

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No. 805/1996**

% **30th January, 2018**

STATE TRADING CORPORATION OF INDIA LTD. Plaintiff

Through: Mr. Adarsh B. Dial, Sr. Adv.
with Ms. Sumati Anand,
Advocate.

versus

GOVT. OF PEOPLE'S REPUBLIC OF BANGLADESH & ORS.

..... Defendants

Through: Mr. Jai Bansal, Advocate for D-
2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Plaintiff/State Trading Corporation of India Ltd. has filed this suit for recovery of USD18,68,572 equivalent to Rs.6,35,31,549.22 against defendant nos.2 to 4. There were other reliefs claimed of detention of a ship belonging to defendant nos. 3 and 4 or for defendant no.3 to restore to the plaintiff 6500 MT and 524 MT of Non Basmati Par Boiled Rice but such reliefs are now not

pressed on behalf of the plaintiff. The only relief which is pressed is for recovery of money as against defendant nos. 2 to 4.

2. Defendant no.1 in the suit is the Government of the People's Republic of Bangladesh. Defendant no.1 was the buyer of Non Basmati Par Boiled Rice from the plaintiff totaling to 50,000 MT (+5%). Out of this contracted quantity of 50,000 MT, the plaintiff had entered into a "Back-to-Back Contract" with defendant no.2/Doon Valley Rice Ltd so that the defendant no.2 will perform the contract of plaintiff with the defendant no.1 to the extent of 10,500 MT (+5%) of Non Basmati Par Boiled Rice. This contract between the plaintiff and defendant no.2 is dated 11.11.1995. Defendant no.3 is the shipping company through whom defendant no.2 contracted to deliver rice to the defendant no.1. Defendant no.4 is the Indian agent of the defendant no.3 shipping company.

3. At this stage itself it is noted that the plaintiff has no privity of contract with the shipping company being defendant no.3 nor the plaintiff has any privity of contract with the defendant no.4 who is the shipping agent of defendant no.3. Since there is no privity of contract of plaintiff with these defendant nos. 3 and 4, hence there

is no liability of defendant nos. 3 and 4 towards the plaintiff because these defendant nos. 3 and 4 were only the shippers and agent respectively of the defendant no.2 for performing of the contract of defendant no.2 of supply of 10,500 MT of Non Basmati Par Boiled Rice, and which rice was to be supplied by the defendant no.2 to the defendant no.1 and on behalf of the plaintiff. Accordingly, no relief can be granted, and therefore, the suit will stand dismissed as against defendant nos. 3 and 4.

4. That leaves us with only the claim of the plaintiff against defendant no.2, inasmuch as already stated above, no money decree is claimed against the other defendant nos. 5 to 7 and who were essentially the port authorities at New Mangalore and the bank which had issued the performance guarantee on behalf of the defendant no. 2 to the plaintiff, and which bank guarantee could not be encashed by the plaintiff.

5. In terms of the contract dated 11.11.1995 of the plaintiff with the defendant no.2, plaintiff was to get USD 4 PMT as service charge and USD 4 PMT as agent's commission. This amount was to be deducted from the Letter of Credit (LC) which the defendant no.1

got assigned upon in favour from the plaintiff, and this LC which was assigned by the plaintiff to the defendant no.2 was got issued by defendant no.1 in favour of the plaintiff under the contract of the plaintiff with the defendant no. 2 for supply of Non Basmati Par Boiled Rice. The balance of the amount of LC after paying USD 8 PMT to plaintiff was to be received by the defendant no.2 for performing by the defendant no.2 of its obligations with the plaintiff for supplying of 10,500 MT of Non Basmati Par Boiled Rice to the defendant no.1 on behalf of the plaintiff.

6. The shipper being the defendant no.3 transported a quantity of 6500 MT rice on the Ship known as “M.V. Yanmit”, from Kakinada Port in Andhra Pradesh to Chittagong Port in Bangladesh. At this stage, there were some issues with respect to discharge of the stock of rice not at Chittagong Port but at Mongla Port up-stream, and while this issue was being sorted out, there were disturbances in Bangladesh and resultantly defendant no.3 in the night of 26/27.2.1996 fled from the port of Chittagong and since then has remained untraceable. The result was that 6500 MT of rice which was on the ship M.V. Yanmit of defendant no.3 could not be delivered to

the defendant no.1. Also, there were a short quantity of 524 MT under the earlier shipment of rice delivered to the defendant no.1 which was loaded on the ship M.V. Lewant. Defendant no.1, on account of not receiving the rice and having already paid for the same in terms of the LC opened in favour of the plaintiff and which LC was assigned by the plaintiff to defendant no.2, therefore claimed a sum of Rs.6,35,31,549.22 from the plaintiff, and this amount was recovered by the defendant no.1 from the plaintiff from the other amounts of the plaintiff lying with the defendant no.1, hence the present suit is filed by the plaintiff seeking a money decree against the defendant no.2 inasmuch as defendant no.2 had encashed the LC issued by the defendant no.1 in favour of the plaintiff and which was assigned by the plaintiff to the defendant no.2, and because the defendant no.2 had received amount of the LC without supplying the rice to defendant no.1 in terms of the contract of defendant no.2 with the plaintiff.

