IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(ADMIRALTY JURISDICTION)

ADMIRALTY SUIT NO. 28 OF 2026

Lufesa Diver's S.C.R.L.
—Plaintiff

-Versus-

M.V. PRINCESS JIA JIA (now M.V. VORTEX BULK), IMO No. 9189926 and others
—Defendants

Mr. Md. Raihan Kawsar, Advocate
— for the plaintiff.
Mr. M. Belayet Hossain, Senior Advocate with
Mr. M. Mahmudul Hasan, Advocate
— for defendant Nos. 1, 2 and 6-applicants.

The 30th August, 2026

Present:
Justice Sikder Mahmudur Razi

1. This application has been filed by defendant Nos. 1, 2 and 6 for rejection of the plaint and dismissal of the action *in rem* against them, together with recall of the order of arrest dated 8 June 2026 and discharge and return of Bank Guarantee No. OBPLC/AGR/BG/031/2026 dated 28 June 2026, issued by ONE Bank PLC, Agrabad Branch, Chattogram, for BDT 44,67,575/-. It appears that the applicants have entered appearance under protest and have maintained throughout that neither their appearance nor the furnishing of substituted security amounts to submission to the jurisdiction of this Court or waiver of their objections.

The plaintiff's case

2. The plaintiff, a company incorporated in Peru, instituted the suit on 8 June 2026 for realization of USD 36,470.00, stated to be equivalent to BDT 44,67,575/-, with interest and costs. According to the plaint, on 5 July 2025 the

plaintiff provided underwater cleaning of the vessel's vertical sides and flat bottom and polishing of her propeller at Callao, Peru. Invoice No. EB01-1118 for USD 21,470.00 was allegedly issued to the then Master, owner and manager of the vessel. The plaintiff further added USD 10,000.00 as legal fees and costs, USD 3,000.00 as vessel-tracking costs and USD 2,000.00 as administrative costs.

3. The plaint describes the vessel as M.V. PRINCESS JIA JIA, flying the flag of Panama, and identifies Bedford Castle Shipping Corporation as her owner and Eleen Marine JSC as her manager. Jurisdiction is invoked under section 3(2)(Tha) and (Da) of the Admiralty Court Act, 2000 on the assertion that the services were rendered for repair and maintenance of the vessel. On 8 June 2026 this Court ordered arrest of the vessel.

The defendants'-applicants' case

4. The learned Senior Advocate for the applicants contends that, after the alleged services were rendered but before commencement of the suit, the vessel was sold to Vortex Bulk Inc. Under a Memorandum of Agreement on SALEFORM 2012 dated 3 April 2026, as amended on 17 May 2026, Bedford Castle Shipping Corporation agreed to sell the vessel for USD 4,700,000.00. They rely upon the payment records, a Bill of Sale executed on 12 May 2026 and apostilled on 14 May 2026, the Protocol of Delivery and Acceptance dated 22 May 2026, the Certificate of Cancellation issued by the Liberia Maritime Authority on 22 May 2026 and Provisional Certificate of Registry No. SKAN-COR-260722 issued by the Saint Kitts and Nevis International Ship Registry on 26 May 2026.

5. Learned advocate for the applicants further contends that according to those documents, delivery, title and risk passed to Vortex Bulk Inc. on 22 May 2026. The Liberian registration was cancelled, the vessel was renamed M.V. VORTEX BULK, and on 26 May 2026 she was registered under the flag of Saint Kitts and Nevis in the sole ownership of Vortex Bulk Inc. Therefore, when the suit was instituted on 8 June 2026, Bedford Castle Shipping Corporation i.e. the person alleged to be liable when the cause of action arose, was no longer the beneficial owner of any share in the vessel.

6. The learned Senior Advocate for the applicants further submits that the claim for cleaning and polishing is, at its highest, a statutory maritime claim and not a maritime lien. Consequently, section 4(3) is not attracted and the action *in rem* can be maintained only upon fulfillment of both the conditions as contained in section 4(4) of the Act, 2000. Since the person allegedly liable in personam did not beneficially own all the shares in the vessel when the action was brought, the second statutory condition was absent. The Bank Guarantee was furnished under protest solely to mitigate the continuing commercial loss caused by detention. It was accepted on 1 July 2026 in substitution for the arrested *res* and cannot, according to the applicants, create jurisdiction where none existed at the time of commencement.

