



Guiding Spirit to Shipping Industry

Sagar Sandesh

Maritime Tabloid English Bi - Weekly E - Paper

In association with R L Institute of Nautical Sciences, Madurai, Tamil Nadu. | RNI No. TNENG/2012/41759 | Monday, April 05, 2021 | Voyage 10 Wave 15

**PAGE - 4**

Chief of Defense Staff General Bipin Rawat operationalises.....

**PAGE - 5**

Blue Economy – Wave 70.....

**PAGE - 9**

JNPT handles around 4.7 Million TEUs during

**PAGE - 12**

Baltic index rises as capesize rates hit.....

“Unfold Story - MV EVER GIVEN, SUEZ CANAL” (Part 1)

Dr. (Capt.) Vivek Jain, Barrister (England & Wales), Ph. D (Int. Law) (China), LL.B. (Lon.), LL.M. (Maritime Law, Lon.), B.V.C. (Lon.), MBA (Norway), B.Sc.(N.Sc.)(India), TS Rajendra alumnus



MV Ever Given

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 USD 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 salvaged. 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 subsequently 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



Dr. (Capt.) Vivek Jain

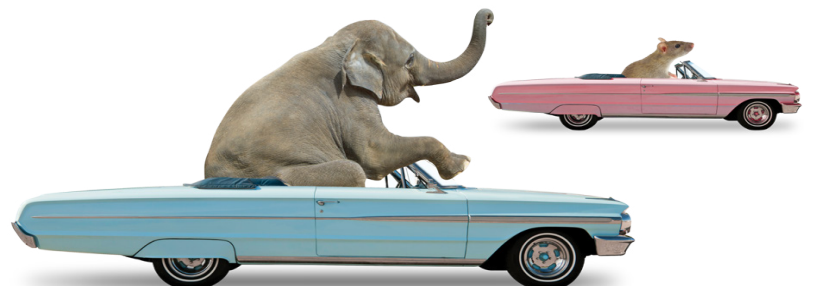
Turn to page -2 >>

One size doesn't fit all

Tailored to your needs

Whether you need some mighty muscle or a gentle touch, you can count on us. Big or small, GAC India's logistics experts have moved everything from super-sized structures to the most delicate parts. Trust us to find the perfect fit for you.

gac.com/india



GAC Shipping (India) Pvt. Ltd.

E: pricing.india@gac.com

T: +91 8369744069

f [fb.com/GACgroup](https://www.facebook.com/GACgroup)

in [linkedin.com/company/gac-group](https://www.linkedin.com/company/gac-group)



Delivering your strategy.

No animals were harmed in the making of this advertisement.

Unfold Story - EVER GIVEN..... From Page : 1

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 sort 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.

Mr.Shankar Shinde,Chairman(Elect)-FFFAI urges for smooth connectivity and logistics infrastructure to strengthen trade among BBIN

In view of tremendous potential of cross border trade between Bangladesh, Bhutan, India and Nepal (BBIN) **Mr. Shankar Shinde, Chairman Elect, the Federation of Freight Forwarders Associations in India (FFFAI)** has recommended for seamless multimodal connectivity and strong logistics infrastructure in each of the above countries.

Speaking at a webinar on 'UN TIR System and its benefits of expansion to Bangladesh and other BBIN countries', which was organised by FICCI in association with IRU Geneva, ICC Bangladesh and FFFAI on March 25, MrShinde observed that accession to TIR Carnet would be immensely beneficial for the hassle-free cross border trade in this region. It would be

pertinent to mention that FFFAI is one of the associates of TIR Carnet and have been working with the Government of India for International North South Transport Corridor (INSTC) project, under TIR Carnet.