7. In this suit the defendant no. 2 had appeared and filed its written statement. Defendant no. 2 however thereafter did not appear and hence was proceeded *ex-parte* on 18.5.2004. Defendant no. 2 thereafter moved I.A.No.2165/2006 for setting aside *ex-parte*

proceedings and which application was disposed of on the statement being made by counsel for defendant no. 2 that the defendant no. 2 does not press for setting aside of the *ex-parte* proceedings but only sought the relief of being heard at the time of arguments and application accordingly was disposed of reserving such right to the defendant no.2 to be heard at the time of arguments.

8. Plaintiff has filed affidavits by way of evidence of three of its witnesses. The first affidavit is of Sh. R.K. Sharma who has deposed as PW-1. The second affidavit which has been filed is of Sh. Bhim Sain who has deposed as PW-2 and the third affidavit which is filed is of Smt. Vinod Kalra who has deposed as PW-3. These witnesses have proved the case of the plaintiff by deposing in terms of the averments made in the plaint. Contract of plaintiff with defendant no. 2 has been proved and exhibited as Ex.PW1/2. Contract of plaintiff with defendant no. 1 has been proved and exhibited as Ex.PW1/1. PW-1 has deposed that defendant no. 2 recovered the entire amount of LC but failed to deliver the contracted quantity of rice to defendant no.1. This witness has also deposed as to the defendant no. 3 running away with the ship M.V. Yanmit from the port of Chittagong at

Bangladesh. PW-2 has also deposed in terms of the averments made in the plaint. PW-2 has also deposed with respect to defendant no. 1 making a claim on the plaintiff and which letter dated 21.4.1996 has been proved as Ex.PW2/1. Defendant no.1's another letter making a claim against the plaintiff of the suit amount has been proved as Ex.PW2/2. Yet another letter dated 12.5.1996 issued by the defendant no.1 making a claim against the plaintiff as proved as Ex.PW2/3. One more letter dated 11.6.1996 from the defendant no.1 to the plaintiff making the claim has been proved as Ex.PW2/4. The Minutes Of Meeting dated 18.2.1997 between the defendant no.1 and the plaintiff have been proved as Ex.PW2/5. PW-2 has accordingly deposed, as did the PW-1, that the defendant nos.2 to 4 have failed to perform the contract and failed to discharge 6500 MT of Non Basmati Par Boiled Rice to the defendant no.1.

9. PW-3 has deposed with respect to the loss of the original Minutes Of The Meeting dated 18.2.1997 and thus for allowing leading of secondary evidence being copy of the Minutes of Meeting dated 18.2.1997. Reason given for loss of the original is a loss of this document by the plaintiff's earlier counsel Mr. Vivek. There is in my

opinion no reason to disbelieve the deposition of PW-3 for taking on record the secondary evidence with respect to Minutes of Meeting dated 18.2.1997. In any case, in my opinion the plaintiff has otherwise proved through the evidence of PW-1 and PW-2 the *factum* with respect to the defendant no.2 receiving the entire amount of the LC which was assigned by the plaintiff to the defendant no.2 and which LC was received by the plaintiff from the defendant no.1, and that defendant no.1 had given this LC to the plaintiff for the rice which was to be supplied by the plaintiff to the defendant no.1 under the contract Ex.PW1/1. PW-1 and PW-2 have also deposed with respect to rice not being supplied by the defendant no.2 to the defendant no.1 in terms of the contract Ex.PW1/2 of the plaintiff with the defendant no.2.

10. Learned counsel for the defendant no.2 argued that liability of the defendant no.2 under its contract dated 11.11.1995/Ex.PW1/2 was only to ship the rice and since the defendant no.2 shipped the rice to the defendant no.1 through the defendant no.3, therefore the defendant no.2 cannot be held to be liable. I cannot agree with this argument urged on behalf of the defendant no.2 as the last para at page 1 of the contract

dated 11.11.1995/Ex.PW1/2 clearly shows that the defendant no.2 under its contract with the plaintiff had agreed to perform all obligations which the plaintiff had to perform *qua* the defendant no.1 for the supply of 10,500 MT of rice, and therefore, the issue is not only of shipping of the rice but also of the actual delivery of the rice to the defendant no.1, and which delivery has been found not to be made as the defendant no.3 had run away with the stock from the Chittagong Port at Bangladesh.

11. In view of the above discussion, since defendant no.2 has already received consideration of goods without having delivered the goods to the defendant no.1 as required under the contract dated 11.11.1995 of the defendant no.2 with the plaintiff, therefore, defendant no.2 is liable to refund the suit amount to the plaintiff, and which was the amount recovered by the defendant no.2 under the LC assigned by the plaintiff in favour of the defendant no.2.

12. In view of the above discussion, suit of the plaintiff is decreed for a sum of Rs.6,35,31,549.22/- as prayed. Plaintiff is also entitled to interest *pendente lite* and future at 7 ½% per annum simple. Plaintiff is also entitled to costs. Decree sheet be prepared.

JANUARY 30, 2018 ib/AK/Ne

VALMIKI J. MEHTA, J