

In the matter of the SCMA Arbitration Rules (2022)

Between

FAN GU SHIPPING

...Claimant

And

POWAN TRADING LTD

...Respondent

WITNESS STATEMENT OF LI RUI

I. Introduction

1. I am a director of Fan Gu Shipping, the Claimant herein. I am duly authorized to make this witness statement on behalf of the Claimant.
2. The facts and matters set out in this witness statement are known to me and are true to the best of my knowledge, information and belief.

II. Factual Background

3. The Claimant is a company registered in the laws of the People's Republic of China. The Respondent is Powan Trading Ltd, a company incorporated in the Republic of India.
4. By way of a time charterparty dated 20 June 2021, the Claimant chartered the MV "Polar" from Hook Shipping Inc for the period of 15 months.
5. Subsequently, on 10 September 2021, the Claimant entered into a voyage charterparty dated 10 September 2021 with Powan Trading Ltd, the Respondent herein, for the carriage of 150,000 MT of coal from Kakinada, India to Ningbo, China (the "**Voyage Charterparty**"). I had concluded the fixture over the telephone with a Mr. Sanjay ("**Sanjay**"), whom I understand is a director of the Respondent.
6. Thereafter, I gave instructions to the operations team to have the Vessel proceed to Kakinada for loading. I understand the vessel would have arrived at the Port of Kakinada on or about 15 September 2021.

III. The situation in India

7. On 14 September 2021, I received a call from Sanjay sometime in the afternoon. Sanjay asked if I had seen the news on the health crisis in India. I informed him that I had not, as I had been busy travelling to oversee our various business operations. Sanjay then informed me that there was a new variant of the COVID-19 virus circulating in India, and that the Indian government had imposed a nation-wide lockdown on 13 September 2021.
8. I asked him if this would have an impact on the Vessel's operations in Kakinada. I distinctly recall this being my primary concern at that time, as I had just received an enquiry for a subsequent charter for the Vessel after its present voyage to China under the Voyage Charterparty. That charter was from Shanghai to Brazil, and was to commence sometime in November 2021, which meant that the Vessel could not afford any delays to the Voyage Charterparty if the Claimant wished to accept that charter.
9. Sanjay told me that he had seen a copy of the governmental notice, and assured me that the lockdown would not apply to port services, which are considered essential services. He further informed me that he expected port services to carry on as per normal, and that he was confident that the Vessel would not face any delays arising from the issue of the governmental lockdown.

10. On that basis, I recall informing the broker on the very same day that we would be available to take up the charter. While the subsequent charter was ultimately not fixed owing to other reasons, I clearly recall being informed by Sanjay that there would be no delay to the Vessel, which was the reason why I had informed the broker that the Vessel would be available for a subsequent voyage in November.
11. I understand that the Vessel called to berth on 11 October 2021 at 15:00 hours. Loading of the cargo commenced on 12 October 2021, and was completed only on 12 November 2021 at 10:00 hours due to the manpower restrictions. The Vessel left the Port of Kakinada on 12 November 2021.
12. Throughout this period, I have never received a single notice of the invocation of force majeure from Sanjay. I also understand that the Master of the Vessel similarly did not receive any notice that the force majeure clause in the charterparty was being invoked.
13. I have confined my statement to the issue of my conversations with Sanjay as I understand that there is no dispute as to quantum if liability for demurrage is established.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Li Rui