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Legal Ambiguities in the Enforcement of Maritime Claims

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ABSTRACT

Insolvency law addresses the position of corporate persons who are unable to meet their financial obligations, and the Insolvency and Bankruptcy Code, 2016 supplies a body of legal principles and procedures relating to reorganisation and insolvency resolution. The maritime industry plays a crucial role in the national and international economy, and in recent years the shipping industry has faced many challenges, including insolvency proceedings under the Code, while admiralty matters attract a special jurisdiction under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. This paper studies the conflict between insolvency law and maritime law, which arises at the point of recovery of assets and priority among creditors of the debtor. These regimes provide a structured framework for managing the financial affairs of an insolvent entity, aiming to maximise the recovery of assets for creditors while ensuring a fair and equitable resolution for all stakeholders. Key aspects include defining insolvency criteria, outlining specific insolvency procedures such as bankruptcy and liquidation, protecting the rights of creditors, providing some level of protection for the insolvent entity, and establishing the role of the adjudicating authority in overseeing the process. Insolvency laws vary across jurisdictions but generally aim to promote economic efficiency, ensure fairness and equity among stakeholders, and encourage responsible borrowing and lending practices.

Keywords: *maritime claim, corporate insolvency, admiralty jurisdiction, ship arrest, maritime lien, Insolvency and Bankruptcy Code 2016*

I. INTRODUCTION

Admiralty law, one of the most ancient and well established branches of law, underpins the global economy by facilitating international trade and the movement of goods and people across vast distances.[1] With oceans covering more than 70% of the Earth's surface, maritime transport remains the backbone of commerce, with nearly 90% of world trade by volume relying on seaborne transportation.[2] In India,[3] maritime transport constitutes a vital pillar of economic activity, handling a substantial share of the nation's trade by volume and a significant share by

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[1] INTERNATIONAL CHAMBER OF SHIPPING, *Shipping and World Trade: World Seaborne Trade*, https://www.ics-shipping.org/shipping-fact/shipping-and-world-trade-world-seaborne-trade/ (accessed 18 February 2025).

value. The Indian shipping industry, deeply integrated into the global maritime network, inevitably faces similar challenges. Numerous Indian shipping enterprises are currently grappling with financial difficulties, with a significant number undergoing insolvency proceedings. As of June 2023, 17 entities were undergoing liquidation, while only two cases had secured approval for resolution plans, which highlights the severity of the situation.[4] Resolving these insolvency cases presents a unique set of complexities. The interplay between maritime law and insolvency law, particularly concerning the rights of secured creditors and the recognition of maritime liens, requires careful navigation. Furthermore, the international nature of maritime trade introduces cross-border elements, demanding a nuanced understanding of international legal frameworks.[5] Successfully addressing these challenges necessitates a robust legal framework, specialised expertise, and a collaborative approach among stakeholders to ensure the sustainable growth and development of the Indian shipping industry. In recent years the shipping industry has faced various difficulties: an increased workload on crew, a higher risk of incidents, and insolvency arising from weak demand and overcapacity, including insolvency proceedings against shipping companies. Notable insolvency cases include the *Dragon Pearl*,[6] *Sanko Steamship*,[7] *STX Pan Ocean*[8] and *Hanjin Shipping*.[9] The Indian shipping industry faces challenges similar to those of the global industry: many enterprises are under insolvency proceedings, and these involve complex legal issues concerning secured creditors and cross-border elements.

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[2] ECONOMIC ADVISORY COUNCIL TO THE PRIME MINISTER, GOVERNMENT OF INDIA, *India's Blue Economy: A Draft Policy Framework* (New Delhi, September 2020), https://incois.gov.in/documents/Blue_Economy_policy.pdf (accessed 18 February 2025).

[3] INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY, *Report of the Committee on Development of Avenues for Ship Acquisition, Financing and Leasing (SAFAL) from IFSC in India* (2021), https://www.ifsca.gov.in/Document/ReportandPublication/safal-report-final-2021-10-28-signed-live1212112021032138.pdf (accessed 18 February 2025).

