IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: ARBITRATION ACT, 1940

CS(OS) 467/1995 and IA 11864/1995

Reserved on: 6th February, 2008

Date of Decision: July 1, 2008

M/S JAYSHREE SHIPPING ..... Plaintiff
Through Mr. Pratap Venugopal, Advocate

versus

FOOD CORPORATION OF INDIA LTD. ..... Defendant
Through Mr. P.K. Dey, Advocate
with Mr. Santanu Ghasi and Kaushik Dey, Advocates.

Mr. Justice S. Ravindra Bhat

1. In this suit, an award dated 20.2.1992 is sought to be made Rule of Court. The award substantially upheld the petitioners claim. The respondents (hereafter called FCI) have preferred objections under Sections 30 and 33 of the Arbitration Act, 1940.

2. Briefly the facts are that a Charter Party was signed between the claimant/petitioner (hereafter referred to as the claimant) and the second respondent Union of India. The latter had chartered the vessel MV Jayalakshmi for voyage from Portland, Oregon, USA for ferrying 25,000 MT of wheat to India. The vessel loaded a cargo of 25,499.47 MT of wheat at Austin, USA, from where she set sail. She arrived at Nagapattinam Port at 10:05 Hours on 5.1.1989. She tendered the Notice of Readiness at the same time; it was accepted by the Charterers agent on 6.1.1989 at 10:05 hours. Clause 14(c) of the Charter Party provides as follows:- At first/sole discharge port of place, time to count from 24 hours after receipt of Masters written Notice of Readiness to discharge given to Charterers or their agents during ordinary office hours on a week day before 4 PM (similarly before Noon if on Saturday), also having been entered at Custom House and in free pratique whether vessel in berth or not (underline supplied).

3. Nagapattinam was and continuous to be a minor port. The vessel was, therefore, anchored at High Seas. Discharging operations were carried out through smaller harbor crafts, which went up to the vessel. The discharge operations started on 7.1.1989 at 16:15 hours and completed at 16:00 hours on 15.2.1989.

4. Disputes arose between the Charterer and the claimant/vessel owners as regards calculation of demurrage at load port/discharge port, allegations of short-landing and damaged cargo and as regards other miscellaneous items. The disputes were referred to Arbitration by two persons, one nominated by each of the parties.

5. By the impugned award, the Arbitrators directed payment of Rs.9,47,143/- in favour of the claimants with interest at 18%, commencing from the date of the award till the date of payment. The claims of the vessel owners were upheld in the manner indicated below:- i)Lord Port Demurrage : Rs.17,708-35 ii)Discharge Port Demurrage : Rs.3,58,284-50 iii)Balance of freight : Rs.5,97,201-93 Total : Rs.9,71,194-78

6. The award also directed payment of Rs.24,052-00, as regards the counter-claims of FCI concerning Port and Customs overtime and Cargo Claims. It, however, dismissed counter-claims regarding Discharge Port Dispatch and Short landing of cargo.

7. The FCIs first ground of attack is as regards the finding in the award that lay-time counted at 10:05 hours on 6.1.1989. FCI contends that the interpretation of clause 14(c) should be in the context of the facts of this case. Mr. Dey on its behalf submits that at the Port of Discharge at Nagapattinam even though the Master of the vessel tendered the Notice of Readiness at 10:05 hours on 5.1.1989, the Custom Authorities granted final entry on 7.1.1989 at 14:15 Hours; 8.1.1989 was a charter party holiday being Sunday. It is, therefore, contended by relying on the expression also having entered at Custom House that Notice of Readiness should be inferred to have been tendered at 10:00 Hours on 9.1.1989 since the previous day was Sunday and accordingly lay-time would have commenced on 10.1.1989 at 10:00 hours.

