

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
ADMIRALTY SUIT (L) NO. 420 OF 2016

JVL Agro Industries Limited

... Plaintiff

Versus

MT CAT TUONG VICTORY 09 (IMO 9608506) & Anr.

...Defendants

Mr. Akshay Kolse Patil a/w. Ms. Bulbul Singh Rajpurohit i/b. M/s. Crawford Bayley and Co. for the Plaintiff.

Ms. Naira Jejeebhoy a/w Mr. Shiv Iyer and Ms. Parvathy Kottol i/b Bose and Mitra and Co. for Defendant No. 2

Mr. Harsh Pratap a/w Mr. Amanpreet Gosal for Defendant No. 1

Coram: S. J. Kathawalla, J.
Date : 23 April, 2016
(RESIDENCE)

P.C.:

1. The Plaintiff and Defendant No. 2 inform the court that the matter has been settled between them and on their consent the following order is made.
2. The Plaintiff undertakes and is hereby directed to comply with the following on or before closing of banking hours on Tuesday, 26th April, 2016:
 - a. Amend the existing Letter of Credit opened by the Plaintiff in favor of the Defendant No. 2, to reflect the payment amount under the Letter of Credit to be USD 4,27,8000 (6,200 MT x USD 690) being the total agreed consideration payable for the cargo on board the Vessel M.V. M.T. Cat Tuong Victory 09 ("Cargo"). The Plaintiff shall further ensure that the Letter of Credit is suitably amended so as to be in the terms of this Order and that the same is subject to the terms of the Contract being Contract No. RIYA/S/2016/20065 dated 23 March 2016 and any reasonable request made by Defendant No.2;

- b. The Plaintiff pays the Defendant No. 2 an amount of USD 68,200 (6,200 MT x USD 11) being an additional sum to the total consideration mentioned in (a) hereinabove;
 - c. The Plaintiff pays the Defendant No. 2 an amount of USD 50,000 as deposit towards demurrage of Defendant No. 1 vessel from the date of arrival of the Defendant No. 1 vessel at Haldia Port till completion of discharge. Defendant No. 2 shall provide the Plaintiff with the Statement of Facts, Demurrage calculation and the Demurrage invoice raised by Ship Owner. Within 7 days of the submission of the said document by the Defendant No. 2 to the Plaintiff the Plaintiff and the Defendant No.2 will mutually reconcile the Demurrage calculation before the Defendant No. 2 makes the payment to the Ship Owner out of the Deposit provided by the Plaintiff. If the demurrage incurred by Defendant No. 2 exceeds USD 50,000 for any reason, including but not limited to delay in discharge of the cargo beyond 27 April 2016, the Plaintiff shall pay this additional amount on actuals within 5 bank working days of a demand being raised by the Defendant No. 2 on the Plaintiff. If the demurrage incurred by the Defendant No. 2 is less than USD 50,000 the difference shall be refunded by Defendant No. 2 to the Plaintiff within 5 bank working days of settling the demurrage with the Ship Owner;
 - d. The Plaintiff pays the Defendant No. 2 an amount of USD 5,000 towards interest.
 - e. The Plaintiff shall issue an undated NOC in favor of the Owner of the Vessel or in the format as provided by the Defendant No. 2 for permitting amendment of the IGM, which shall be undated to enable the Defendant No. 2 to amend the IGM should the Plaintiff fail to comply for amendment of the Letter of Credit and make payment as ordered in this paragraph. The Defendant No. 2 shall provide the Plaintiff with the necessary format of the NOC in the course of today.
3. The above payments (mentioned in clause 2 (b), (c) and (d)) shall be made by the Plaintiff by telegraphic transfer to the following bank account of Defendant No. 2 and a copy of the Bank's SWIFT Message reflecting the payment made to the Defendant No. 2 shall be provided to the Defendant No. 2 and their Lawyers Bose & Mitra & Co to evidence the payment having been effected:

Bank of New York Mellon

(Swift Code: IRVTUS3N) for the account of DBS Bank Ltd.

12 Marina Boulevard

Marina Bay Financial Centre, Tower 3, Singapore 018982

Beneficiary Name: Riya International Pte Ltd.

Beneficiary's Account No.: 0003-026118-01-5

(USO) Swift Code DBSSSGSG

4. On passing of this Order and and subject to the Plaintiff's compliance of clause 2(e) herein above the Defendant No. 2 undertakes to take all necessary steps to cause the amendment of the Import General Manifest presently filed to reflect the name of the Plaintiff as Consignee of the Cargo. Should the Plaintiff provide the NOC today the Defendant No. 2 will make all endeavours to have the IGM amended in the course of today Customs permitting failing which the Defendant No. 2 shall amend the IGM on the next working day.
5. On receipt of evidence of payment of the amounts as mentioned in Clause (2) (b), (c) and (d) by way of the Bank Swift Advise and on receipt of the Amended Letter of Credit as set out in paragraph 2 (a) above along with an LOI issued by the Plaintiff and guaranteed by their Bankers for compliance of the Plaintiff's obligation under paragraph 2 hereinabove:
 - a. The Defendant No. 2 shall duly endorsed in favour of the Plaintiff the Bills of Lading for the Cargo and submit the endorsed Bills of Lading, Invoice and other documents as per the terms of the Letter of Credit to the Bank for receiving payment; and
 - b. The Defendant No. 1 vessel shall subject to any rights that Defendant No. 1 may have, allow discharge and deliver the Cargo to the Plaintiff at the first available opportunity .

6. The Title to the Goods shall only vest in the Plaintiff on the Defendant No. 2 having received the payments as set out in paragraph 2 hereinabove.
7. In the event the Plaintiff fails to comply providing evidence of the payment and amendment of the Letter of Credit set out in paragraph 2 above on or before closing of banking hours on Tuesday 26th April, 2016, the Plaintiff shall have no right of the said Cargo and the Defendant No. 2 shall be entitled to sell the Cargo to any third party or otherwise deal with the same without further recourse or reference to the Plaintiff. The Defendant No. 2 shall have the right to submit the NOC directed to be provided by the Plaintiff under paragraph 2(e) above to the Ship Owner and/or their agents and/or the Authorities for amendment of the IGM. The Plaintiffs shall not raise any objection to the amendment to the IGM in such circumstances. The Defendant No.2 shall have the right to claim damages / costs incurred, if any, from the Plaintiff in accordance with law.
8. The parties inform that there is no caveat against release of the Defendant No. 1 vessel.
9. All parties including port, customs, Sheriff and all other parties / authorities to act on a fax / email copy of the Order duly authenticated.
10. Order of arrest dated 20 April 2016 as extended by order dated 21 April 2016 stands vacated. Instrument of release to be dispensed with.
11. The Plaintiff undertakes to pay poundage, if any, as per rules, within two weeks from today.
12. The Parties are at liberty to communicate a copy of this order to all port authorities, custom officers, coast guards, etc., by fax, email and/or hand delivery.
13. All authorities including port, customs, coast guards, etc., to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

14. In view of the above, the suit stands disposed off. Accordingly, the Notice of Motion (L) No. 1363 of 2016 does not survive.

15. Refund of court fee as per rules.

(S.J.KATHAWALLA, J.)