[4] Master Shipyard Private Limited, Kochi, https://lots-ship.com/master_shipyard_private_limited_kochi.php; Tebma Shipyards Limited, https://www.sebi.gov.in/sebi_data/attachdocs/1291290024891.pdf (both accessed 18 February 2025).

[5] Ole Boger, *The Case for a New Protocol to the Cape Town Convention Covering Security over Ships*, COMITE MARITIME INTERNATIONAL, https://comitemaritime.org/wp-content/uploads/2018/11/Annex-4-1.pdf (accessed 18 February 2025).

[6] *King (Trustee), in the matter of Zetta Jet Pte Ltd v. Linkage Access Ltd* [2018] FCA 1979 (Federal Court of Australia), concerning the yacht *Dragon Pearl*, https://www.uncitral.org/docs/clout/AUS/AUS_111218_FT.pdf (accessed 18 February 2025).

[7] *Sanko Steamship Co. Ltd. v. United States*, No. 98-1667 MMC (Docket No. 91) (N.D. Cal. 12 August 2002), http://www.admiraltylawguide.com/circt/9thsanko.pdf (accessed 18 February 2025).

[8] *Yu v. STX Pan Ocean Co Ltd (South Korea), in the matter of STX Pan Ocean Co Ltd (receivers appointed in South Korea)* (2013) 223 FCR 189, [2013] FCA 680, [39] (Buchanan J), https://www.uncitral.org/clout/clout/data/aus/clout_case_1333_leg-3156.html (accessed 18 February 2025).

[9] *In re Hanjin Shipping Co. Ltd.*, No. 16-27041 (JKS) (Bankr. D.N.J. 6 September 2016) [Dkt. No. 22]; *In re Hanjin Shipping Co. Ltd.*, No. 16-27041 (JKS) (Bankr. D.N.J. 9 September 2016) [Dkt. No. 102], https://www.njb.uscourts.gov/sites/njb/files/hanjin.pdf (accessed 18 February 2025).

II. Insolvency in the Shipping Industry

The ocean has been an indispensable artery for human civilisation, connecting distant shores and facilitating the exchange of goods, and maritime transport has played a pivotal role in shaping the course of human history.[10] The rise of globalisation has exponentially increased reliance on seaborne trade, transforming it into the backbone of the modern global economy.[11] Maritime transport therefore performs an indispensable role in the modern globalised economy.[12] The global shipping industry has witnessed a period of unprecedented disruption in recent years and currently navigates a complex and challenging landscape. The number of insolvency cases against shipping companies has grown, which indicates a growing inability of these companies to meet their financial obligations, such as debt repayments and operational expenses.

III. International Conventions on Maritime Claims and Creditors' Rights

No single international convention governs security interests over ships. There is an urgent need for a comprehensive assessment of the underlying factors contributing to the financial hardships of the sector. It requires a proactive approach to the challenges faced by the Indian shipping industry, including the implementation of reforms to enhance the sector's resilience, competitiveness, and long-term sustainability. International conventions contribute to a more harmonised and efficient international legal framework for maritime liens and mortgages, and thereby promote the smooth and efficient flow of maritime commerce. These conventions have significant implications for maritime insolvency proceedings. They establish priorities through a hierarchy of maritime liens and mortgages, and so determine the order in which creditors are paid in the event of a shipowner's insolvency. This ensures a fair and equitable distribution of assets among creditors. They facilitate cross-border enforcement and promote the international recognition and enforcement of maritime liens and mortgages, which assists the recovery of debts across national borders. They also enhance legal certainty: by providing a uniform legal framework they reduce legal uncertainty and complexity, making it easier for businesses to engage in maritime trade and investment. The Brussels Convention primarily focuses on the

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[10] World Ocean Review, *Living with the Oceans: A Report on the State of the World's Oceans* (2010), https://worldoceanreview.com/wp-content/downloads/wor1/WOR1_en.pdf (accessed 18 February 2025).

