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Unfold Story - MV EVER GIVEN, SUEZ CANAL

Recently, MV Ever Given (hereinafter "the vessel"), a 200,000 MT container ship ran aground and was stuck in the southern part Suez Canal. As a result, the vessel blocked Suez Canal for number of days; in fact, it means that the grounded vessel has blocked 10-12% of the global trade. The vessel was finally salvaged using mud excavators for number of days along with the assistance of powerful tugs. The salvage operation has prevented a need to lighten the vessel by offloading 20,000 containers from the vessel. The vessel, a Panama flagged vessel, can carry 20,000 containers. At present, the vessel is awaiting inspections at Great Bitter Lake (a lake in between Northern and Southern part of the Suez Canal) for signs of any damage to hull and also for collating evidence that could assist the investigators to find the cause of the grounding.

It is vital to note that this is not an isolated incident in Suez Canal. There have been further 75 reported incidents of different magnitude in Suez Canal between 2010 and 2019.

There are many issues that arise out of the incident such as issues about supply chain, increase in price of commodities due to disruption in supplies and effect on supplies of commodities/finished goods in Europe/the US for Easter holidays, need to reorient the existing supply chains, the effects on seafarers that have already been suffering due to COVID-19, potential civil and criminal liabilities of the seafarers that were on-board the vessel, congestion at the subsequent ports after the stuck ships will all head to these ports and so forth.

The **first article** in this series, the author will highlight the impact of the incident on the insurance/re-insurance industry and a few pertinent legal issues that arise out of this maritime incident that has hogged international headlines. The vessel is Japanese-owned and has been chartered by a Taiwanese container line. The vessel can carry 20,000 containers, which usually contains cargoes for multiple destinations for multiple stakeholders. At a later stage, these containers are likely to be carried on rail or road or feeder ships and all stakeholders in the chain have been affected by the incident. The same can be said for cargoes on other vessels as well.

The **first** issue is – who is going to pay for *salvage* operations? Before I answer this question, it is important to appreciate the value of the ship should be around USD 100 million and the vessel must be carrying a cargo of at least USD 500 million. The majority of salvage claims will be paid by the Hull and Machinery Insurers and the salvage remuneration payable to multiple salvors will depend on the duration of salvage operations and to some extent the costs involved in carrying out those salvage operations.

The **second** issue is that this event could even be considered as a *General Average* incident (Master's declaration as such is not required) and this means the costs of salvage and other costs would have to be shared by all parties to the maritime adventure according to the proportion of risk they had in the maritime adventure – ship owner for value of hull, cargo owners for value of cargo in containers, owners of container shells, charterer of the vessel for value fuel on the container ship and any other similar stakeholder(s), whose assets have been salved. The other parties may refuse to share the General Average costs with the Owners of the vessel on the basis of unseaworthiness of the vessel or wilful misconduct of the Owners.

The **third** issue is that of potential *cargo claims* affecting cargo insurers and the subsequent likely numerous litigations by subrogated insurers. Most cargo claims will fall in the category of claims due to the delay in delivery of cargo to the consignees, which in fact would be the pure economic loss. Such delay claims are difficult in practice to claim from the carriers. However, this ship or other vessels could have been carrying perishable cargo and those damages would be classed as physical damage to the cargo and in principle can be recovered. My understanding of facts is that the refrigerated containers on the vessel were not affected. However, perishable cargos on other ships could have been damaged. I also read stories about livestock carriers that were stuck and lack of animal feed for livestock on board those vessels due to the delay affecting them. The situation was ripe for animal rights activists and all sorts of other activists as well! During the delay, the vessels will remain responsible for the care of the cargo on board, and there could be breach of such duty resulting in damage to the cargo. Accordingly, a few litigations would be likely on this basis as well. All such issues will revolve around the relevant facts on the vessels.

The **fourth** issue could be any *pollution* from the vessel, or the tugs that came to salvage the vessel or any ships that were in convoy and were stuck inside the Suez Canal for the days. The P and I Clubs for those vessels will have to deal with those claims, if any.

The **fifth** issue would be a likely claim for huge *damages from Suez Canal Authority* ("SCA"), even though SCA's pilot(s) was on board the vessel at the time of accident. This issue will revolve around the outcomes of future investigation into the causes of the maritime accident. Was there a failure of steering gear on the vessel? Was there a sudden black-out on vessel? Was there a sudden gust of wind creating a 'sail effect" due to containers that were stacked very high on the vessel? Were the Master and crew unable to deal with sudden emergency? Was there a breakdown in communication between the pilot &/or SCA authorities and Master on the vessel? Were the crew and the Master selected appropriately by the ship management company that was in charge of crewing and technical management of the vessel? The answers to these questions could make the charterers and ship management liable for huge damages. On closer study of SCA's rules, it seems the vessel will remain responsible in all scenarios unless it was an accident. My analysis says that vessel was not long inside the Suez Canal, and if the weather was supposed to be not suitable for such kind of vessel, the canal pilot's or authorities should not have allowed the transit for the vessel. This issue is ripe for lots of lengthy arguments for maritime lawyers from both sides.

Another issue would be – whether there was a deviation in the context of the vessels that sought to avoid the blocked Suez Canal and had proceeded to take another route via Cape of Good Hope? Will it be classed as a *deviation* and thus depriving the carrier of their rights to limit their liability for cargo claims? It is my view, that it would not be classed as a deviation as the Owners are also responsible to take the cargo to the destination as soon as possible. However, it will also depend on P and I Clubs' view on the issue.

Other legal issue would be *criminal or civil liability of the crew* on board the vessel. It will be discussed later in the later articles in this series. It is quite possible that they may be detained to put pressure on insurance companies to provide security for the claims.

There are many other potential legal issues but I have discussed here the most pertinent ones at this stage. We all can see that insurance/re-insurance industry already impacted by COVID-19 is going to take another big-hit. The litigation surrounding all the legal issues will take years to conclude. I can only see the only party that is going to benefit by this incident are maritime lawyers.

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