8. FCI relies upon Sections 30 and 31 of the Indian Customs Act. They read as follows:- Section 30: Delivery of import manifest or import report: 1)The person-in-charge of a conveyance carrying imported goods shall, within twenty-four hours after arrival thereof at customs station, deliver to the proper officer, in the case of a vessel or aircraft, an import manifest, and in the case of a vehicle, an import report, in the prescribed form: PROVIDED that- a)in the case of a vessel any such manifest may be delivered to the proper officer before the arrival of the vessel. b)if the proper officer is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof within twenty-four hours after the arrival of the conveyance, he may accept at any time thereafter. 2)The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents. 3)If the proper officer is satisfied that the import manifest or import report is in any way correct or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented. Section 31. Imported goods not to be unloaded from vessel until entry inwards granted. 1)The master of vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel. 2)No order under sub-section(1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it. 3)Nothing in this section shall apply to the unloading of a

baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

9. Mr. Dey contends that the actual discharge in fact commenced on 7.1.1989 after the final entry was given to the vessel at 14:30 hours by the Custom Authorities. He submits that a combined reading of Sections 30 and 31 supports the inference that till final Customs entry is granted, discharge of the vessel is prohibited. The FCI, therefore, contends through its counsel that the interpretation of the expression entry, which was accepted by the Arbitrators as misplaced and contrary to law.

10. Learned counsel relied upon the decision of the Supreme Court in Dhiraj Lal H. Vohra vs. Union of India, 1993 Supp (3) SCC 453. The Court had, in that case, ruled that under Section 31, the master of the vessel cannot permit the unloading of importing goods until an order is given by the proper officer granting entry inwards to such vessel and no order under sub-section (1) in turn could be granted until the import manifest were delivered or a proper officer expressed his satisfaction about existence of sufficient cause for not delivering it.

11. Learned counsel also relied upon two decisions of the British Court reported as President of India vs. Davenport Marine Panama SA, 1987 (2) Lloydss Law Reports 365 and President of India vs. Diamantis Patros (Hellas) Marine Enterprises Ltd., 1987 (2) Lloyds Law Reports 649. The Courts had in that case had held that the word entry referred to the final entry and cannot comprehend filing of an entry inward application. Learned counsel also relied upon the judgment of the Lord Compania de Navviera Nedelka SA vs. Tradex International SA, (1973) 2 Lloyds Reports 27. The Court had ruled that for a Notice of Readiness to be construed as proper, the vessel must be ready at the time the notice is given and not at a time in future.

12. On the strength of these, it was contended that Notice of Readiness is deemed to have been given only on 9.1.1989 and consequently, lay- time commenced from 10.1.1989 and not 6.1.1989 as held by the Arbitrators. This finding, it was submitted, was unsupportable in law and amounted to legal misconduct.

13. The next contention concerned the available lay-time for discharge of the vessel as well as interpretation of clause 14(a). Clause 14(a) of the Charter Party states as follows:- 14(a) Cargo to be discharged by consignees Stevedores, free of risk and expenses to vessel at the average rate of 1500 Metric Tons basis 5 (five) or more available workable hatches and pro-rata for less number of hatches per weather working day of 24 consecutive hours, Saturday after noon, Sundays and Charter Party holidays excepted, even if used, always provided the vessel can deliver at this rate. (underline supplied).

14. According to Mr. Dey, learned counsel on behalf of the FCI, a textual reading of the condition discloses that available lay-time is based on the availability and workability of a hatch. As soon as any individual hatch becomes unworkable due to its becoming empty, it would be excluded for the purpose of calculating rate of discharge. He

submitted that a completed hatch and an empty hatch is not workable hatch within the meaning of the Charter Party. According to the accepted formula, lay-time is arrived at by dividing the quantity of cargo in the hold with the largest quantity by the result of multiplying the agreed daily rate per working or workable hatch by number of hatches serving the hold. He relied upon on the following formula:- Lay-time = Largest Quantity in one hold = Days Daily rate per hatch

15. It was contended that in this case the vessel had five hatches when the discharge started; cargo in the heaviest hatch was 6862MT. The average rate per hatch was 300MT. The lay-time, therefore, was 22 Days and 20 Hours. It was contended that the award misconstrued the formula and incorrectly arrived at lay-time. In this case, the Arbitrators had proceeded to find out that lay- time allowed for discharge was 16 Days 23 Hours and 59 Minutes.

