

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/ADMIRALTY SUIT NO. 38 of 2024

=====

FARMART SERVICE PRIVATE LTD.

Versus

M.V.SW SOUTH WIND I (IMO NO. 9478626)

=====

Appearance:

MR MANAV A MEHTA(3246) for the Plaintiff(s) No. 1

=====

CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 10/10/2024

ORAL ORDER

1. Heard Learned Advocate Mr. Manav Mehta assisted by Mr. Darshankumar Kabra for the Plaintiff.

2. Learned Advocate for the Plaintiff has placed reliance on the averments made in the plaint and submitted that Plaintiff purchased about 2000 MT of Parboiled Rice i.e. the cargo in question and sold the cargo through broker SM Agro Impex to one ATC Trading SARL (“ATC”). To export the cargo, the Plaintiff entered into a Charter Party Agreement dated 19th June, 2024 with one OK International Logistics LLC, the Disponent Owner of the Defendant Vessel, for a Voyage Charter of the Defendant Vessel for exporting the Cargo to ATC. Learned Advocate further submitted that the plaintiff’s cargo formed a small part of the entire cargo shipped on board

the Defendant Vessel.

3. Learned Advocate for the Plaintiff further submitted that Upon securing the Defendant Vessel for exporting the Cargo, the Plaintiff issued Commercial Invoice dated 21st June 2024 and Packing List dated 21st June, 2024 for 2000 MT of Parboiled Rice. Learned Advocate further submitted that Disponent owners of the Defendant Vessel i.e. OK International sent an initial freight invoice dated 30th July, 2024 bearing invoice number SW01/2024/06 to Plaintiff which mentioned port of loading as Kandla along-with details of Defendant Vessel and entire nature of cargo.

4. Learned Advocate for the Plaintiff further submitted that for exporting the Cargo, the Plaintiff entered into a Sales Contract with ATC being Sales Contract No. SMA043(24-25) dated 8th June 2024 for export of 2000 MT (+/- 10%) of Indian Long Grain IR-64 Parboiled Rice at the price of USD 606 per MT and the Cargo under the sales contract was to be shipped between 20th June 2024 to 10th July 2024 with the Load Port being Kandla Port, Gujarat and discharge port being Cotonou, Benin (a country in West Africa).

5. Learned Advocate for the plaintiff further submitted that the Defendant Vessel arrived at Deendayal Port (Kandla),

Gujarat on 8th July 2024 and in the meantime plaintiff packed the Cargo in 40,000 bags. Learned Advocate further submitted that four shipping bills were also filed by the Plaintiff on 05th July, 2024 and before commencing loading operations, a Pre-Shipment Inspection of the cargo was also carried out on the Defendant Vessel.

6. Learned Advocate for the Plaintiff further submitted that loading operations onboard the Defendant Vessel commenced on 21st July 2024 and The Customs Authorities cleared the Cargo for export on 25th July 2024 which can be evidenced by the Shipping Bill Summary in respect of four cargos of 10,000 bags each.

7. Learned Advocate for the plaintiff further submitted that upon clearance, the loading of the Plaintiff's Cargo onboard the Defendant Vessel was completed on 27th July 2024 and Accordingly, four Mate's Receipts dated 27th July 2024 were issued to the Plaintiff showing that the Plaintiff's entire Cargo of 2000 MT had been loaded onboard the Defendant Vessel.

8. Learned Advocate for the Plaintiff further submitted that operations of the total cargo of 50,670 MT onboard the Defendant Vessel completed at 21:10 Hours on 8th August 2024 and The Plaintiff was issued Original Bills of Lading of the

same date. Learned Advocate further submitted that the Bills of Lading provide the weight of the Cargo as well the discharge port. Learned Advocate further submitted that as on 09th August, 2024, the Defendant Vessel was ready for departure.

9. Learned Advocate for the Plaintiff further submitted that the Defendant Vessel had not left Deendayal Port (Kandla), Gujarat since then and the Plaintiff received an email dated 09th September, 2024 from one Commodity Care Shipping Pte Ltd. (“**Commodity Care**”) claiming to be the Disponent Owner of the Defendant Vessel that the Defendant Vessel had been detained by the Kandla Customs due to “*lack of clearance for the cargo*”. Learned Advocate further submitted that the Plaintiff’s cargo is duly compliant with the Export Standards and it is only because of some other prohibited cargo on board the Defendant Vessel, the vessel has been detained. Learned Advocate further submitted that the Plaintiff’s cargo is not a banned cargo as per the notifications of Customs Department and the Plaintiff is suffering heavy financial losses due to negligence on behalf of the owners/ masters/ agents of the Defendant Vessel.

10. Learned Advocate for the Plaintiff further submitted that the Plaintiff has received an email dated 06th October 2024

from its purchaser through the broker whereby the plaintiff has been informed that the Sales Contract has been cancelled due to the failure of the Defendant Vessel to sail and discharge the cargo on time.