Mr. Shinde also emphasised on well-defined policies to be framed up by the respective governments and well-trained officers including Customs and allied agencies engaged at the border check posts. Based on the INSTC route experience, where FFFAI had launched a trial run of containers, Mr.Shinde stated that point to point vehicle movement would be the pragmatic solution instead of re-working of unloading and reloading transshipment, to save cost and reduce dwell time. Accordingly, accession to TIR would expedite the process in this regard. He, however, highlighted various other challenges as regard to cross border cargo transportation, as witnessed in INSTC route. Mr.Shinde further suggested that the governments will have to provide more impetus on private logistics companies, NVOCC or multimodal logistics operators' participation in the BBIN project and also important would be to create a BBIN website portal with complete information for trade participation and addressing issues.

The Webinar was also addressed by **Mr.SatyajitMohanty**, Joint Secretary & Commissioner of Customs, Central Board



Mr Shankar Shinde-Chairman Elect-FFFAI

of Indirect Taxes & Customs (CBIC); **Mr.KhairulKabir** Mia, First Secretary, National Board of Revenue (NBR), Bangladesh; **Mr.Satish Kumar** Reddy, Consultant, ADB; **Mr.KazemAsayesh**, IRU, Geneva; **Mr. AK Azad**, Vice President of ICC Bangladesh and **Mr.Kabir Ahmed**, President, Bangladesh Freight Forwarders Association (BAFFA).

According to Mr.Mohanty, TIR is one of the oldest established and functioning conventions and India being a party to it has a lot of potential to push trade and connectivity to a very different level. MrMohanty added that accession and adoption to a global convention like TIR can promote seamless

cross-border movement of cargo vehicles in much lesser timeframe. It also gets rid of a lot of procedural formalities and inspection of goods at the cross borders.

The United Nations TIR Convention, overseen by the United Nations Economic Commission for Europe (UNECE), is managed by IRU, Geneva. TIR stands for 'Transports Internationaux Routiers' (International Road Transport). One of the most successful international transport conventions, TIR makes border crossings faster, more secure and more efficient, reducing transport costs, and boosting trade and development.



Sagar Sandesh

Maritime Tabloid English Bi-Weekly E-Paper

Mumbai Office

217, Secands Road, Unique Industrial Estate, off Veer Savarkar Marg,
Bombay Dyeing Compound, Prabhadevi, Mumbai - 400025
Ph: 022 - 24211583 / 24210193. Fax: 022 - 2421 2149

Chennai Office

No.6, Ground Floor, Nungambakkam First Lane (Opp. Regional Office, Indian Oil Corporation), Nungambakkam High Road, Chennai - 600 034
Ph: 044-42664408 / Mob: +91 72000 84866

Admin. Office

21 "LAKSHMI", Sathya Sai Nagar, Madurai-625 003. Ph : 0452 437 8300 / +91 72000 84864

EDITOR & PUBLISHER : **Dr R Lakshmiopathy**
EXECUTIVE EDITOR : **Dr G.R. Balakrishnan**, M.A Phd.,
CONSULTING EDITOR : **Mr M Subramanian**, F.I.Mar.E., M.I.E.,

ADVISORY EDITORIAL BOARD

Mr. Ashok C. Advani,
Chief Engineer - Advisor (Mumbai) RLINS, Ex General Manager - Pacific International Lines.
Capt. S.S. Jairam,
Master Mariner, Ex Director- Sealand Management services Pvt Ltd. Ex Chairman - MASSA.
Captain S.M. Halbe,
Chief Executive Officer - MASSA; Fellow of Nautical Institute, London and CMMI, Ex MD- GEM.
Mr. Y. Nath, PFI.Mar.E., F.I.E.,
Chartered Engineer, President, Planmain Quality Consultants (India) Pvt. Ltd.

SAGAR SANDESH - Maritime Tabloid English Biweekly E-Paper
Published by Dr R Lakshmiopathy (Owner) on behalf of
Professional Publications (P) Ltd, "Sriram", 27, Sathyasai Nagar, Madurai - 625 003.
Published at "Lakshmi", 21, Sathyasai Nagar, Madurai - 625 003, Tamilnadu.
RNI No. TNENG/2012/41759, Postal Registration No. TN/MA/140/2018-2020.
Licence No. TN/WPP-115/SR/2018-2020.