The plaintiff's objection

7. The plaintiff opposes the application principally on the ground that an application under Order VII rule 11 of the Code of Civil Procedure must be determined only from the averments in the plaint. The learned advocate for the plaintiff contends that the alleged sale, transfer, payment, delivery, change of registry and beneficial ownership are disputed questions introduced by the

defendants and cannot be decided without formal proof, cross-examination and trial. The learned advocate for the plaintiff further submits that the documents relied upon by the applicants are photocopies and cannot be acted upon at this stage. He next submits that, from the payment receipts, it appears that the payments were made through Blue Ocean Maritime Consultancy Services and not by the applicants and therefore, contractual relationship of the applicants with the seller is not established.

8. The learned advocate for the plaintiff also contends that the furnishing of the Bank Guarantee amounts to acceptance of the nature of the claim and that the applicants are estopped from challenging maintainability after obtaining release of the vessel. It is further alleged that the Memorandum of Agreement acknowledged liabilities of the former owner and that the purchaser assumed those liabilities.

Questions for determination

9. Upon hearing the learned Advocates and perusing the plaint, the application, the written objection, the written reply and the documents placed before the Court, the following questions arise for determination:

(i) whether the plaintiff's claim creates a maritime lien or is merely a statutory maritime claim dependent upon section 4(4) of the Admiralty Court Act, 2000;

(ii) whether, at the time the suit was instituted, the person allegedly liable in personam was the beneficial owner of all the shares in the vessel;

(iii) whether the Court may consider the title and registry documents for deciding this threshold question of admiralty jurisdiction; and

(iv) whether furnishing substituted security precludes the applicants from challenging jurisdiction.

Statutory scheme and applicable principles

10. Section 3(2) of the Admiralty Court Act, 2000 identifies the classes of maritime claims over which this Court may exercise admiralty jurisdiction. The existence of a maritime claim within section 3(2), however, does not by itself make every such claim enforceable *in rem* against a vessel irrespective of ownership. Sections 4(3) and 4(4) prescribe distinct routes by which an action *in rem* may be maintained.

11. Section 4(3) concerns claims which give rise to a maritime lien or other charge upon the ship. Such a lien is proprietary in character and, subject to its nature and priority, may follow the ship notwithstanding a subsequent private change of ownership. Section 4(4), on the other hand, concerns the statutory right *in rem* for the classes of claim specified there. It requires cumulatively that: first, the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship; and secondly, when the action is brought, that same person is the beneficial owner of all the shares in the ship proceeded against, or of all the shares in another ship proceeded against as a sister ship.

12. The distinction has been explained in Nigel Meeson and John A. Kimbell, *Admiralty Jurisdiction and Practice*, 5th edition (2017), paragraphs 3.33–3.38. The learned authors distinguish claims maintainable irrespective of ownership from claims limited by ownership and state that, for the latter class, the person liable *in personam* must satisfy both the ‘status requirement’ when the cause of action arose and the ‘beneficial-ownership requirement’ when the claim is

brought. Toh Kian Sing, *Admiralty Law and Practice*, 3rd edition (2017), Chapter 3, in the discussion of section 4(4), likewise treats these requirements as successive statutory steps and emphasizes that the relevant person must beneficially own all the shares at the time of commencement of the action.

13. The same understanding has been adopted in this jurisdiction. In *HRC Shipping Ltd. v. M.V. X-Press Manaslu*, 58 DLR (2006) 185, this Court, upon considering *The St Merriel* and other comparative authorities, held that the expression "beneficially owned as respects all the shares" denotes proprietary ownership and does not extend merely to possession or operational control under a charter. The same proprietary understanding was reiterated in *HRC Shipping Ltd. v. M.V. Lady Fatima*, 60 DLR (2008) 494, and *Acquila Voyager Maritime GmbH & Co. KG v. M.V. Jin*, 1 CLR (HCD) (2013) 1.