16. Learned counsel relied upon the decision of Queens Bench Division in Cargill Inc. vs. Rionda De Pass Ltd. (The Giannis Xilas), in support of the interpretation of clause 14(c). In that case, Mr. Justice Bingham, at that time, the Member of the Bench, held as follows:- (2) This simple approach is not a quantity per hatch per day but, as here, to a quantity per workable hatch per day. (The expressions workable hatch or available workable hatch have the same meaning). The effect of that expression is not to distinguish a cargo hatch from any other kind of hatch but to denote a hatch which can be worked either because under it there is a hold into which cargo can be loaded or a hold out of which cargo can be discharged, in either event being a hatch which the party responsible for loading or discharging is not for any reason disabled from working. The use of this expression acknowledges that holds being of different sizes and containing different quantities of cargo, points will be reached during loading or discharge at which successively hatches will cease to be workable because they are, as the case may be, full or empty, and accordingly loading or discharging obligation is modified when these points occur. On the proper application of the clause in this form the time permitted for loading is governed by the quantity of cargo loaded into the hold into which the greatest quantity of cargo is loaded.

17. Learned counsel submitted that the said decision has found an approval and was applied by this Court in the judgment reported as B.K.Vashisht vs. East International Ltd. 95 (2002) DLT 716.

18. The FCI next avers and contends that according to the Charter Party, the prevalence of adverse weather conditions (surf at shore) resulted in lightening craft being unable to approach the vessel for discharge. This period were entitled to be excluded for calculation of lay-time. He relied upon the Statement of Fact for the discharge Port accepted by both parties in which it was stated that 5.1.1989, 6.1.1989, 11.1.1989, 16.1.1989, 18.1.1989 and 30.1.1989 was served on the basis of the Courts Certificate issued in that regard. The vessel owners too had included all these dates except 11.1.1989 while calculating lay-time. It is claimed that the Arbitrators committed a serious error in not excluding 11.1.1989 while calculating the lay-time, which is an error apparent on the face of the award.

19. The FCI contended that the award also discloses an error committed on its face because, under Rule 16 of the Tamil Nadu Minor Ports Harbour Craft Rules, 1953, prohibits discharge operations between 6:00 PM and 6AM since the working hours of the Port were 6AM to 6PM. The said Rule reads as follows:- .16. Working of the Harbour Craft at night and in bad weather:- No registered harbor craft shall apply within the limits of the port: a)Between the hours of 6.00 a.m. without the previous permission of the Registering Officer, or b)When flag S by day or one red light by night indicating bad weather or high seas displayed from the port flag staff. When either of the signals referred to in clause (b) is hoisted at the port flag staff, all harbor craft shall return to the shore at once and shall not plu again, without special permission of the Registering Officer until the signal is hauled down.

20. It is, therefore, submitted that as a result of the Rule, no discharge operation was actually carried out between 6PM to 6AM. To the extent, it was based on the existing facts caused as a result of regulations, of which both parties were aware, the vessel owners could not claim inclusion of that period in the lay-time and demand demurrage. In not adverting to this aspect and giving effect to it, the Arbitrators committed an error of law. 21. It was lastly contended that as against the Bill of Lading, quantity of MT 25,499.467 loaded in the vessel, what was actually delivered was a quantity of MT 25,412.399MT including loss on Board, of three bags. A quantity of 4.485.600 MT was damaged cargo. The total quantity short-landed and damaged was MT 82.582.210, valued at Rs.2,22,551.39. The Certificate of the Superintendent of Customs, Nagapattinam was produced as evidence to prove this fact. The Arbitrators, however, erroneously rejected this claim.

22. It is contended that the award should be interfered with on the grounds, as according to FCI, the findings were contrary to the terms of the contract. Mr. Dey relied upon the Decision of the Supreme Court in State of U.P. vs. Ram Nath International Construction (P) Ltd., (1996) 1 SCC 18, and State of JandK Anr. Vs. Dev Dutt Pandit, 1999(5)SCALE 241. It was submitted that the Supreme Court has held that the Arbitrator being a creature of Agreement is duty bound to enforce its terms and cannot adjudicate upon anything beyond the contract. In case, he does so, the Court would be acting within its jurisdiction to delve into the contract and evaluate the correctness of such findings. On the facts, it was submitted that on a proper application of these rulings, the award had to be set aside.