Guiding Spirit to Shipping Industry

Sagar Sandesh

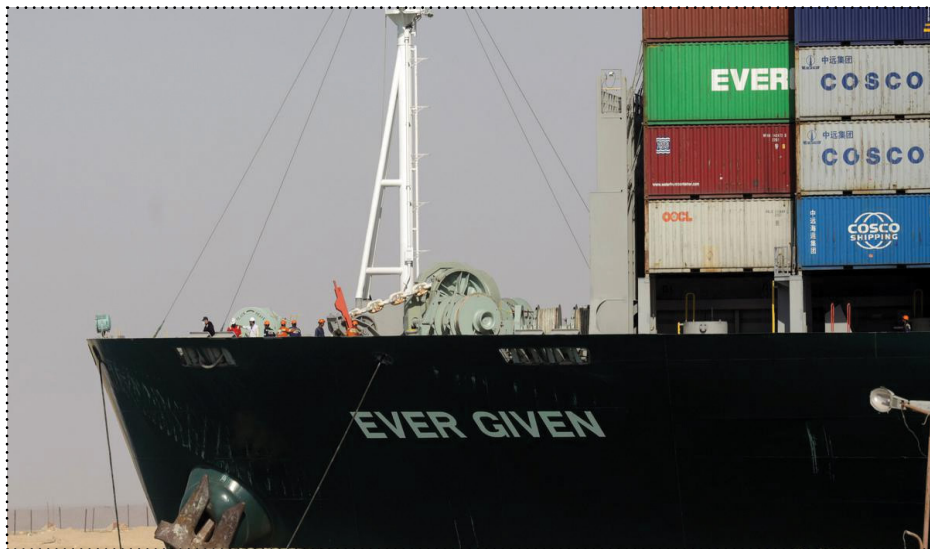
Maritime Tabloid English Bi - Weekly E - Paper

In association with R L Institute of Nautical Sciences, Madurai, Tamil Nadu. | RNI No. TNENG/2012/41759 | Monday, April 12, 2021 | Voyage 10 Wave 17

**PAGE - 5**Blue Economy –
Wave 71**PAGE - 9**India conveys
its concern to
United States
through....**PAGE - 12**BIMCO:
Containership
Orders Reach
High**PAGE - 15**DP World
to upgrade
Southampton
facility

“Unfold Story –MV EVER GIVEN, SUEZ CANAL” (Part 2)

Dr. (Capt.) Vivek Jain, Barrister (England & Wales), Ph. D (Int. Law) (China), LL.B. (Lon.), LL.M. (Maritime Law, Lon.), B.V.C. (Lon.), MBA (Norway), B.Sc.(N.Sc.)(India), TS Rajendra alumnus



MV Ever Given

Anti-Corruption policies (in many cases by law) exactly like they have been complying with Anti-alcohol policy or the ISM Code or the ISPS Code on board the vessels. What if the master, following his company policy or law of the flag state, refuses to bribe the pilot? It has been



Dr. (Capt.) Vivek Jain

Turn to page -2 >>

Recently, **MV Ever Given** (hereinafter “the vessel”), a 200,000 MT container ship ran aground and was stuck in the southern part of the 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 **second article** in this series, I will discuss the possible role of Suez Canal Authority (hereinafter “SCA”) in the incident along with other stakeholders. In the first article, I had discussed the legal issues arising out of the grounding of the vessel, and one of the highlighted issues was possibility of a large claim, possibly an inflated claim, from SCA. I had also highlighted in the first article that the grounding of this vessel was not an isolated incident in Suez Canal. There have been further 75 reported incidents of different magnitude in Suez Canal between 2010 and 2019.