[11] OECD, *Global Value Chains and the Shipbuilding Industry* (Working Paper), https://www.oecd.org/en/publications/global-value-chains-and-the-shipbuilding-industry_7e94709a-en.html (accessed 22 April 2025).

[12] International Chamber of Shipping, *Shipping Is Complex: Shaping the Future of Shipping*, https://www.ics-shipping.org/resource/shipping-is-complex-animation/ (accessed 22 April 2025).

arrest of seagoing ships to secure claims arising from maritime claims. It provides a framework for the arrest of vessels within the jurisdiction of a contracting state to ensure the availability of assets to satisfy potential judgments. This convention plays a crucial role in enabling creditors to secure their interests and facilitates the enforcement of maritime claims.[13] The Geneva Convention on Arrest of Ships, 1999 seeks to improve the efficiency and predictability of ship arrest procedures while ensuring the protection of the rights of all parties concerned.[14] The Convention on the Registration of Inland Navigation Vessels, 1965[15] focuses on consistent registration of inland vessels for various purposes, including determining ownership, establishing clear title to the vessel, facilitating maritime liens and mortgages, enabling the creation and enforcement of security interests over the vessel, and improving safety and security by ensuring proper identification and tracking of vessels. The UNCITRAL Legislative Guide on Secured Transactions (2007) and the UNCITRAL Model Law on Secured Transactions (2016)[16] provide guidance on the general principles of secured transactions, including issues such as perfection, priority, and enforcement. These principles can be adapted and applied to secured transactions involving inland vessels. The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes, while not specifically tailored to the maritime sector, offer valuable guidance for developing effective insolvency frameworks for entities involved in inland navigation.[17] The International Institute for the Unification of Private Law (UNIDROIT) has undertaken work to enhance the efficiency and predictability of enforcement procedures, thereby promoting greater legal certainty and facilitating secured transactions in the inland navigation sector.[18] The Cape Town Convention on International Interests in Mobile Equipment, while not directly applicable to ships, governs the enforcement of security interests in certain types of mobile equipment, such as aircraft and railway rolling stock, and has significantly

[13] *International Convention Relating to the Arrest of Sea-Going Ships*, signed at Brussels, 10 May 1952, https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801338ba&clang=_en (accessed 20 February 2025).

[14] *International Convention on Arrest of Ships, 1999*, Geneva, 12 March 1999, https://treaties.un.org/doc/Treaties/1999/03/19990312%2009-14%20AM/Ch_XII_8p.pdf (accessed 20 February 2025).

[15] *Convention on the Registration of Inland Navigation Vessels* (with annexed protocols), concluded at Geneva, 25 January 1965, https://treaties.un.org/doc/Publication/UNTS/Volume%201281/volume-1281-I-21114-English.pdf (accessed 20 February 2025).

[16] *Model Law on Secured Transactions*, EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, Japan-Europe Cooperation Fund and U.K. Know How Fund (2004), https://www.ebrd.com/documents/comms-and-bis/pdf-model-law-on-secured-transactions.pdf (accessed 20 February 2025).

[17] WORLD BANK, *Principles for Effective Insolvency and Creditor/Debtor Regimes*, https://openknowledge.worldbank.org/server/api/core/bitstreams/3824fe8e-edb3-5f9b-aa28-f5afc759e562/content (accessed 20 February 2025).

[18] UNIDROIT, Study LXXII A, *Model Law in the General Field of Secured Transactions* (1994), https://www.unidroit.org/studies/security-interests/ (accessed 20 February 2025).

facilitated cross-border financing and leasing of these assets.[19] This gap in coverage presents an opportunity for further development of international legal frameworks to facilitate secured transactions in the maritime sector.