14. Comparative authorities lead to the same conclusion. In *The Evpo Agnic* [1988] 1 WLR 1090 (CA), the Court of Appeal rejected an attempt to treat vessels owned by separate companies as being in the same beneficial ownership merely because the companies were under common control. In *The Tian Sheng No. 8* [2000] 2 Lloyd's Rep 430, the Hong Kong Court of Final Appeal observed that registration, though not invariably conclusive, is in the ordinary course virtually conclusive and requires an exceptional case to displace it. In that case the court observed at 433 that-

> *It is possible that registration is, as a matter of law, not conclusive on the issue of ownership; conceivably, there are circumstances where it might be shown that the registered owner was in fact not the legal and beneficial owner of all the shares in the ship: The fraudulent procurement of registration would be an example. But, in the general*

> *run of things, registration would be virtually conclusive, and it would take a wholly exceptional case for it to be otherwise.*

Furthermore, Meeson and Kimbell, at paragraphs 3.48–3.59, explain that where a change of ownership occurs after the claim arises but before commencement, the Court may investigate whether the transfer is genuine; however, courts do not disregard a completed transfer merely because it defeats an anticipated statutory arrest.

15. Even the decision in *The Monica S* [1968] P 741 will not assist the plaintiff on the present facts. The said decision establishes that, once an action *in rem* has been commenced, the statutory right against the *res* thereby created cannot be defeated by a subsequent transfer of the vessel, even to a bona fide purchaser for value. Toh Kian Sing, in Chapter 8- STATUTORY RIGHT OF ACTION IN REM (STATUTORY LIEN) under the discussion of "Enforceability against third party purchasers", explains that the material dividing line is commencement of the action. The learned author maintained that-

> *As discussed above, in respect of a claim coming within section 3(1)(d)(q) of the High Court (Admiralty Jurisdiction) Act (section 20(2)(d)–(q) of the Senior Courts Act), the decision of The Monica S makes it clear that the statutory lien which accrues with the issuance of the writ in rem cannot be defeated by a subsequent change of ownership. In such a case, the bona fide purchaser of the ship which is subsequently served with the writ and arrested can intervene, and if necessary, defend the claim. On the other hand, where a ship is sold before the writ is issued, an action in rem cannot be brought against her under section 4(4) of the High Court (Admiralty Jurisdiction) Act or section 21(4) of the Senior Courts Act since at the time the action is brought, i.e. when the writ is issued, she*

> *would no longer be under the beneficial ownership of the person who would be liable in personam.[page-345, 346]*

Here the transfer is asserted and documented as having been completed on 22 May 2026, whereas the suit was instituted on 8 June 2026. Thus, the transfer preceded and not followed the commencement of the action.

Nature of the present claim

16. The plaintiff's pleaded claim is for underwater cleaning of the vertical sides and flat bottom of the vessel and polishing of her propeller. Even if every factual allegation in the plaint is accepted, the claim is one relating to services, maintenance, repair or equipment of a ship within the statutory heads of maritime jurisdiction. The plaint does not plead facts capable of bringing the claim within the traditional categories of maritime lien, such as seamen's wages, salvage, damage done by a ship, bottomry or Master's wages and disbursements. Nor is any statutory provision identified which creates a proprietary charge for this cleaning invoice.

17. The categories of maritime lien are not to be enlarged by judicial analogy. Meeson and Kimbell, at paragraphs 3.34–3.39, referring to The St Merriel [1963] P 247 and The Acrux (No. 3) [1965] P 391, emphasize that an ordinary possessory or commercial claim connected with repair or maintenance is not thereby transformed into a maritime lien or 'other charge'. Accordingly, the plaintiff cannot invoke section 4(3). Its action *in rem* must stand or fall under section 4(4).

Ownership at the date of commencement

18. The alleged services were supplied on 5 July 2025 when Bedford Castle Shipping Corporation was the owner and Eleen Marine JSC was the manager. The first limb of section 4(4) may therefore be assumed in the plaintiff's favour for present purposes. The decisive question is the second limb: whether the person allegedly liable *in personam* beneficially owned all the shares in the vessel on 8 June 2026, when the suit was instituted.