11. Learned Advocate for the Plaintiff further submitted that nearly two months have gone by since the loading operations onboard the Defendant Vessel stood completed and The Plaintiff is finding itself in a difficult position with no clear information about whether the Defendant Vessel will be allowed to sail or if its Cargo will be offloaded at Deendayal Port (Kandla), Gujarat itself. Learned Advocate further submitted that Due to this detention, the Plaintiff is already at risk of defaulting with its buyers leading to significant financial losses and damage to the Plaintiff's reputation in the market and The Defendant Vessel is, therefore, liable to be proceeded against for the losses caused to the Plaintiff to the tune of USD 1,437,794 (United States Dollar One Million Four Hundred Thirty Seven Thousand Seven Hundred Ninety Four only) due to detention of the Defendant Vessel for no fault of the Plaintiff. Learned Advocate further submitted that Plaintiff's cargo is not a banned cargo as per the Notifications issued by the Central Government and that the Plaintiff's claim is a recognized maritime claim within Section, *inter alia*, 4(1) (f) of the Admiralty (Jurisdiction and Settlement of Maritime Claims)

Act, 2017 [“Admiralty Act”]. (f) loss or damage to or in connection with any goods.

12. Heard Learned Advocate Mr. Manav Mehta for the Plaintiff and also considered the averments made in the plaint herein declared at Ahmedabad on 09.10.2024 filed by the advocate for the Plaintiff herein and the affidavit of Mr. Ashok Prajapati, the Authorised Representative of the Plaintiff above named affirmed on 09.10.2024 in support of the arrest. On a reading of the plaint and the exhibits thereto, prima facie it appears that the claim in the Plaint is in the nature of a maritime claim as the Plaintiff’s claim arises out loss or damage to or in connection with any goods.

13. Upon hearing Learned Advocate Mr. Manav Mehta and upon the Plaintiff giving an undertaking in writing to pay such sums by way of damages as this Court may award as compensation in the event of the Defendant Vessel sustaining any prejudice by this order, I do order that the Registrar of this Court do issue a warrant for the arrest of the Defendant vessel, **MV SW SOUTH WIND I (IMO No: 9478626)** along with her hull, engines, gears, tackles, bunkers, machinery, apparel, plant, furniture, equipment and all appurtenances, at present lying at Deendayal Port (Kandla) within the Indian territorial waters and that the Warrant of Arrest be executed at any time

of the day or night or on Sundays or holidays and I do further order that the Port Officer and the Customs Authorities at Deendayal Port (Kandla) do effect the arrest, seizure or detention of the Defendant Vessel at present lying at Deendayal Port (Kandla) or within the Indian territorial waters or such other place wherever she may be within the territorial waters of India and I do further order that in the event of the Defendants and / or those interested in her depositing in this Court for securing and / or satisfying the Plaintiff's claim of principal amount with costs US Dollars 1,437,794 (United States Dollar One Million Four Hundred Thirty Seven Thousand Seven Hundred Ninety Four only) and further simple interest on the principal amount @ 12 % per annum from suit date till payment and /or realisation, the said Warrant of Arrest would not be executed against the Defendant Vessel at present lying at Deendayal Port (Kandla), within the Indian territorial waters.

14. The Port Officer and the Customs Authorities at Deendayal Port (Kandla) are directed to arrest the Defendant Vessel i.e. **MV SW SOUTH WIND I (IMO :9478626)** at present lying at Deendayal Port (Kandla), within the Indian territorial waters and to keep the Defendant Vessel under arrest until further orders of this Court. It is further ordered that the Port Officer and the Customs Officer at Deendayal Port (Kandla)

shall also intimate about this order to the Master / Chief Engineer of the Defendant Vessel and effect the warrant of arrest for the Defendant Vessel through email.

15. The Registry is directed to send this order to Port and Customs at Deendayal Port (Kandla) at following addresses

signalcpt@deendayalport.gov.in

trafficmanager@deendayalport.gov.in

harbourmaster@deendayalport.gov.in

dyconservator@deendayalport.gov.in

dycvo@deendayalport.gov.in

cvo@deendayalport.gov.in

Secretary@deendayalport.gov.in

commmr-cusDeendayal@nic.in

dydirector@deendayalport.gov.in,

kandlacustoms@gmail.com

16. It is further directed that Authorities at Deendayal Port (Kandla) shall act on Email copy of the order and take the Defendant Vessel i.e. **MV SW SOUTH WIND I (IMO : 9478626)**.

17. **Notice** to the Defendants returnable on **24.10.2024**. The Plaintiff is permitted to serve to the Defendant Vessel through her Owner or interested person through email.

18. It is also open for the Plaintiff to communicate the above order by Email to the Port and Customs authorities at Deendayal Port (Kandla) and the Authorities at Deendayal Port (Kandla) are directed to act on Email message with an ordinary copy of this order.

19. It is made clear that it will be open for the Defendants to approach this Court even prior to the returnable date with adequate notice to the Plaintiff.

20. Direct Service is permitted today.

(MAUNA M. BHATT,J)

NAIR SMITA V./08