IV. Legal Framework on Corporate Insolvency Resolution in India

The Insolvency and Bankruptcy Code, 2016 (IBC) is a landmark legislation in India. It aims to create a time-bound and efficient framework for resolving insolvency and bankruptcy matters.[20] The Code is crucial for a healthy market economy: by improving credit flow and facilitating timely debt recovery, it encourages lending and promotes a vibrant credit market. It also provides a mechanism for viable businesses to restructure their debts and continue operations, preventing unnecessary liquidation. Its focus on maximising asset value ensures that creditors receive a fair return, while also potentially enabling the revival of valuable businesses, and the framework enhances investor confidence by minimising the risks associated with lending and investing in the Indian market. The corporate insolvency resolution process (CIRP) follows a two-phase approach: (a) successful resolution, or (b) liquidation.[21] Section 14 of the Code imposes a moratorium on certain actions against the corporate debtor during the CIRP. The moratorium remains in effect until the completion of the CIRP or until the approval of a resolution plan or a liquidation order. The moratorium does not suspend or terminate licences, permits, or similar grants required for the continued operation of the corporate debtor, and it ensures the continued supply of essential goods or services during the moratorium period. The Code outlines the order of priority for the distribution of assets realised during the liquidation process.[22] This ensures a fair and equitable distribution among creditors, with certain classes of creditors receiving priority over others.[23] The courts have affirmed the priority of secured creditors in the distribution of assets and their right to recover their dues before other creditors.[24] They have also clarified the position of secured creditors, the order of priority, and the importance of protecting their interests.[25] The Code explicitly bars civil courts from

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[19] *Cape Town Convention and Protocol*, ICAO, https://www.icao.int/sustainability/Pages/Capetown-Convention.aspx (accessed 20 February 2025).

[20] Mamata Biswal, Yearbook on Insolvency and Bankruptcy Law: Principles, Cases and Analysis, vol. 2 (joint publication of GNLU and IBBI) 4.

[21] Insolvency and Bankruptcy Board of India and International Finance Corporation, Understanding the IBC: Key Jurisprudence and Practical Considerations, A Handbook 12.

[22] *State Tax Officer v. Rainbow Papers Ltd.*, Civil Appeal No. 2568 of 2020 (decided along with Civil Appeal No. 1661 of 2020), judgment dated 6 September 2022; 2022 Live Law (SC) 743.

[23] Insolvency and Bankruptcy Code, 2016, s. 53.

[24] *Sanjay Kumar Agarwal v. State Tax Officer*, Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020, https://ibbi.gov.in/uploads/order/62d1e9fc9718615f013ffdc1ac7b0e46.pdf (accessed 9 April 2025).

[25] *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni*, https://digiscr.sci.gov.in/html_view?dir=YWRtaW4vanVkZ2VtZW50X2ZpbGUvZWJvb2tzLzIwMjQvdm9sW1lIDIvUGFydCBJLzIwMjQyMjU4Mjg3MTcwNzk5NTM4Ni5odG1s&judgment_id=MzcwODA= (accessed 9 April 2025).

exercising jurisdiction over matters that fall within its purview. This aims to streamline insolvency proceedings and prevent delays caused by parallel proceedings in different courts.[26] The Code has overriding effect over any other law inconsistent with it, which ensures that the Code takes precedence in matters relating to insolvency and bankruptcy and promotes uniformity and consistency in the application of insolvency laws.[27] The jurisdiction of the adjudicating authority under the IBC is limited to matters specifically covered by the Code. This ensures that the authority focuses on its core functions and avoids unnecessary interference in other areas of law. These judicial pronouncements and jurisdictional considerations play a crucial role in shaping the interpretation and application of the IBC, and in ensuring that the Code is effectively implemented and that the interests of all stakeholders are adequately protected.