19. The documents placed before the Court form a consistent chronological chain. The SALEFORM 2012 Memorandum of Agreement is dated 3 April 2026; the consideration was paid from 7 April 2026 to 22 May 2026; the Bill of Sale was executed on 12 May 2026 and apostilled on 14 May 2026; the Addendum is dated 17 May 2026; the Protocol of Delivery and Acceptance are dated 22 May 2026; the Liberian registration was cancelled on 22 May 2026; and the Saint Kitts and Nevis registration in the sole ownership of Vortex Bulk Inc. was issued on 26 May 2026. These events were completed before 8 June 2026.

20. The plaintiff has not produced any contemporaneous record pointing to a different conclusion except making some evasive denial. More importantly, it does not allege that the transaction was sham, collusive, backdated, fraudulent or designed to defeat this particular claim. A bare assertion that ownership is 'disputed' does not itself create a factual controversy requiring a full trial when the pleaded response identifies official and contemporaneous records and the opposing party neither challenges their authenticity with particularity nor places any countervailing material before the Court. Additionally, as regards the plaintiff's objection concerning payment through Blue Ocean Maritime

Consultancies Services, it appears that the Addendum dated 17 May 2026 clearly provides that the buyers shall pay from the bank account of their associated company, namely Blue Ocean Maritime Consultancies Services the amounts towards settlement of the mentioned claims, in respect whereof arrests have been imposed over the vessel at the port Chattogram.

21. The earlier admiralty proceedings involving the vessel do not alter this conclusion. The materials indicate that while the vessel was subject to arrest orders in other suits, a negotiated sale was completed and those suits were withdrawn or otherwise disposed of one after another. It is true that a private sale does not have the cleansing effect of a judicial sale, by which the vessel is ordinarily sold free from prior encumbrances. Nevertheless, in the absence of a maritime lien or an already-commenced statutory action *in rem*, the relevant question remains the one prescribed by section 4(4): who beneficially owned all the shares when this action was brought. On the uncontroverted material, that owner was Vortex Bulk Inc., not the person allegedly liable for the July 2025 invoice.

Whether the documents may be considered at this stage

22. The plaintiff submits that, when an application is confined strictly to Order VII rule 11(a), the Court ordinarily examines the plaint as a whole and does not conduct a trial upon a defence. Sarkar on the *Code of Civil Procedure*, in the commentary on Order VII rule 11, states that rejection at the threshold is a serious power and that a plaint disclosing an arguable cause should not be rejected merely because the claim appears difficult to prove. That general principle is not in dispute.

23. The present application, however, is not merely an invitation to decide the merits of the invoice claim upon the defendants' evidence. It raises the anterior question whether the statutory conditions necessary to invoke jurisdiction *in rem* existed when the suit was commenced. Admiralty jurisdiction is special in nature. Arrest of the *res* is not an ordinary interlocutory attachment ancillary to an otherwise competent civil suit; the statutory right to proceed against the *res* depends upon the conditions enacted in section 4. A Court whose jurisdiction over the *res* is specifically challenged must be able to examine the material bearing directly upon that jurisdiction.

24. The principles of the Code of Civil Procedure apply to admiralty proceedings subject to the special statutory character of admiralty jurisdiction. Where jurisdiction over the *res* is specifically challenged, the Court is not required to postpone that determination until trial merely because the relevant facts are disclosed through materials produced by the appearing owner. It may examine such materials for the limited purpose of determining whether the statutory conditions necessary for commencement of the action *in rem* existed. This approach does not amount to adjudication of the underlying maritime claim; it is an examination of the jurisdictional foundation upon which the vessel was proceeded against. The overarching principle is that admiralty courts prioritize their specialized jurisdiction and the effective resolution of maritime disputes. This approach is consistent with the principles recognised in *Sonali Bank v. Bengal Liner Ltd.*, 10 BLC (2005) 148: LEX/BDHC/0164/2004, and the following comparative admiralty authorities which reinforces the distinct and often exclusive nature of admiralty jurisdiction over the res and its proceeds, implying that general civil procedural rules (analogous to CPC)

cannot be rigidly applied to undermine or circumvent the specific jurisdictional and priority rules established within admiralty law. Some of those authorities are-