23. The claimant petitioner argues that the award cannot be attacked, since the Court should not divine the reasoning which persuaded the Arbitrators to rule as they did. Relying on clause 42 of the Charter Party, it was contended that there was no obligation to furnish reasons supporting the findings. Learned counsel for the Petitioner relied on the judgment reported as Raipur Development Authority vs. Chokamal Contractors, 1989 (3) SCR 144. Since the arbitration clause did not require the award to be a speaking one, the FCI could not fault it as unreasoned and, therefore, illegal.

24. On the issue of readiness to discharge, counsels interpretation of clause 14(c) was that it meant actual point of time when Notice of Readiness was tendered. It was submitted that at some point in time, there were differing approaches on the subject. Thus in N.Z.Mechalos vs. The Food Corporation of India (THE APPOLLON), 1983 (1) Lloyds LR 409 and FCI Of India vs. Carras Shipping Co. Ltd. (THE DELIAN LETO), 1983 (2) Lloyds LR 496, the position that prior entry (as opposed to final entry, through acceptance of the manifest) was favoured. Two later decisions, viz. President of India vs. Davenport Marine Panama SA (THE ALBION), 1987 (2) Lloydss Law Reports 496 and President of India vs. Diamantis Patros (Hellas) Marine Enterprises Ltd. (THE NESTOR), 1987 (2) Lloyds Law Reports 649, however, held that entry into the port meant final entry. Learned counsel submitted that the Bombay High Court favoured the previous approach in The Appollon and The Delian Letto, holding that prior entry constituted entry while construing readiness of the vessel, to discharge her cargo. This view was later affirmed by the English Courts when the Court of Appeal, in Antclizo Shipping Corporation vs. FCI (The Antclizo), 1992(1) Lloyds LR 558 held that notice of readiness is deemed furnish upon prior entry or submission of the notice. It was submitted that the issuance or withholding of an order under Section 31 of the Customs Act was irrelevant for deciding a commercial based on a Charter Party.

25. On the issue of lay-time, and consequent demurrage, learned counsel for the petitioner contended that the decision in Cargil Inc. (supra) was not followed by a later decision of the House of Lords in England in the judgment reported as The General Capinpin President of India vs. Jebsens (UK) Ltd., 1991 (1) Lloyds LR1. It was thus contended that the average workable hatch interpretation was discarded in favour of the average overall rate. It was also submitted that the decision of this Court in B.K.Vashishts case (supra), did not take note of the subsequent decision in the General Capinpin (1991) (supra), and is not, therefore, an authority on the issue.

26. As regards applicability of the Tamil Nadu Rules and exclusion of time between 6PM to 6AM, it was contended that nothing prevented the charterer (FCI) from engrafting such exceptions, while entering into the contract. Since no such exemption was made in the Charter Party, the unavailability of any time could not be taken into consideration while calculating admissible lay-time.

27. Learned counsel contended that there was no infirmity in regard to the finding of short landing and denial of relief to the FCI.

28. From the above sequential narrative, it is evident that the Charter Party, in this case, for the vessel MV Jayalakshmi was entered into on 10.10.1988. In its terms, the owner agreed to ship 25,000 MT grain to one or two ship ports in India excluding Calcutta. The vessel was loaded and set sail from Portland on 29.11.1988. She arrived at the discharging port, Nagapattinam. Notice of Readiness was tendered and accepted on 5.1.1989 at 10:05 Hours. The first point of dispute was as to whether the Arbitrators findings about commencement of lay-time from 10:05 hours on 6.1.1989 is legally sound incorrect. It is not in dispute that the vessel started discharging at 14:15 Hours on 7.1.1989 and completed at 16:00 Hours on 15.2.1989.