Therefore, the key issue that needs to be investigated is where does SCA stands in relation to the Panama Canal Authority in the context of operational efficiency and stakeholders’ perception about the canals? There is no doubt that both the authorities had managed to keep the International Trade move forward during good and bad times. I had discussed this

issue with many mariners and compared the complexity of operations in both the canals simultaneously. My view based on feedback obtained from other mariners is that the Panama Canal Authority is relatively a bit more efficient as compared to SCA. In this article, I have to point out that I am not favouring one authority over another, but the intention is to look into issues deeply and thereupon comment on efficiency of their operations.

In SCA, pursuant to the feedback from many mariners, there has been constant concern of pilots in Suez Canal demanding cartons of cigarettes and at times even items from pantries such as Nescafe bottles to take home with them and so forth. The issue then is whether such pilots are underpaid by SCA? As a result, can ship owners and other stakeholders such as insurance companies be at peace, especially, when handing over their expensive vessels to these pilots while transiting Suez Canal? To be fair to these pilots and SCA, similar issues are also highlighted at other ports as well. However, SCA dwarfs other authorities in terms of magnitude of operations and therefore this issue has to be looked at critically.

These days, most shipping companies have to comply with Anti-Bribery and

The human touch

Keeping it real

Our operational expertise is gained from over 35 years of answering the call for quality shipping and logistics services globally. We see every client as an individual and every job as unique - and we respond with quality, expertise, compliance as well as respect for you and the environment.

gac.com/india


GAC Shipping (India) Pvt. Ltd.

E: pricing.india@gac.com

T: +91 8369744069

[fb.com/GACgroup](https://www.facebook.com/GACgroup)
[linkedin.com/company/gac-group](https://www.linkedin.com/company/gac-group)


Delivering your strategy.

No animals were harmed in the making of this advertisement.

Unfold Story - MV EVER GIVEN..... From Page : 1

observed that as a result of refusal to accede to the pilots' demands, there have been a few instances of furious pilots refusing to co-operate with masters in many ports. I submit that an angry and hurt pilot due to the fact that his/her demand has not been accepted as expected, could be a real and imminent danger to the vessel. Are Port Authorities or SCA not aware of such practices? Can vessels register protest about such practices and simultaneously escape targeting by bureaucrats from Port Authorities, whereby they could be target by references to sudden actual/imaginary deficiencies on board the vessel? Did something like this happen on this vessel as well? Only a detailed investigation that is currently being carried out on the vessel can highlight such issues. **I am of the view; there could be a silver lining in this incident, whereby SCA may henceforth prohibit their pilots from demanding items from the Masters of these vessels.** For the sake of completeness, I am not aware of any observation of demands

from pilots on board the vessel leading up to the incident on this particular vessel nor have I read any incident reports regarding this issue.

In relation to liability, until all facts leading up to the incident are investigated thoroughly, it is difficult to predict as to which of the parties may be liable for this maritime accident. I will consider a few possibilities in the forthcoming paragraphs.

The maritime incident with the vessel occurred when the vessel was just approximately 5 miles inside the channel. Did Suez Canal consider the weather forecast (and possibility of gust of wind) for this kind of vessel in particular that has lots of containers stacked and are prone to the effects of wind especially gust of wind? Were the pilot properly trained to cater to such kind of vessel? Were enough measures available with SCA to cater for any emergency such as this kind of maritime accident involving the large container vessel? I have read the news article where powerful tugs were called upon from

different geographical area for salvage operations. It seems that SCA was not fully prepared for such kind of incident involving such a large vessel, when the magnitude of operations with SCA is colossal. Could it then be argued that safe systems within SCA were missing? Does it then mean that SCA is to be blamed or has contributed to the cause of incident or the losses flowing from the incident?

