Callidus News

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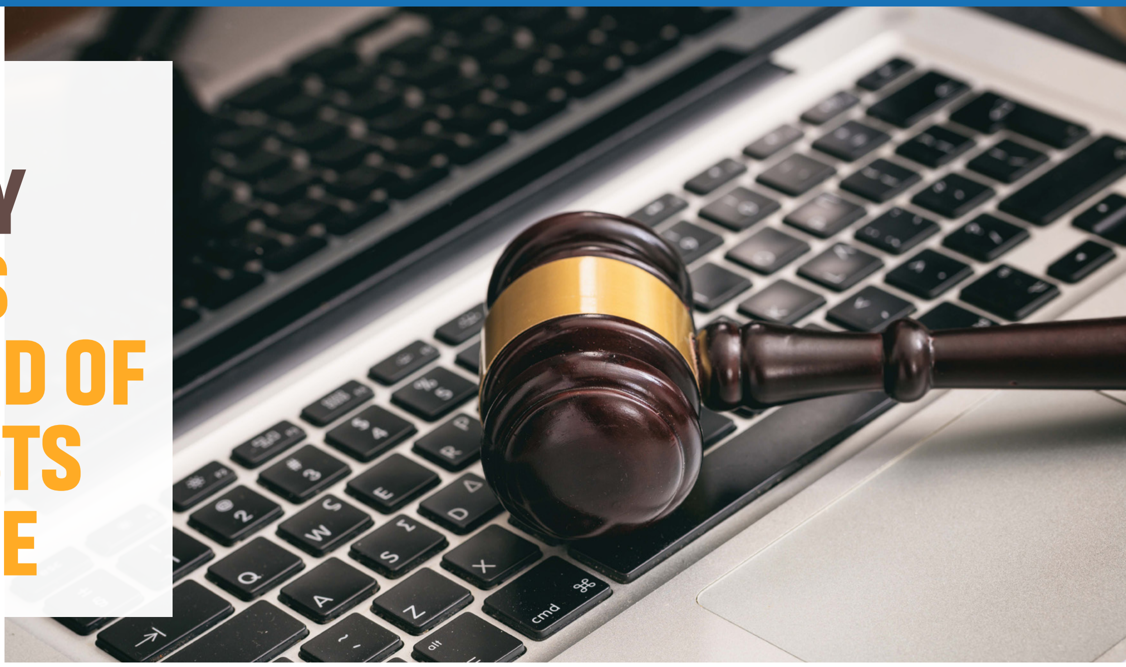
VIRTUAL ADMIRALTY CASE: SETS THE RECORD OF MANY FIRSTS IN ITS NAME



Last year 2020 not only accelerated the concept of "Work from Home" but also helped to realize that even the Civil Court Proceedings can also be done virtually. With the pandemic, the Court proceedings had to switch completely to virtual hearings, without any Judges, Lawyers or the Parties to the suit, from being personally present in the court room. Many countries even introduced new regulations or rules to regulate remote hearing and in the midst of all this chaos, the year 2020 also marked its first virtual admiralty case and interestingly, its hearing took place by a telephone as a result of the COVID crisis.

In the case, Qatar National Bank (QPSC) vs. The Owners of the Yacht "Force India" (No. 2) [2020] EWHC 719 (Admlty), the claimant bank had a mortgage over the Yacht following a default under an underlying loan agreement and even obtained a judgment for the sale of the yacht in the Admiralty Court for the sums secured by the mortgages. Interestingly the unusual arrangement in this case was that the mortgage was not in place to secure a loan taken out by the owner of the yacht, instead the loan was taken out by a related company to finance a property purchase in the South of France and the Yacht was mortgaged as the additional security in relation to that property purchase.

However, following the Order made by the Admiralty Court for the sale of the Yacht, the claimant bank applied to the Court, to have the order for sale, set aside, on the final day for bids to be received. The Court declined this request instead gave some time to enable a hearing to take place, allowing the Court to consider the arguments of all the interested parties. The Order was set aside on the basis that a third party had paid the sum secured by the Mortgage, and so the judicial sale of the Vessel was no longer required. Where the sum secured by the Mortgage has in effect been paid by a third party, the judicial sale of the Vessel was no longer required.

THOUGHT for the MONTH

"Education is not the learning of facts, but the training of the Mind to think".