V. Reconciliation between Maritime and Insolvency Laws: Global Status

The reconciliation of maritime and insolvency law presents a significant challenge. These two distinct bodies of law often have conflicting objectives and approaches.[28] Maritime law, with its emphasis on speedy remedies and the protection of maritime liens, can clash with the centralised and collective approach of insolvency law, which aims to maximise the value of a debtor's estate for all creditors. Understanding and resolving these conflicts is crucial for the smooth functioning of the global maritime industry. It ensures legal certainty, protects the rights of all stakeholders, and facilitates efficient and equitable resolutions in cases involving insolvent shipping companies. Insolvency law generally seeks to centralise the resolution of a debtor's financial affairs within a single forum, aiming for a comprehensive and coordinated approach. In contrast, maritime law, with its emphasis on swift remedies, often allows for multiple proceedings in different jurisdictions, potentially leading to fragmentation and conflicting outcomes. Maritime law provides for specific security mechanisms, such as the arrest of ships, to secure maritime claims.[29] This can create conflicts with the broader objectives of insolvency law, which may seek to protect the value of all the debtor's assets for the benefit of all creditors. Maritime claimants often face time pressures and must act swiftly to arrest vessels to secure

[26] INSOLVENCY AND BANKRUPTCY BOARD OF INDIA, https://ibbi.gov.in/uploads/whatsnew/72a560ce5697bbaeef62ce5893a3f1ad.pdf (accessed 21 April 2025).
[27] Insolvency and Bankruptcy Code, 2016, s. 238.
[28] Victor Hugo Chacon, *Reconsidering the Law on Maritime Liens for Bunker Suppliers' Claims*, NUS Centre for Maritime Law Working Paper 22/01 (2022), https://law.nus.edu.sg/cml/wp-content/uploads/sites/8/2022/01/CML-WPS-2201.pdf.
[29] *Chan Siew Lee Jannie v. Australia and New Zealand Banking Group Ltd* [2016] 3 SLR 239, [2016] SGCA 23, https://www.elitigation.sg/gd/s/2016_SGCA_23 (accessed 21 April 2025).

their claims. This can lead claimants to initiate proceedings in multiple jurisdictions, potentially creating a race to the courthouse and increasing the complexity of the situation.[30] The possibility of forum shopping, where claimants choose jurisdictions with favourable laws or procedures, can further exacerbate the issue of multiple proceedings, leading to inconsistent outcomes and increased costs for all parties involved.[31] Insolvency law generally favours a collectivist approach, in which all assets of the debtor are pooled together for the benefit of all creditors. This can conflict with the individualistic approach often taken in maritime law, where individual claimants may pursue their own remedies through separate proceedings.[32] Maritime liens, particularly those arising from salvage, towage, and other maritime services, can be considered "invisible encumbrances". They may not always be readily apparent to third parties, such as purchasers of vessels or lenders. The "equity rule", which generally protects bona fide purchasers without notice from prior unknown encumbrances, may conflict with the recognition of maritime liens. This can create uncertainty and disputes regarding the priority of claims. The recognition and enforcement of maritime liens can vary significantly across different jurisdictions, further complicating the issue and creating potential conflicts in cross-border situations. Shipping companies often adopt a structure in which each vessel is owned by a separate legal entity (a "one-ship company"). This structure can create complexities in insolvency proceedings, as each vessel may be subject to separate insolvency proceedings in different jurisdictions. While a centralised administration of the insolvency of a group of related vessels would be ideal for restructuring purposes, it may be difficult to achieve in practice because of the complexities of coordinating multiple insolvency proceedings across different jurisdictions.

VI. Recognition of Foreign Insolvency Proceedings and Arrest of Ships

Article 20(1) of the UNCITRAL Model Law on Cross-Border Insolvency provides for an automatic stay of legal actions against the debtor's assets upon the recognition of foreign main insolvency proceedings. The application and interpretation of this automatic stay can vary significantly across jurisdictions. Some jurisdictions may provide broader exemptions for certain types of claims, such as maritime liens, while others may afford greater protection to the rights of secured creditors. The Enterprise Bankruptcy Law of 2006 (EBL) governs corporate

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[30] Martin Davies, *Cross-Border Insolvency and Admiralty: A Middle Path of Reciprocal Comity*, in MELIS OZDEL (ED.), COMMERCIAL MARITIME LAW.
[31] Anthony J. Casey, Aurelio Gurrea-Martinez and Robert K. Rasmussen, *A Commitment Rule for Insolvency Forum* (April 2024).
[32] Aurelio Gurrea-Martinez, *Insolvency Law in Emerging Markets*, Working Paper 3/2020.

