

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL SUIT NO.258 OF 2015

Adani Power Rajasthan Ltd. & Anr.)....Plaintiffs

V/s.

Murmansk Shipping Co.)....Defendant

Mr.Ruchir Goenka i/by Bose and Mitra and Co. for plaintiffs.
Mr.Bimal Rajasekhar for defendant.

CORAM : K.R.SHRIRAM,J

DATE : 5.11.2019

P.C.:-

1. Mr.Goenka for plaintiffs seeks leave to withdraw the suit.
Suit dismissed as withdrawn. Refund of court fees if any, in
accordance with Rules.

2. Mr.Rajasekhar for defendant states that on behalf of
defendant British Marine had given a letter of undertaking dated
12.1.2012 (incorrectly mentioned as 12.1.2011) to pay to plaintiffs
such amount as may be awarded by this Court.

3. Mr.Goenka for plaintiffs states that the original of the
undertaking has been misplaced by plaintiffs. Mr.Goenka for plaintiffs
tenders a photo copy of the letter of undertaking which is taken on
record and marked `X' for identification, which for ease of reference is
scanned and reproduced below :-



or as may be mutually agreed to between the parties hereto, in respect of the said claims, interest and costs of the Cargo Owners. This undertaking is provided subject to the following conditions:

1. The total of our liability hereunder shall not exceed the sum of US\$10,000,000 (U.S. Dollars Ten Million, Six Hundred and Fifty Eight Thousand, Eight Hundred and Eighty Eight, Fifty Two Cents) plus interest and costs;
2. Cargo Owners agree that the principal amount secured at (1) above shall be reduced, if warranted to a sum, jointly agreed by surveyors representing the Shipowners and the Cargo Owners following joint survey of the cargo after discharge. For the sake of clarity, it is stated that surveyors representing both parties shall reach mutual agreement on the value of the Cargo Owners' Claims for security purpose not later than 30 days from the date of time of completion of discharge of the cargo.
3. Upon the joint assessment of the Cargo Owners' Claims, as aforesaid, we agree and undertake to provide security for the Cargo Owners' Claims, as ascertained in the joint survey, in the form of a Bank Guarantee for such jointly surveyed amount from a mutually agreed bank and in a mutually accepted wording or failing such agreement on bank or wording, from an Indian nationalised bank in the standard wording of the High Court of India at Mumbai with legal endorsements. Upon such Bank Guarantee being furnished, this Undertaking shall stand discharged.
4. If, however, the joint surveyors are not able to reach agreement as to the quantum and within the time provided for in (2) above, the appropriate quantum of security is to be determined by the High Court of Judicature at Mumbai. Such Bank Guarantee shall be issued no later than 30 days from the date of time of agreement on quantum or court order whichever shall be earlier.
5. We further undertake to keep the Bank Guarantee issued under (3) or (4) above alive until a final judgment/decree by the Bombay High Court or final award, as the case may be, has been served upon the Cargo Owners.

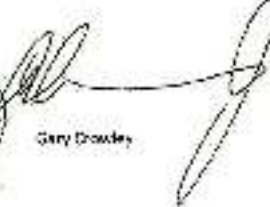




Nothing herein amounts to any admission of liability and this undertaking is provided without prejudice to the Shipowners' defenses and/or rights to limit liability by reason of any applicable contract, statute or law.

This undertaking shall be governed by and construed in accordance with English law. We confirm that our registered or principal office is situated at Plantation Place, 30 Fenchurch Street, London EC3 3RD.

Yours faithfully,
For and on behalf of British Marine

David J. Hamerton
Signed this day 12th January 2011
London England

Gary Crowley



4. Mr.Goenka for plaintiffs states that British Marine be released of its undertaking since parties have settled the matter out of Court.

5. In view of the statement made by Mr.Goenka for plaintiffs, British Marine is discharged of its undertaking.

6. All to act on authenticated copy of this order.

(K.R.SHRIRAM,J)