On the other hand, could the vessel's stakeholders such as Owners, or Time charterers or Ship Management Company accountable for providing crew and technical management be held responsible? The investigators may consider following issues (a few of which were discussed in the first article as well) – (1) Was there a failure of steering gear on the vessel? (2) Was there a sudden black-out on vessel? (3) Was there a sudden gust of wind creating a 'sail effect' due to containers that were stacked very high on the vessel and there was no contingency measure planned for such an eventuality? (4) Were

the Master and crew unable to deal with sudden emergency while the vessel was transiting the Suez Canal? (5) Was there a breakdown in communication between the pilot &/or SCA and Master on the vessel? (6) Were the crew and the Master selected appropriately for this kind of vessel by the ship management company that was in charge of crewing and technical management of the vessel? (7) Any issue with medical records of crew and Master or due diligence in selection of Master and crew? (8) Analysis of evidence as to the maintenance of hull and machinery from records and were there any gaps in it?

The answers to the above questions could render the owners or charterers and ship management liable to SCA 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. This issue is ripe for lots of lengthy arguments for maritime lawyers from both sides. There could be other arguments that such incident was an abnormal occurrence and only party that should bear the loss

irrespective of any liability are the insurers of respective parties.

Another issue that may arise is whether the stakeholders such as the vessel in question have any stake in drafting of such rules for SCA? Patients go to doctors, but does it mean whether doctor kill them or injure them, still the patients will remain responsible for their own deaths or injuries no matter howsoever caused. SCA is charging huge service fees from the vessels, and therefore complete immunity for SCA for their acts/omissions, and in addition claims for damages from them does not make sense in the 21st century.

May be, the incident will act as a catalyst for the maritime community to demand more voice in the affairs of SCA. Only time will tell whether this may even be thinkable! Is it not fair to expect more influence in affairs of SCA when 10-12% of global trade passes through Suez Canal? The only parties powerful enough to exert enough influence on SCA could be the insurance/reinsurance companies and/or large customers of SCA.

Election Notice

ELECTION OF "WARDENS OF THE COURT" - Last Date E Voting Registration 29 April, 2021

We are pleased to inform the Members that the two-year term of the present Court of The

Company of Master Mariners of India is nearing its end and once again the time has come

to elect a new Court for the year 2021-2023'.

To ensure that maximum Members are able to participate in this election and vote (Including Members abroad, traveling or sailing), for the first time, the facility of "E-voting" has been provided by CMMI. The facility for casting votes through remote E-voting will be provided by NSDL (a Govt. of India approved body).

The Election Schedule is as below.

- * Posting/E-Mailing of Election Notice -30th April, 2021
- * Last date for receiving Nominations-5th June, 2021
- * Last date of withdrawal of Nominations-7th June 2021
- * Posting of Ballot Papers for those who opted for ballot -22nd June, 2021
- * Opening of E-voting portal-21st July, 2021
- * Closure of E-voting portal-5th August 2021
- * Last date of receiving Ballot Papers for members who have opted for ballot-5th August, 2021
- * Counting of Ballot / Access of E-voting results-6th August, 2021

In order to assist our Senior Members, it has been decided to



continue with the "Postal Ballot voting" system parallel with the e-voting. A Member shall avail of any one of the below options: E-voting OR Postal Ballot voting.

For E-voting:

Members desiring to use facility of E-voting are requested to send email to CMMI office before 29th April 2021 on office@cmmi.co.in with their Name, Membership number and Mobile number.

This information will be shared with NSDL. Thereafter, NSDL will directly communicate with the

respective Member and assign him a secure log-in id and password for e-voting.

For Postal Ballot voting:

In case no e-mail is received by CMMI office before 29th April, 2021, it will be assumed that the respective Member will use the ballot voting system (by default). **Ballot papers will be sent to such Members by courier.**

Information regarding the election is also available on the CMMI website at www.cmmi.co.in (Update contact details on website). For Query- ceo@cmmi.co.in and office@cmmi.co.in



Sagar Sandesh

Maritime Tabloid English Bi-Weekly E-Paper

Mumbai Office

217, Secands Road, Unique Industrial Estate, off Veer Savarkar Marg,
Bombay Dyeing Compound, Prabhadevi, Mumbai - 400025
Ph: 022 - 24211583 / 24210193. Fax: 022 - 2421 2149