ALBERT EINSTEIN

Callidus

Under English Law, there are no specific rules as to how the sale should be organised. In most of the judicial sales, the Marshal invites the potential purchasers to send a written tenders that usually include the name of the bidder, its agents and the bid validity period and the person / company who submits the highest bid above the appraised value purchases the ship. After the highest bid has paid the purchase price into the Court, the person/company shall sign the conditions of sale and subsequently the Marshall will deliver the ship and the documents along with its certificates to the new buyer. This being the normal procedure of "Judicial Sale of the Vessel" the Court also emphasized that this setting aside of sale should certainly not become a practice because if it becomes a practice, then those willing to incur the time and expense involved in making a bid for a vessel ordered to be sold, might feel disinclined to do so and this might lead to Vessels being sold for a value less than that of its Market Value, which might tarnish the reputation of the Court.

Mr Justice Teare concluded the judgment of the aforementioned case to be "Special and Perhaps Exceptional" as it was a rare incident where an independent third party would discharge the judgment debt and so render the sale unnecessary and that is what happened in this case.

Though there are few instances where application being made to set aside a sale, the Marshall and his Agents, in relation to this case, has commented that in their 40 years of association with the court for conducting judicial sale of vessels, they have never known such an application being made to halt a sale at such a late stage and the only reported instance appears to be almost sixty years old.

FROM CSR TO ESG AND BEYOND

A couple of year ago, the concept of Corporate Social Responsibility [CSR] gained ground as consumers and investors sought after socially conscious and accountable entities to do associate with. ESG [Environmental, Social and Governance], is the recent progression of the intentions behind CSR, which provides a framework for greater transparency, greater efforts and greater good, undertaken by Companies, in relation to sustainable and socially responsible practices. The ESG analysis and reporting can provide valuable insights and act as a tool or platform, for stakeholders to make sound investment choices and decisions.

Though ESG reporting is voluntary in most countries, there is a surging global trend to regularise corporate ESG data reporting. In India SEBI vide its circular dated 10th May 2021 revolutionised the ESG reporting standards, with the view that benefits, which are an outcome of business, should be shared amongst all the Stakeholders and not be limited to the Shareholders; Business Responsibility and Sustainability Reporting Framework [BRSR], brought in via this circular sought to replace the decade old Business Responsibility Reporting [BRR]. When BRR was initially introduced in 2012, it was limited to the top 100 listed companies, which was amended and revised over the years, bringing within its scope the top 1000 companies by 2019. In 2018 a BRR Committee was formed by the Ministry of Corporate Affairs [MCA] to review and recommend changes in the existing framework. The Committee recommended a shift in reporting standards and suggested the replacement of BRR with BRSR.

The BRSR reporting is essential, in examining the ESG, as it factors in various standards and global principles formulated under National Guidelines on Responsible Business Conduct [NGRBC]; which are globally endorsed by the Paris Agreement, ILO Core Conventions, UN Guiding Principles on Business and Human Rights and UN Sustainable Development Goals. Currently the BRSR reporting has been made voluntary for the Financial Year 2021-22, limiting its reach to the top 1000 listed Companies, but it will be made mandatory for the subsequent years, with plans to loop in all companies and LLPs within the next 5 years. The BRSR Lite has also been introduced on a voluntary basis to the non-listed Companies in order to encourage sustainability reporting.

Understanding the concept behind ESG

Environmental: In line with Principles 2 and 6 under the NGRBC, businesses should take steps to protect and preserve the environment; this provides a bench mark on how companies use energy and manage their environmental impacts. Factors considered are energy efficiency, climate change, carbon emissions, biodiversity, air pollution/ emission and water quality and usage, impact on Biodiversity, deforestation, and waste management sustainable sourcing etc. Companies that do not consider these environmental risks may face unforeseen financial risks and investor scrutiny.

Social: It examines how a Company nurtures its employees and culture, and its effects on the community as a whole. In this regard BSRS has laid down extensive reporting requirements on the well-being of employees include quantifying gender and social diversity indicators, health, welfare and safety management, proper training, fair and equitable wages etc. It further provides for reports on Product Labelling, Product Recalls, Consumer complaints, data privacy, cyber security etc., in relation to the consumers. Responsibility of a business towards society is a guiding principle listed under the UN Guiding Principles of Business and Human Rights. These disclosures are in line with Principles 3, 4, 5, 8, and 9 of the NGRBC.

Governance: This focuses on a Company's internal system of controls, practices, and procedures, its checks on violations. The BSRS basis its reporting requirements on the principle that Businesses should Conduct and Govern themselves with integrity in a manner that is Ethical, Transparent and Accountable. It mandates disclosures on the Company's Anti-corruption or Anti-bribery policies and details of any action initiated by the authority against the business for following anti-competitive practices which are also in line with Principles 1 and 7 of the NGRBC; company's leadership, board composition, executive compensation, audit committee structure, internal controls, and shareholder rights, etc.