(i) *Dowling Vs. Isthmian S.S. Corporation MANU/ FETC/0142/ 1950: 184 F.2d 758*

(ii) *Da Hui Shipping (Pte) Ltd vs. An Rong Shipping Pte Ltd MANU/SGCA/0029/2025: [2025]SGCA30*

(iii) *Stolt Kestrel BV v Sener Petrol Denizcilik Ticaret AS MANU/UKWA/0518/2015: [2015]EWCA Civ 1035*

24.1 Here in this suit, this Court is not adjudicating whether the services were rendered, whether the invoice remains unpaid or which person is liable *in personam*. Its consideration of the Bill of Sale, delivery protocol and official registry records is confined in deciding whether section 4(4) permitted this vessel to be proceeded against on 8 June 2026.

25. Nor does the description of the documents as photocopies compel postponement of this jurisdictional determination. For the limited purpose of determining jurisdiction, the Court finds no sufficient basis for disregarding those documents merely because copies have been produced. The Bill of Sale is stated to have been apostilled, the deletion and registration certificates emanate from the relevant maritime registries, and the several instruments form a consistent and coherent chain of transactions. Their authenticity, execution and contents have not been specifically challenged, nor has the plaintiff produced any contrary document or material. The conclusion is therefore not founded upon the mere production of photocopies, but upon the absence of any specific challenge to a coherent body of contemporaneous and official records.

Formal proof may become necessary where the authenticity of a document or the underlying transaction is genuinely put in issue. It should not, however, become a device for prolonging an action *in rem* merely to preserve security where the documents are mutually consistent, their authenticity is not specifically challenged, and no contrary material has been produced.

26. The above proposition also finds support in the following authorities from comparative jurisdictions:

In *Cohenrich Energy FZE v. M.T. Mirage and others*, LEX/HBPK/0727/2021, the plaintiff instituted an admiralty action in rem for recovery of US$5,146,648.33 arising from the alleged non-delivery or short delivery of cargo. Before institution of the suit, however, the vessel had been sold to an independent purchaser for demolition, and the former owners, who were allegedly liable in personam, had ceased to be its beneficial owners. The Court held that, for a maritime claim falling under section 3(2)(h) of the Admiralty Jurisdiction of High Courts Ordinance, 1980, an action *in rem* under section 4(4) can be maintained against the offending vessel only when, at the time of institution of the action, it remains beneficially owned, as to the majority shares, by the person who would be liable *in personam*. Since the sale documents were not specifically denied and no material was produced to show that the transaction was sham or intended to defeat the claim, the statutory requirement of common beneficial ownership was not satisfied. The High Court, therefore, dismissed the admiralty appeal and affirmed the rejection of the plaint under Order VII rule 11 of the Code of Civil Procedure.

Although the statutory language considered in that decision referred to ‘majority’ shares, whereas section 4(4) of the Bangladesh Act requires beneficial ownership of 'all' the shares, the decision remains persuasive on the procedural point that an undisputed transfer completed before commencement may be examined at the threshold stage when it directly determines the existence of jurisdiction *in rem*.

In *International Bunkering Middle East DMCC v. M.T. Tridonawati*, LEX/HBPK/0063/2012, the plaintiff sought the arrest of the vessel for unpaid dues arising from furnace oil supplied to it as necessaries. Before institution of the suit, however, the vessel had been sold for valuable consideration to a purchaser who had no notice of the plaintiff's claim. The Court held that an action *in rem* under section 4(4) of the Admiralty Jurisdiction of High Courts Ordinance, 1980 could be maintained only if, when the action was brought, the vessel was beneficially owned by the person liable *in personam*. A bona fide purchaser for value without notice could not be made liable merely because the claim arose while the vessel was under its former ownership. Accordingly, the application for arrest and attachment was dismissed, and the interim arrest and restraint orders were vacated.