Chennai Office

No.6, Ground Floor, Nungambakkam First Lane (Opp. Regional Office, Indian Oil Corporation), Nungambakkam High Road, Chennai - 600 034
Ph: 044-42664408 / Mob: +91 72000 84866

Admin. Office

21 "LAKSHMI", Sathya Sai Nagar, Madurai-625 003. Ph : 0452 437 8300 / +91 72000 84864

EDITOR & PUBLISHER : **Dr R Lakshmiopathy**
EXECUTIVE EDITOR : **Dr G.R. Balakrishnan**, M.A Phd.,
CONSULTING EDITOR : **Mr M Subramanian**, F.I.Mar.E., M.I.E.,

ADVISORY EDITORIAL BOARD

Mr. Ashok C. Advani,
Chief Engineer - Advisor (Mumbai) RLINS, Ex General Manager - Pacific International Lines.

Capt. S.S. Jairam,
Master Mariner, Ex Director- Sealand Management services Pvt Ltd. Ex Chairman - MASSA.

Captain S.M. Halbe,
Chief Executive Officer - MASSA; Fellow of Nautical Institute, London and CMMI, Ex MD- GEM.

Mr. Y. Nath, PFI.Mar.E., F.I.E.,
Chartered Engineer, President, Planmain Quality Consultants (India) Pvt. Ltd.

SAGAR SANDESH - Maritime Tabloid English Biweekly E-Paper
Published by Dr R Lakshmiopathy (Owner) on behalf of
Professional Publications (P) Ltd, "Sriram", 27, Sathyasai Nagar, Madurai - 625 003.
Published at "Lakshmi", 21, Sathyasai Nagar, Madurai - 625 003, Tamilnadu.
RNI No. TNENG/2012/41759, Postal Registration No. TN/MA/140/2018-2020.
Licence No. TN/WPP-115/SR/2018-2020.



Guiding Spirit to Shipping Industry

Sagar Sandesh

Maritime Tabloid English Bi - Weekly E - Paper

In association with R L Institute of Nautical Sciences, Madurai, Tamil Nadu. | RNI No. TNENG/2012/41759 | Thursday, April 22, 2021 | Voyage 10 Wave 20



PAGE - 5

Students Corner
- 201

PAGE - 9

India's Adani
Faces Scrutiny
for Port.....

PAGE - 12

Indian Register
of Shipping
launches.....

PAGE - 15

Drones
to deliver
medicine
and....

“Unfold Story –MV EVER GIVEN, SUEZ CANAL” (Part 3)

Dr. (Capt.) Vivek Jain, Barrister (England & Wales), Ph. D (Int. Law) (China), LL.B. (Lon.), LL.M. (Maritime Law, Lon.), B.V.C. (Lon.), MBA (Norway), B.Sc.(N.Sc.)(India), TS Rajendra alumnus

Recently, **MV Ever Given** (hereinafter “the vessel”), a 200,000 MT container ship ran aground and was stuck in the southern part of the 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 **third and the last article** in this series, I will discuss the incident, role of various stakeholders and their effects on seafarers that have already been suffering due to COVID-19 until the time of the accident along with the potential civil and criminal liabilities of the seafarers that were on-board the vessel. In the first article, I had discussed the legal issues arising out of the grounding of the vessel, and one of the highlighted issues was possibility of a large claim, possibly an inflated claim, from SCA. I had also highlighted in the first article that the grounding of this vessel was not an isolated incident in Suez Canal. There have been further 75 reported incidents of different magnitude in Suez Canal between 2010 and 2019. In the second article, I had discussed the potential culpability of Suez Canal Authority.

