR SANCTIONS OF THE UKRAINE GOVERNMENT, ALONG WITH SECTION 63B CERTIFICATION**