

In the matter of the SCMA Arbitration Rules (2022)

Between

FAN GU SHIPPING

...Claimant

And

POWAN TRADING LTD

...Respondent

WITNESS STATEMENT OF SANJAY

I. Introduction

1. I am a director of Powan Trading Ltd, the Respondent herein. I am duly authorized to make this witness statement on behalf of the Respondent.
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. Powan Trading Ltd is a company that has its base of operations in Kakinada, India. Our primary trade is in the buying and selling of coal to international traders, and we regularly charter vessels to comply with our obligations to our international buyers.
4. Sometime in August 2021, Powan entered into a cif sales contract with a buyer in China for 150,000 MT of coal.
5. On 3 September 2021, I read a news article from the New York Times that the Indian health authorities were reporting the outbreak of a new, previously undetected variant of the COVID-19 virus circulating in India that was causing its healthcare system to become severely overstretched. In the same article, health experts were quoted as saying that the new variant was more infectious and deadly than previous variants, with severe cases requiring hospitalization doubling every 2 days.
6. Having already gone through several outbreaks of the COVID-19 virus, I was not too concerned about this new variant, believing that it will pass uneventfully. Moreover, I had not seen any news reports by local news outlets on the matter, and thought that the matter was being overblown by international news outlets. I thus took no heed of it.
7. On 10 September 2021, Powan voyage-chartered the MV "Polar" (the "**Vessel**") from Fan Gu Shipping as part of its obligations as cif seller under the sales contract. The Vessel was due to arrive in Kakinada, India to load cargo on or about 15 September 2021.

III. The situation in India and my subsequent conversation with Fan Gu Shipping

8. On 13 September 2021, the World Health Organisation's Technical Advisory Group on Virus Evolution declared the outbreak in India a Variant of Concern, and codenamed the variant the "Sigma Variant". I was personally surprised by this news, as I had not seen evidence that COVID-19 infections were rising in Kakinada. I also received a copy of a governmental notice at my office in Kakinada on the same day, informing that the country had been placed on a nationwide lockdown with severe restrictions on people leaving their homes. However, as the notice provided that workers in essential services would be exempt from this restriction, which would extend to port workers, I was of the view that the lockdown would not affect the Vessel's loading operations in Kakinada.
9. Nevertheless, I spoke to the manager of the stevedoring company that Powan had employed for the loading of the Vessel. She informed me that there was a possibility of

delay as the port authorities were starting to limit the number of workers at the port to ensure safe-distancing measures would be complied with. Further, she informed me that the port workers were all concerned about the Sigma Variant. There was thus a risk that the Vessel's loading would be delayed. I told her that I would put Fan Gu on notice of the force majeure, and that there was no need to worry about the delay.

10. On 14 September 2021, I spoke to Mr. Li Rui at 15:45 hours local time on the situation. I informed Mr. Li Rui of the outbreak of the Sigma Variant in India. I recall that he seemed surprised by the outbreak, and he informed me that he had been busy and was not aware of this development.
11. He expressed concerns about whether the Sigma Variant would have any impact on the Vessel's loading. I told him that I had received a governmental notice of the lockdown, but that from my reading it did not appear to have any impact given that port workers would be permitted to work as per normal, subject to safe distancing measures being observed. I also shared with him my conversations with the stevedoring company, and warned that he should be prepared for delays to the Vessel. I told him that any delay should not be on Powan's account, since the Sigma Variant and the governmental lockdown were acts of force majeure that would fall within Clause 34 of the Voyage Charterparty. Mr. Li Rui agreed with me, telling me that I should rest assured as Fan Gu Shipping will honour its obligations.

IV. The delay in Kakinada

12. The Vessel arrived in Kakinada and tendered its notice of readiness on 15 September 2021 at 22:30 hours local time.
13. On 16 September 2021, at 08:00 hours local time, I was informed by the stevedoring company that an outbreak of the Sigma Variant had just been detected at the port, and workers were not allowed in while the port assesses the severity of the outbreak. I was subsequently informed that the port authorities had imposed a 50% limit on the workers allowed into the port, and that this was in compliance with "safe distancing measures". While I was frustrated by these measures, I felt that there was little Powan could do, except to push the stevedoring company to resolve the delay as soon as possible. As I was of the view that Mr. Li Rui had already been warned about the possibility of delay, I felt no reason to inform him of these further restrictions, and left it to the stevedoring company to coordinate with the Vessel's discharge port agents.
14. 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.
15. I believe that the force majeure clause in the Charterparty has been correctly invoked by my call to Mr. Li Rui, and that Fan Gu Shipping's claim for demurrage is baseless.

Statement of Truth

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

Sanjay