Globally Recognised ESG Reporting Standards

When it comes to ESG Reporting Standards, the below are globally accepted for proper disclosure, performance and guidance.

CDP Driving Sustainable Economies: It is applicable across all industries but primarily focuses on Greenhouse gas emissions [GHG emissions], water and forest concerns. Disclosure and performances are scored on a 100-point scale. It is the largest repository of corporate GHG emissions which in turn helps manage risks and provides insight on opportunities on various inclusive development aspects.

DOW Jones Sustainability Indexes: It applies to investors, as it lays down an equal balance of all ESG components. Investors are ranked against peers on a 100-point scale, to ascertain their total sustainability score. It is regarded as one of the most credible sustainability ratings as it brings forth industry specific and simplistic disclosures.

Global Reporting Initiative: It is applicable across industry that enables reporting standards, in line with ESG and CSR principles. The primary resolve is to promote transparency & accountability and hence, does not follow a defined scoring method. It is the official reporting standard of the UN Global Compact, with its incomparable focus on ESG components and principles.

Global Real Estate Sustainability Benchmark: It is relevant to the global commercial real estate sector, with its standards centred on ESG principles. The responses are evaluated out of approximately 140.5 points. Since it is real estate centric, it serves as a barometer for sustainability performance.

Sustainability Accounting Standards Board: It is followed by US public companies as it lays down Industry specific issues of substantial relevance to investors. It facilitates a standardised reporting system as part of the annual filing. It facilitates financially material information on sustainability and identifies ESG issues to financial performance across several industries.

Countries Following Mandatory Sustainable Reporting

In UK, businesses are mandated full disclosure of annual GHG emissions, social and gender diversity of employees, practices adopted for the protection of human rights etc under the Companies Act (Strategic and Directors Report) Regulations 2013. Further, businesses having a premium listing of equity shares have to mandatorily report on the practices adopted for the application of Corporate Governance principles under the Corporate Governance Code 2012.

In the United States, the US Securities and Exchange Commission has mandated the disclosure of environmental compliance expenses by all listed companies. Also, New York Stock Exchange has mandated all listed companies to adopt a code for business ethics and make disclosures regarding their practices.

In the European Union, some large companies and public interest companies are mandated to disclose information w.r.t environmental compliances, employee well-being, anti-corruption practices and human rights compliances under the Disclosure of Non-Financial and Diversity Information Directive 2013.

In China, corporations must mandatorily disclose information about environmental compliances i.e., pollution levels, waste generation and management, resource utilisation etc under the Environmental Information Disclosure Act, 2008.

Benefits of imbibing Sustainability Reporting System

Adopting sustainability reporting internally will promote our Nations commitment to climate change, enhanced database which may help identify and review factors affecting ESG Components, it will also increase opportunity to attract and retain talent etc. External factors may include brand building, improved accountability and transparency, promote the ability of a company to generate value and provide the stakeholders with a broader perspective of the company and increased awareness etc.

Conclusion

Globally there has been a considerable increase in ESG reporting in the recent past, with a number of nations integrating their ESG reporting in their annual reporting to demonstrate how sustainability is embedded in their business. In India the change from BRR to BSRS is a welcome change, as it aligns with the Global Reporting Standards. At a time when business entities are called to be transparent, accountable and to have sustainable objectives, a proper reporting system to gauge and manage performance is crucial. With Global investors looking to make ESG based investments this move is a huge step in the right direction. In the coming years, ESG based ranking and decision making would be a global phenomenon and standard to measure any industry or business.

HOT NEWS

SAN MARINO – THE NEWEST LANDLOCKED NATION TO LAUNCH SHIP REGISTRY

The Republic of San Marino has been a member of the International Maritime Organisation (IMO) since 2002. San Marino is the mountainous microstate with a geographical area of 61 sq.kms, surrounded by North Central Italy. This tiny land-locked nation has ratified almost all major maritime international conventions and is now stepping into an active role in the maritime sector, launching the registration of pleasure and commercial vessels to an international audience.

The Maritime Authority of the Republic of San Marino has announced that it shall be partnering with the newest registry to come to the market, the San Marino Ship Register (SMSR). This registry will register the ships, whether VLCCs or yachts and commercially operated vessel of any size to fly the flag of San Marino. The newly appointed San Marino Ship Registry has published the guidelines for the Vessel's registration.

With the headquarters located in San Marino, the registry aims to offer efficient and simple registration solutions which include all digital access to certifications, 24 hour global support and a quality customer service with quick response times

Courtesy: www.seatrade-maritime.com & www.smsr.sm

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