insolvency in China. Maritime claims are categorised there into maritime lien claims, ship mortgage claims, and other general maritime claims. Conflicts have arisen between maritime courts and bankruptcy courts regarding jurisdiction over maritime claims in insolvency proceedings.[33] Cases such as those concerning STX (Dalian),[34] Jiangsu Sainty Marine Co. Ltd[35] and *In re Qinzhou Guiqin Shipping Group Co* have highlighted the complexities of reconciling maritime and insolvency law in China. The Corporations Act 2001 governs corporate insolvency in Australia, while the Admiralty Act 1988 provides the framework for maritime claims. The Cross-Border Insolvency Act 2008 (CBIA) provides for the recognition of, and assistance to, foreign insolvency proceedings in Australia. Jurisdictional conflicts can arise between courts dealing with maritime claims and those overseeing insolvency proceedings.[36]

Chapter 15 of the US Bankruptcy Code adopts the UNCITRAL Model Law, providing for the recognition and enforcement of foreign main insolvency proceedings.[37] Upon recognition of a foreign main proceeding, an automatic stay is issued against all actions against the debtor's assets. Section 362(a)(5) of the US Bankruptcy Code specifically addresses liens, providing for an automatic stay against "any act to create, perfect, or enforce any lien against the property of the debtor". Secured creditors may seek leave from the bankruptcy court to enforce their liens.[38] While the automatic stay generally applies, maritime liens are often treated as sacrosanct and may receive greater protection. Section 363 of the Bankruptcy Code allows the court to sell the debtor's property free and clear of all liens, although this power is subject to certain limitations and safeguards.[39] Admiralty law in the United States continues to permit maritime attachment and vessel arrest actions, which can sometimes create tension with the broader objectives of insolvency law.[40]

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[33] Jingchen Xu, *Maritime Cross-Border Insolvency in China*, NUS Law Working Paper No. 2019/013, NUS Centre for Maritime Law Working Paper 19/04.

[34] *STX (Dalian) Shipbuilding Co. Ltd*, Case No. COMP/M.4956, STX/Aker Yards, European Commission decision of 5 May 2008, https://ec.europa.eu/competition/mergers/cases/decisions/m4956_20080505_20682_en.pdf (accessed 22 April 2025).

[35] *Jiangsu Guoxin Corporation Ltd (formerly Sainty Marine Corporation Ltd) v. Precious Shipping Public Co. Ltd* [2020] EWHC 1030 (Comm), https://vlex.co.uk/vid/jiangsu-guoxin-corporation-ltd-844194718 (accessed 22 April 2024).

[36] Julie Soars, *Cross-Border Insolvency and Shipping: A Practical Guide* (7 Wentworth Selborne Chambers, Sydney, 2015), https://www.fedcourt.gov.au/law-and-practice/national-practice-areas/admiralty/admiralty-papers/julie-soars-2015 (accessed 22 April 2025).

[37] 11 U.S.C. s. 1520(a)(1); 11 U.S.C. s. 362(a)(5).

[38] 11 U.S.C. s. 362 (Title 11, ch. 3, subch. IV).

[39] Aram Movaseghi, *A Bankruptcy Court May Not Sell a Vessel Free and Clear of a Maritime Lien When a District Court Has Jurisdiction*, AMERICAN BANKRUPTCY INSTITUTE, https://www.abi.org/member-resources/blog/a-bankruptcy-court-may-not-sell-a-vessel-free-and-clear-of-a-maritime-lien (accessed 24 July 2026); Evan F. Rosen, *A New Approach to Section 363(f)(3)*, 109 MICH. L. REV. 1529 (2011).

[40] 11 U.S.C. ss. 362(d), 1520, https://www.law.cornell.edu/uscode/text/11/362 (accessed 22 April 2025).