29. The approach of the Arbitrator, attacked as erroneous is highlighted with reference to Sections 30 and 31 of the Customs Act which have been extracted in the preceding part of the judgment. It is urged on behalf of the FCI that Notice of Readiness in terms of clause 14(c) should be construed not as of the point in time when it was tendered on 5.1.1989 but after it was accepted, i.e. on 9.1.1989 (since 8.1.1989 which would otherwise have been relevant date), was a Sunday. The FCIs contention is based upon an interpretation of Sections 30 and 31 of the Customs Act, particularly, the latter which prohibits entry of any imported goods unless an order accepting the notice is made by the concerned officer. By relying on the judgment Dhiraj Lal Vohra (supra), it is submitted that the Notice of Readiness is deemed to have occurred on 7.1.1989 and, therefore, lay-days commenced at 10:00 Hours on 9.1.1989. The claimant/owners contention, on the other hand, is that the reference to Sections 30 and 31 of the Customs Act are of no relevance since what is material is the point in time when Notice of Readiness is tendered. On their behalf, the previous cleavage of opinion about the correct approach as between prior entry and final entry was adverted to. They rely to the latest judgment of the Court of Appeal on the issue, i.e. Antclizo (supra) as well as the judgment of the Bombay High Court in Union of India vs. The Great Eastern Shipping Company Ltd., Arb.Pet.No.38/1988 decided on 13.12.1988.

30. In the Great Eastern Shipping Company (supra), after considering Sections 30 and 31 of the Indian Customs Act, the Bombay High Court held that the award (which interpreted the following term:- ``time to count from 24 hours after receipt of Masters written Notice of Readiness to discharge given to Charterers or their agents during ordinary office hours on a week day before 4 PM . vessel also having been entered at Custom House and in free pratique whether in berth or not as meaning from the point of submitting Notice of Readiness as opposed to acceptance by the Custom Authorities) was correct and that there was no error in law.

31. In the Antclizo (supra), the Court of Appeal considered all the previous four decisions, i.e. THE APPOLLON, THE DELIAN LETO, THE ALBION and THE NESTOR. The Court held that tendering of Notice of Readiness (also called ``the prior entry'') constituted the reference point from which lay-time had to commence in terms of the Charter Party. The Court of Appeal noticed the provisions of the Indian Customs Act and also held that such a prior entry is also a physical entry in the Register to which all relevant parties attach importance.

32. Facially, the reference to Sections 30 and 31 of the Customs Act are undoubtedly attractive. Section 30(1) casts an obligation on the person-in-charge of a conveyance carrying imported goods (such as vessel), within twenty-four hours after its arrival at the customs station, to deliver, to the proper officer, an import manifest, in the prescribed form. Section 30(2) enjoins that the import manifest should contain a declaration about the veracity of its contents. Section 31(1) obliges the master of vessel not to permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such a vessel.

33. In this case, it is evident that two possible interpretations are being canvassed for acceptance. The strongest contention on behalf of the FCI is based upon Sections 30 and 31 of the Customs Act. While undoubtedly the master of every vessel is obliged to respect the mandate under Section 31, equally shipping practice followed by the ports and customs officials in India has been documented by the Bombay High Court in the Great Eastern Shipping case (supra). It is also reflected in the Court of Appeals decision in Antclizo, where an elaborate examination of the Indian Customs Act and the Customs manual was undertaken as a question of fact. As held in Great Eastern Shipping case (supra), though the decisions of English Courts are not binding their reasoning if logical can be adopted. Viewed from a commercial perspective, there is nothing to restrict the plain and literal interpretation of the expression [after receipt of Masters written Notice of Readiness to discharge also having been entered at Custom House and in free pratique whether vessel in berth or not]. These expressions are almost identical as in the Great Eastern Shipping case (supra). Moreover, the first requisite of lay-time commencing 24 hours after receipt of Masters written Notice of Readiness, constitutes an objective fact. The latter part about the Notice of Readiness having been entered at Custom House qualifies this objective fact. The entry of the Notice of Readiness, which is furnished by the Master is no less, a notice and in fact, constitutes the basis for an order under Section 31(1). Having regard to the fact that Sections 30 and 31 have existed on the Statute Book and also having regard to the previous history of the clause, nothing prevented the Charterers, i.e. the FCI, from making the position clear beyond any shadow of doubt while negotiating the contract. Thus, they could have clarified that entry would mean acceptance of the Notice of Readiness by the competent official, under Section 31. However, that was never done. In these circumstances; the contention that the Arbitrators committed an error in law cannot be accepted. They merely acted upon one possible interpretation. Though the Court might in its original jurisdiction be inclined to accept a contrary interpretation that itself would not afford a ground to hold the award invalid.