Effect of the Bank Guarantee

27. The Bank Guarantee was furnished under protest after the arrest in order to obtain the release of a trading vessel and to mitigate the continuing commercial loss. By the order dated 1 July 2026, the Court accepted the Bank Guarantee as substituted security and directed that it remain in force until disposal of the suit or until further order. In admiralty law, security furnished for the release of an arrested vessel represents and stands in place of the *res*. Such security preserves the claim and jurisdiction lawfully attaching to the *res*; it does not create or enlarge a statutory right of action *in rem* which did not exist when the proceeding was commenced.

28. For the same reason, the pleas of estoppel and waiver are misconceived. The furnishing of security under protest for the release of a trading vessel does not amount to an admission of liability, an unconditional submission to jurisdiction or an abandonment of the right to challenge the maintainability of the action *in rem*. Toh Kian Sing explains that an appearance may be entered for the purpose of applying to set aside the writ or otherwise challenging the Court's admiralty jurisdiction: *Admiralty Law and Practice*, 3rd edn., p. 214**.** In *The Evmar* [1989] SGHC 40, the Court similarly recognised that furnishing security "under protest" signifies a reservation of rights. More directly, in *The Eternal Strength* [2006] SGHC 12, the Court found that the action *in rem* had been wrongly instituted for non-compliance with the statutory ownership requirement and consequently cancelled the letter of undertaking furnished as security for that action. Accordingly, once the present action *in rem* is found not maintainable, the substituted security has no independent legal foundation and cannot lawfully be retained.

29. The plaintiff's contention that the purchaser assumed the seller's liabilities under the Memorandum of Agreement is also unsupported. The identified payments under the Addendum were treated as corresponding portions of the purchase price and the plaintiff's invoice is not shown in the itemized schedule. The seller's covenant to deliver the vessel free from encumbrances and debts protects the buyer; it does not, without clear words, constitute an assumption by the buyer of every unlisted personal liability of the seller, much less create a maritime lien in favour of a non-party to the sale contract.

Conclusion

30. The plaintiff's claim, taken at its highest, is a statutory maritime claim and not a maritime lien. The person allegedly liable in personam when the cause of action arose was no longer the beneficial owner of all the shares in the vessel when the action was brought. The transfer was completed before institution of the suit, and no allegation or material has been placed before the Court capable of treating it as sham or ineffective. The cumulative requirements of section 4(4) of the Admiralty Court Act, 2000 are therefore not satisfied.

31. Consequently, no statutory right of action *in rem* attached to M.V. VORTEX BULK (previously known as MV Princess Jia Jia) upon institution of the suit on 8 June 2026. The defect concerns the statutory foundation of the action against the *res* and cannot be cured by appearance, amendment, arrest or the furnishing of substituted security. This Court must therefore decline to permit the action *in rem* to continue against the vessel. The plaint is consequently liable to be rejected for failure to satisfy the mandatory requirements of section 4(4) of the Admiralty Court Act, 2000.

32. This conclusion does not adjudicate the merits of the plaintiff's alleged invoice claim and shall not prejudice any remedy *in personam* which the plaintiff may pursue, in accordance with law, against Bedford Castle Shipping Corporation, Eleen Marine JSC or any other person properly liable in appropriate forum. It only holds that the alleged personal liability cannot be enforced through this action *in rem* against a vessel purchased before commencement by Vortex Bulk Inc.

Order

Accordingly, the application succeeds and is allowed.

The plaint in Admiralty Suit No. 28 of 2026 is hereby rejected for failure to satisfy the mandatory requirements of section 4(4) of the Admiralty Court Act, 2000. Consequently, the action *in rem* against M.V. PRINCESS JIA JIA, now named M.V. VORTEX BULK, stands terminated.

The order of arrest dated 8 June 2026 is recalled and vacated. Bank Guarantee No. OBPLC/AGR/BG/031/2026 dated 28 June 2026, issued by ONE Bank PLC, Agrabad Branch, Chattogram, for BDT 44,67,575/-, is discharged. The Registrar is directed to return the original Bank Guarantee to defendant Nos. 1, 2 and 6-applicants, or their duly authorized representative, for cancellation, upon proper receipt and identification.

In the facts and circumstances of the case, there shall be no order as to costs. The office shall communicate this order to the Marshal and the concerned authorities forthwith.

(Sikder Mahmudur Razi, J.)