A REPORT WORTH READING
192
02/2019

The Superyacht New Build Report

OWNER

Owners give their honest feedback on their own new-build experiences in a compendium of our most candid interviews.

DESIGN

A quickie with Dickie

The inimitable Dickie Bannenberg becomes the latest designer to join Georgia Boscawen for a pint.

Michael Breman and Theo Hooning debate our two-tier market hypothesis

TECHNOLOGY

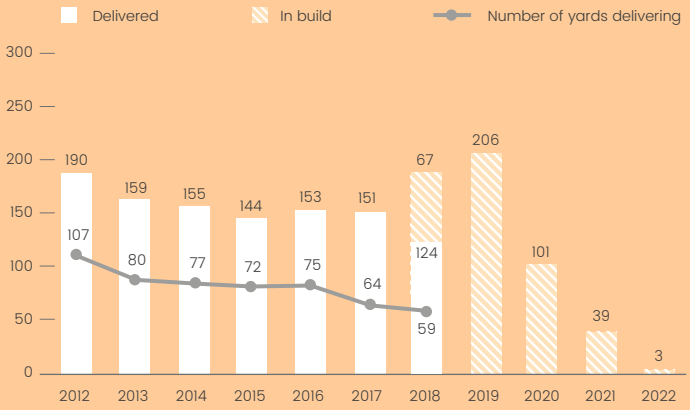
"If you're a superyacht builder and you ask someone to import Burmese teak, you are in effect commissioning someone to commit a crime."

Jago Wadley, senior forest campaigner for the Environmental Investigation Agency

FLEET

The Superyacht New Build Report

Completed and scheduled deliveries



BUYER

223 & 125

The average number of annual second-hand sales and new orders, respectively, since 2013.

OPERATIONS

'An owner I worked for actually changed the shipyard when looking for a larger new build because of the amount of post-build work we had to conduct to correct simple issues.'

FORCED JUDICIAL SALES AND THE CASE OF *INDIAN EMPRESS*

Ann Fenech, managing partner of Fenech & Fenech Advocates in Malta, explains the reasons behind the enforced sales of yachts and outlines the lessons that can be learned, citing the case of M/Y Indian Empress, *a vessel impounded by the authorities in 2017.*

INTERVIEW BY RACHEL ROWNEY

What brings about enforced sales of ships and yachts?

Shipping is not immune to world recessions, changing trade patterns, rising bunker prices and more, all of which may leave ship owners unable to pay their creditors. This reality is not just limited to merchant vessels, and despite the very evident palpable wealth present in every lavish international boat show, the world of failed businesses and bankruptcies exists in yachting too. When things come to a head, creditors move in on what is very often an owner's last remaining asset – the ship or the yacht. These assets would typically be mortgaged to a financier and would have a number of other creditors who would seek to get whatever they can. Very often, the best way forward would be to get the vessel sold.

Why is Malta considered a favourable jurisdiction for such sales?

Maltese law offers a huge degree of comfort to the financier of a ship, with a law ready to protect them when things do not go as planned. A mortgagee may proceed directly with the enforcement of the mortgage through the judicial sale of the vessel without the need to first commence an action on the merits. Other creditors with a maritime claim can also seek to sell the vessel; however, they would have to commence an action on the merits and – once judgement is delivered – enforce that judgement through a judicial sale.

Maltese courts can either order a judicial sale by auction, where the vessel is sold to the highest bidder in a public auction held in court, or they can approve a private sale whereby the creditor

first advertises the sale, finds a private buyer, agrees a price, obtains valuations of the ship which would show that the price obtained is in excess of the valuations and requests the court's approval for the sale of that vessel at the agreed price. In both types of sale, the vessel is sold free and unencumbered, which means the buyer purchases the vessel without any pre-existing debt. The rather extraordinary case of *Indian Empress* had both.

What happened with *Indian Empress*?

Indian Empress (now *Neom*) was a 95m yacht built for the Qatari royal family and then sold to Indian Empress Ltd, whose ultimate beneficial owner's serious financial difficulties prevented his creditors – including crew, financiers and suppliers of provisions and services – from being paid. While in Malta in March 2018, she was arrested by her creditors. Melita Power Diesel Ltd was the first to obtain a judgement in April and with a favourable judgement in hand, they proceeded with the judicial sale of the vessel. Just 24 hours prior to the sale, the owners filed an application seeking the postponement of the judicial sale, claiming they had found a private buyer, Crediyacht Ltd, which was prepared to pay $42 million but had not come up with the funds in time. The court refused the application, stating that bankrupt owners cannot disrupt a judicial sale and propose a court-approved private sale – something that can be done only by a creditor with an executive title. The auction went ahead, but the highest bidder at $43.5 million was the same Crediyacht. Unfortunately, under Maltese law, a bidder only has to provide a reference to the auctioneer prior to the auction and is not obliged to put up a deposit. The purchase price has to be paid within seven days from the auction.

Unsurprisingly, on the seventh day following the auction, Crediyacht filed an application informing the court that it did not have the funds and requesting an extension of time. This application was rejected outright. Barclays Bank, the mortgagee, then requested the judicial sale of the vessel for no less than €35 million. Maltese law does not provide for a reserved price to be put on a vessel in a judicial sale.

Given the saga that had just occurred, the judge decided to grant the application for the second judicial sale to take place on 19 September, but rather ingeniously also ordered that €1 million be deposited with the court registry by each bidder at least 48 hours prior to the sale. The court also prohibited Crediyacht from taking part in the auction and ordered that Crediyacht would have to pay the difference between the $43.5 million and the eventual selling price at the second auction in the event that the vessel was sold for less than in the first auction.

Interest in the second judicial sale by auction was high, with a number of bidders having deposited the €1 million well ahead of the auction. However, on 11 September, Barclays Bank filed two applications – one seeking suspension of the judicial sale by auction on 19 September and the other seeking court approval for the private sale of *Indian Empress* for €35 million plus VAT to Sea Beauty Yachting Limited, owned by a Saudi, Albrahim Waleed Ibrahim.

The court immediately suspended the auction on 19 September and instead ordered a hearing to decide on the application of Barclays Bank. At the hearing, the court decided it would allow the court-approved private sale to Sea Beauty Yachting Limited. The yacht was therefore sold to Sea Beauty Yachting Limited for $43.5 million and all creditors were subsequently paid.

Editor's comment

The case of M/Y *Indian Empress* serves as a study in the complexities of enforced sales of vessels and underlines how much tighter the parameters have become around superyacht finance since the somewhat spurious days of freely available credit that characterised the mid-2000s. RR

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