34. The second bone of contention, in this case, concerns interpretation of clause 14(a) which has been extracted above. The FCIs contention is based upon the understanding that lay-time availability is based upon workability of a hatch. Thus it argues that when a particular hatch is rendered unworkable, for any reason, it should be excluded for the purpose of calculating rate of discharge. By applying this formula, the FCI contends that lay-time available was 22 Days 20 Hours.

35. As against this argument, the vessel owners submit that the workable hatch formula has been discarded, in preference to the overall discharge rate, applied in the impugned award. It relies upon a decision of the House of Lords in England in The General Capinpin (1991) (supra).

36. The workable hatch formula was accepted and applied in some previous rulings of the English Courts notably in Cargills case (supra). The Courts had earlier leaned in favour of such interpretation because according to them the owners interpretation depended upon the way in which the Charterers chose to use the vessel. Thus, there could possibly be good reasons why they could load vessels one after the other. On the other hand, the reasons may not be logical. This led to an unsatisfactory result where the Courts

could not distinguish between the excusable delay and unwanted delay. The Court, therefore, had earlier favoured the workable hatch formula. In the House of Lords decision in The General Capinpin (supra), the entire gamut of case law was reconsidered in the context of three awards challenged before Courts. One of those contains a lay-time calculation stipulation identical with the clause in this case. The party to that dispute also was the Government of India which had chartered the vessel for the FCI. The Court upheld the award in all the cases; the Arbitrators did not favour the workable hatch formula but adopted the overall rate of discharge formula. In the The General Capinpin (supra), the Court was persuaded to adopt a different and overall rate as opposed to the workable hatch formula firstly because of the history of change of the clause in the Charter Party and secondly because of the three awards had reached a similar conclusion.

37. The Court further held that while entering into a Charter Party, the element of volition existed unlike in case of legislation. It was further held that the Arbitrators in that case were correct in applying the overall rate formula. The Court preferred to treat the reference to available workable hatches not as substituting a rate per hatch for the expressly provided over-all rate for the ship, but rather as imposing a qualification upon it. It was held that such reaction of commercial men, well aware of the practical consequences and who must also found how Charter Parties are negotiable and how they are likely to understand by practical man in the trade, should be upheld.

38. In Shipping Law, parlance lay-time means the period of time agreed between the parties during which the vessel owner makes the ship available for loading or discharging the cargo without payment of addition to the freight (Ref. Lay-time'` by Michael Brynmor; Summerskill, Stevens and Sons Limited, 1989). In Nielsen vs. Wait, (1885) 16 Q.B.D. 67 (C.A.), lay-days were described as follows:- There must be a stipulation as to the time to be occupied in the loading and in the unloading of the cargo. There must be a time either expressly stipulated, or implied. If it is not expressly stipulated, then it is a reasonable time which is implied by the law; but either the law or the parties fix a time. Now, when they do fix a time, how do they fix it Why, they allow a certain number of days, during which, although the ship is at the disposal of the charterer to load or unload the cargo, he does not pay for the use of the ship. That is the meaning of 'lay days'.

39. Once lay-days or lay-time agreed to lapse or expire, the Charterers have to bear additional freight or demurrage, in terms of the Charter Party. The admissible lay-time, therefore, has been subject matter of extensive litigation in English Courts. The working hatch (also known as the heavy hatch) formula which the FCI bases its argument upon, is premised upon calculation of lay-time relative to the speed at which each hatch is unloaded (or ``discharged'`, as it is termed) having regard to the hatch capacity of the vessel. The time to unload or discharge is relative to the speed since on applying such formula, the state of the hatch is taken into consideration. Thus, if a hatch is empty, it is kept out of reckoning while calculating lay- time. On the other hand, the formula favoured in The General Capinpin opinion, is the ``over-all formula'`, strives to achieve a uniform, or over-all rate. This construction treats the stipulation concerning the number of hatches and their capacity as only qualifying the over-all rate. The House of Lord in its majority opinion in The General Capinpin that under the over-all rate, a quick, if rough

and ready calculation can be made, that would enable parties how much lay-time is prima facie availabile to Charterers for discharging. They would have to divide the Bill of Lading quantity by the specified rate. The lay-time clause which provides rates per hatch particularly rate available per hatch was characterized as a highly tuned clause. But, at the same time, it was held, that would lead to anomalies having regard to disproportionate size of cargo spaces, in each vessel itself. This, the ``over-all rate'' interpretation provides for a uniform rate of discharge calculable on the same basis, for the vessel rather than taking into account individual variations relative to the point of time when hatches are empty.