These two areas of law collided on a global scale in the case of *Hanjin Shipping Company Limited*. Considering the unique nature of the conflicting interests between insolvency debtors and maritime lien holders, the court held that the automatic stay order did not prejudice maritime liens.[41] The Australian court appears to be more willing to protect a debtor's owned and operated vessels from arrest, so as to further the objective of foreign rehabilitation proceedings.[42] The maritime lien holders in the United States opposed the relief sought, arguing that maritime lien rights under United States law were far superior to those under Korean law. The court, however, did not accept the proposition that maritime lien claimants were in a better position in respect of supplies furnished in the United States. The court refused to grant relief by way of exceptions to maritime lien claimants and held that nothing in United States public policy would justify allowing the claimants to arrest Hanjin's vessels.[43] The case nevertheless indicates that United States courts allow some leeway in granting relief in respect of a pre-existing vessel arrest, by recognising the claims as secured claims.

VII. Reconciliation of Maritime and Insolvency Laws in India

Prior to the enactment of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, admiralty jurisdiction in India was governed by a patchwork of laws. An early enactment provided a framework for admiralty jurisdiction in India.[44] Further legislation developed admiralty jurisdiction within the colonial context.[45] Other instruments granted certain powers to High Courts in India, including admiralty jurisdiction.[46] The resulting legal framework for admiralty jurisdiction in India was fragmented and lacked a comprehensive and modern approach. The Supreme Court, in *M.V. Elisabeth*,[47] expressed concern about the gaps and inconsistencies in the existing legal framework for admiralty jurisdiction. The Law Commission of India, in its report on admiralty jurisdiction, recognised the need for a comprehensive and modern admiralty law to address the evolving needs of the maritime sector.[48] The courts have

[41] UNCITRAL Model Law on Cross-Border Insolvency, art. 20(2).
[42] Justice Steven Rares, *Admiralty Law: The Flying Dutchman of Cross-Border Insolvency*, [2009] FedJSchol 22, https://classic.austlii.edu.au/au/journals/FedJSchol/2009/22.html (accessed 22 April 2025).
[43] *In re Hanjin Shipping Co. Ltd.*, No. 16-27041 (JKS) (Bankr. D.N.J. 20 September 2016); Jay M. Goffman, *Hanjin Is a Cautionary Tale for Distressed Investors*, Skadden, Arps, Slate, Meagher and Flom LLP (February 2017), https://www.skadden.com/-/media/files/publications/2017/02/hanjinisacautionarytalefordistressedinvestors.pdf (accessed 24 July 2026).
[44] The Admiralty Court Act, 1861.
[45] The Colonial Courts of Admiralty Act, 1890 and the Colonial Courts of Admiralty (India) Act, 1891.
[46] The Letters Patent, 1865.
[47] *M.V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd.*, 1993 Supp (2) SCC 433; AIR 1993 SC 1014; [1992] 1 SCR 1003; JT 1992 (2) SC 65; 1992 (1) SCALE 490 (Supreme Court of India, 26 February 1992), https://cmlcmidatabase.org/mv-elisabeth-v-harwan-investment-trading-pvt-ltd (accessed 11 April 2025).
[48] Law Commission of India, *151st Report on Admiralty Jurisdiction* (1994), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080812-3.pdf

also considered the application of a lien under the Merchant Shipping Act, 1958, highlighting the interplay between maritime liens and other relevant legislation,[49] and the relationship between admiralty jurisdiction and winding-up proceedings, addressing potential conflicts between these two legal regimes.[50] The latter judgment dealt with the issue of claimants' charges over vessels and provides important insights into the recognition and enforcement of maritime liens in Indian law. These judicial precedents, while providing valuable guidance, often lacked clarity and consistency because of the fragmented nature of the pre-existing legal framework.