I had predicted in the first article that the Master and crew, already affected by COVID-19 rules would be detained along with the vessel for purpose of putting up a security for inflated claims from the Suez Canal Authority. I have read news and it seems my prediction was correct. **It is important to note that seafarers on board the Japanese vessel are Indian seafarers. Foremost, irrespective of any civil and criminal liability imputed on the seafarers, these seafarers need support of all stakeholders.**

It is a fact that a few seafarers with particular nationalities are more vulnerable as the envelope can be pushed in relation to them by any Authority from any part

of the world because the probability of consequences for such organisations for acting against such seafarers is virtually zero. Can seafarers from Western Europe or Northern America or North Asia be so easily used as a pawn in geo-political battles affecting maritime trade or in the aftermath of any maritime incidents such as this incident? This is the area of foreign policy of any country to ensure that seafarers that provide valuable foreign exchange to a developing country are not vulnerable to coercive tactics in other countries. How a nation's foreign policy along with its armed forces can install a ‘fear of God’ in other authorities & other countries for mistreating seafarers from their country is beyond the scope of the article and beyond the expertise of the author. It is important to highlight that any institution is valuable only when it comes to assistance of the distressed seafarers/people in need. The images of distressed seafarers flashing around the world regularly are also not good for an image of any country.

I have personally called on many casualties as a maritime lawyer and **I can vouch that seafarers due to lack of support from their professional bodies in their own country or support from even their own ship management companies at their time are so vulnerable, these experiences are heartrending as an ex-seafarer, especially when observing the mental state of such seafarers put under huge stress.** I realised a few countries' seafarers have to bear excessive burden of apathy from stakeholders in their country and these seafarers unfortunately have no choice as they need these jobs to earn their bread and butter.

Unfortunately, lip service in numerous conferences or idealistic talks by stewards of maritime industry will not cut the ice

as far as actual assistance required by seafarers in the aftermath of any maritime incident or affected by piracy is concerned. Any seafarer whether it is a Master or just an ordinary seaman needs to be protected by the whole eco-system. Anything less than is complete waste of time for anyone attending those conferences by paying a huge sum of conference fees. In addition, when any seafarer is suffering, the time for niceties and extreme focus on diplomacy should be overridden by a need to assist the seafarer by utilising the unified voice of stakeholders such as foreign policy experts, foreign ministry, shipping ministry, professional bodies, maritime unions, ship management companies that recruit seafarers in that country, possible help from international bodies (mostly located in developed countries) and so forth. All stakeholders should keep in mind that their role is that of protecting the interests of seafarers, and these seafarers are innocent until proven guilty in any justice system. Any stakeholder(s) adopting holier than thou attitude in order to show case their investigative skills from desktop is counterproductive for the welfare of seafarers from their country and accordingly such stewards of maritime industry must resist these temptations. Like Arjun's eyes, the only focus of such stewards should and must remain on the welfare of seafarers affected by such maritime accidents.

Any criminal liability of the seafarers can result these days from ‘error in navigation’ and ‘management of the vessel’. In the first and second article of the series, I had discussed relevant legal issues. **I am pretty sure the prosecutors in Egypt will not lose a chance to prosecute the seafarers, if that could mean increasing their bargaining power with the Japanese owners and other insurance companies to negotiate a better deal for**



Dr. (Capt.) Vivek Jain

compensation. To be fair to Egyptian prosecutors, it is the same process in virtually all the countries. Seafarers would just be pawn in such tactical games and as mentioned above, without any genuine welfare policies and protection they would be vulnerable to coercive tactics. Seafarers should keep in mind that their own well-wishers can do the deal(s) behind their backs as huge sum of money are involved. Additionally, there could be issue of local politics in any nation, where the incident has happened, and could be a decisive factor in the criminal and civil investigations.

After any criminal investigation, there are fines and penalties on seafarers. The investigation will move up the chain to include Designated Persons, Ship Management companies and their bosses, technical superintendents, role of operators & owners and even insurance companies and so forth. Any attempt to hide or obfuscate may go against the stakeholders that are investigated. The fines and penalties increases as the investigation moves up the food chain. I had already discussed the civil liability and penalties in my earlier articles in the series, where master and crew along the Owners and ship management companies may be held liable for this incident.