40. The FCI undoubtedly is correct in its submission that the decisions in Cargill Inc. (supra) and B.K.Vashisht (supra) favoured the workable hatch formula. B.K.Vashisht (supra) is a decision of this Court and has adopted the workable or heavy hatch formula applied in Cargill Inc.(supra). Yet one cannot be oblivious of the fact that the formula was discarded by the House of Lords, in the The General Capinpin. The Arbitrators, in this case, have very evidently followed the later decision which overruled Cargill Inc.(supra).

41. Having regard to the settled principles concerning judicial intervention with awards, this Court is of the view that the availability of one plausible view (as Cargill Inc.(supra), undoubtedly was), cannot mean that the Arbitrators committed such an error in preferring the later view of a higher Court, as to be called unreasonable or perverse. Just as in the case of the question concerning Notice of Readiness, here too, the view of the House of Lords as applied in the arbitration proceedings, cannot be brushed aside as so illegal its adoption by the award is deemed a legal misconduct. In the circumstances, the objection to the award on this aspect too has to fail.

42. So far as the other two objections, i.e. not giving effect to the Tamil Nadu Minor Ports Harbour Craft Rules, 1953, and the question of short- landing are concerned, they too are insubstantial. A copy of the Charter Party has been placed on record. Besides clause 14, the parties specifically provided for other instances when time was not to count as lay-time. This included time during lightening operations. In case the draft of the vessel exceeded 30 feet and it become necessary to lighten it to go allowing side berth, the vessel owner was to arrange lightening operation at its risk. The time used for that operation, by clause 31 was not to count as lay-time. Similarly, clauses 43 and 44 factored force majure and strike conditions as excepted or excluded time for calculation of lay-time. The later two clauses are detailed and exhaustive. If the parties were so intended, nothing prevented the FCI to insist in including stipulations for exclusion of time as mandated by the Tamil Nadu Minor Ports Harbour Craft Rules, 1953. It did not advisably do so. Therefore, it cannot take refuge under the rules and claim that such time had to be excluded from the calculation of lay-days.

43. The last objection with regard to short-landing, in the opinion of the Court, is not well-grounded. The FCI has merely raised this as an objection but not sought to substantiate it with any evidence.

44. Long back in Raipur Development Authority (supra) and subsequently in M/s. Sudarsan Trading Company vs. Govt. of Kerala, AIR 1989 SC 890, the Supreme Court had held that when the award is an unspeaking one, the Court cannot set aside the determination merely on the ground that the findings are unreasoned. It was also held that such awards cannot be characterized as contrary to law and justice. In the subsequent decisions which have applied the rule in Raipur Development Authority, what has been emphasized is that to conclude an unspeaking award to be perverse or illegal, the Court should be satisfied from the materials available that the conclusions were plainly erroneous and unsustainable in law or that the findings were not based on any materials on record. In this case, the Objector FCI has unable to prove or demonstrate such fatal infirmities in the award.

45. For the above reasons, this Court is of the view that the objections are groundless. IA 11864/1995 is accordingly dismissed.

46. The award dated 20.2.1992 is, therefore, made Rule of Court. The petitioner/claimant shall be entitled to the amount directed in the award and interest at the rate of 18% (as awarded) till date, and in addition interest at the rate of 12% per annum from today till the date of realization. The award is made Rule of Court in these terms.

47. The suit, CS(OS) 467/1995, is decreed in the above terms. Costs quantified at Rs.35,000/- shall be paid to the petitioner - claimant.

Sd./-
S. RAVINDRA BHAT,J

JULY 1, 2008