The Code and the Admiralty Act aimed to streamline maritime and insolvency proceedings. However, certain issues persist. The primary question the court addressed in *Raj Shipping Agencies v. Barge Madhwa*[51] was whether there is a conflict between actions *in rem* under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and the provisions of the Insolvency and Bankruptcy Code, 2016 and, if so, how that conflict is to be resolved. The case is a landmark judgment in Indian jurisprudence that significantly clarified the interplay between the two statutes. The Court emphasised the need for a harmonious interpretation of the IBC and the Admiralty Act, recognising that both statutes are crucial for the smooth functioning of the maritime sector. It held that an action *in rem* against a ship is not an action against the corporate debtor under the IBC. This distinction is crucial because the moratorium provisions of the IBC generally prohibit actions against the corporate debtor. The court reaffirmed the principle that maritime liens, recognised and enforceable under the Admiralty Act, enjoy a higher priority than general creditor claims in insolvency proceedings. This recognises the unique nature of maritime liens and their crucial role in securing claims arising from maritime activities. The Court also expressed concern over the potential for ships to be abandoned during insolvency proceedings for want of maintenance, and underlined the importance of ensuring the continued operation and maintenance of vessels, even during insolvency, to protect the interests of all stakeholders. The *Raj Shipping Agencies* judgment established the principle that actions *in rem* under the Admiralty Act can proceed concurrently with insolvency proceedings under the IBC. This allows maritime lien holders to pursue their remedies through the admiralty courts while the insolvency resolution process for the corporate debtor unfolds. The judgment reinforces the priority of maritime liens over general creditor claims, providing greater certainty and

(accessed 11 April 2025).

[49] *Konavalov v. Commander, Coast Guard Region*, (2006) 4 SCC 620; JT 2006 (3) SC 567; 2006 (3) SCALE 398; 2006 (2) CTC 672, https://cmlcmidatabase.org/konavalov-v-commander-coast-guard-region (accessed 11 April 2025).

[50] *Shanmugam Rajasekar v. Owners and Parties Interested in the Vessel M.T. Pratibha Cauvery*, C.S. No. 89 of 2013 and connected applications, and W.P. No. 3568 of 2013 (Madras High Court, 28 April 2023), https://indiankanoon.org/doc/193835168/ (accessed 11 April 2025).

[51] *Raj Shipping Agencies v. Barge Madhwa*, 2020 SCC OnLine Bom 651 (Bombay High Court, 19 May 2020).

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predictability for maritime lien holders. The Court's emphasis on ship maintenance underscores the importance of keeping vessels operational and maintained, even during insolvency proceedings, to protect the interests of all stakeholders, including creditors, employees, and the environment.

VIII. CONCLUSION

Reconciling maritime and insolvency laws presents a significant challenge, particularly in an increasingly interconnected globalised world. The inherent differences in their objectives, with maritime law prioritising swift remedies for individual claims and insolvency law focusing on the collective interests of all creditors, often lead to conflict and complexity. Maritime law emphasises swift action to protect individual claims, while insolvency law adopts a broader, more collective approach to resolving financial distress. The *Hanjin Shipping* case serves as a stark reminder of the global impact of these conflicting priorities. When that shipping company faced financial difficulties, the lack of clear and consistent international rules led to disorder, with vessels stranded and cargo delayed, causing significant disruption to global trade. India has taken important steps towards addressing these challenges with the enactment of the Insolvency and Bankruptcy Code, 2016 and the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. The *Raj Shipping Agencies* judgment provides valuable guidance on how these laws should interact, emphasising the need to balance the rights of maritime lien holders with the broader goals of insolvency resolution. However, the journey towards a truly harmonious coexistence between these two areas of law is ongoing. Continued effort is crucial, including work with other countries to develop more consistent international standards for resolving maritime insolvencies; better communication and cooperation between courts, legal professionals, and stakeholders to ensure smoother and more efficient resolutions; the use of technology to streamline processes, improve information sharing, and enhance transparency in maritime insolvency proceedings; and regular review and updating of laws and regulations to address emerging challenges and ensure that they remain fit for purpose in the ever-evolving maritime landscape. By working together and embracing these steps, a legal framework can be built that supports a thriving maritime industry while ensuring fairness and equity for all stakeholders.

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