To: **Mr Brian Williamson**
10A Hungershall Park
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Kent
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United Kingdom

Our Ref: S0092/010

25 May 2018

By E-mail: brian.williamson@adr-disputeresolver.co.uk

Dear Sirs,

MT "LADY SINA" – DISPUTES ARISING UNDER A CHARTERPARTY DATED 3 NOVEMBER 2016

TUNE CHEMICAL TANKERS BV -v- KVG GLOBAL LIMITED

CLAIMANT'S REPLY SUBMISSIONS (the "Reply Submissions")

1. We would be grateful if the Tribunal would accept this letter as the Claimant's Reply Submissions.

2. Terminology defined in the earlier submissions is adopted. References to paragraphs below are references to the paragraphs in the Charterers' Defence Submissions dated 25 April 2018 unless otherwise indicated. References to "CS*x*" are to page numbers to exhibits attached to the Claim Submissions. References to "Exhibit *x*" are to the exhibits to the Defence Submissions.

3. We shall be addressing all of the Respondent's arguments that they have put forward in their Defence Submissions but do not propose doing so on a strict paragraph by paragraph basis. For the avoidance of doubt, therefore, unless otherwise stated the

contents of the Charterers' Defence Submissions are denied.

Laytime at the Loadport of Kumai

4. Paragraphs 1 to 5 of the Defence Submissions deals with Charterers' position as to laytime calculations at the load port of Kumai. Although no objections were raised in respect of the Owners' laytime calculations in prior correspondence, the Charterers now take the position that:-

   a. the Notice of Readiness ("NOR") tendered on 19 November 2016 at 10:00 hrs was invalid; and

   b. laytime stopped running on 26 November 2016 at 15:30 hrs when the hose was disconnected rather than on 29 November 2016 at 02:30 hrs when the Vessel was cleared for departure.

5. It is denied that the NOR was invalid. In particular, it is noted that Charterers have put forward no evidence to support their assertion that the Vessel was underway at the time of its tender. To the contrary, all of the signed, stamped and verified documentation shows that the Vessel had anchored at 1000hrs on 19 November:

   a. The NOR (CS26) is not only signed and stamped by the Master but it was also accepted by the Charterers' agent without comment or protest. If there was a concern regarding the validity of the NOR it would have been raised contemporaneously.

   b. The Statement of Facts (CS25) prepared by port agents, Univan Ship Management Ltd, refers to the Vessel having anchored at 1000hrs and the SOF has been signed and stamped by the cargo surveyor, terminal representative as well as the Vessel's master in acknowledgment of the facts stated.

   c. In no fewer than 10 different letters of protest, the Master *"put on record that at* ***1000 Hrs*** *LT on* ***19.11.2016****, our good vessel dropped anchor at* ***Kumai Anchorage, Indonesia*** *for loading cargo Crude Palm Oil"*.

   d. All of the contemporaneous evidence therefore shows that the Vessel had

anchored at 1000hrs on 19 November when she tendered NOR.

6. In any event, the Vessel was at the customary waiting area. The sea passage had come to an end two hours earlier at 0800hrs and there was no doubt that the Vessel was an arrived ship. There is certainly no evidence that NOR was tendered "whilst underway" as alleged by Charterers – the relevance of the *Johanna Oldendorff* is therefore denied.

7. The Charterers seek to rely on an email at Exhibit A of their Defence Submissions. Firstly, it is noted that Exhibit A and other documents appended to the Charterers' submissions have been modified from their original form. Certain words have been emboldened and the reference to "EXHIBIT A" has itself been typed on to the document. Secondly, the email is in far less depth than the signed SOF. Thirdly, it mentions nothing of when the Vessel first anchored at Kumai, only the final STS location.

8. Whilst it is acknowledged that the place of loading is stipulated as "1 STS Kumai", the relevance of this in the context of this Charterparty is denied. It is denied that this is a "berth" charter but this is irrelevant in any event when a specific clause deals with how NOR is to be tendered. That clause is Clause 4 of the Vegoilvoy which expressly provides that NOR shall be tendered "*when the Vessel has arrived at the **port** of loading or discharge*". The clause goes on to say that *"The Vessel shall be deemed ready … whether she is in or out of berth"* and that *"Laytime shall commence … Vessel in or out of berth"*. The Charterparty provisions could not be clearer in this respect and Charterers' submissions that time only starts to run upon STS transfer are denied and Owners' laytime calculations at the loadport are maintained.

9. The Vessel only received clearance to sail following loading at Kumai at 0230 hours on 29 November as the Vessel was detained for Charterers' purposes. In any event, Charterers' laytime calculation in their submissions has time stopping upon disconnection of the hoses, albeit their submissions at Paragraph 5 refer to when cargo documentation was completed at 2200hrs on 20 November. Of the two times, time must run until the cargo documents were on board as the Vessel was detained for Charterers' purposes until then.

Laytime at Kakinada

10. Paragraphs 6 to 7 of the Defence Submissions deals with Charterers' position as to

laytime calculations at the 1st discharge port of Kakinada. Although no objections were raised in respect of the Owners' laytime calculations in prior correspondence, the Charterers now take the position that:-

a. the NOR tendered on 8 December 2016 at 17:00 hrs was invalid; or

b. Alternatively, if NOR is valid, that laytime should only run from commencement of discharge on 9 December 2016 at 00:36 hrs instead of 8 December 2016 at 20:24 hrs when she was "all fast".

i. Validity of NOR

11. As above, Charterers are ignoring the one express clause in dealing with the tendering of the NOR in this matter, namely clause 4 of the Charterparty. Citing general comments from well renowned text books is all very well but it has no or limited application to this case. Looking again at the contemporaneous documents:

a. The SOF records the vessel as having arrived following the end of the sea passage and is signed by the Agent, Surveyor, Terminal and Master (**CS43**).

b. The NOR tendered on 8 December 2016 at 1700 hours was accepted by the Charterers' agents on 19 December at 0015 hours with no caveats or comments regarding the validity of the NOR itself (**CS44**). Although accepted later, any concerns about the NOR would or should have been raised contemporaneously, not for the first time in Defence Submissions.

c. The various notes of protest (**CS52-56**) which referred to the Vessel as having arrived at the port at 1700hrs on 8 December.

d. There is no contemporaneous evidence that the Vessel was not an arrived ship at that time.

12. Charterers appear to be asserting that the Vessel had not come to a stop when she had tendered NOR and cite a general passage from *Schofield* explaining why this means the NOR is invalid. Firstly, Charterers have put forward no evidence that the Vessel was underway. Secondly, based on the same authorities as cited by Charterers, a NOR

tendered at "EOSP" (end of sea passage) is not automatically invalid by virtue of having been tendered EOSP. NOR tendered at EOSP may be valid if it coincides with the Vessel's arrival at port – as in the arbitration award referred to in ***London Arbitration 16/05*** (2005) 672 LMLN 3:-

"In an arbitration award relied on by the owners, it was crucial to the arbitrator's reasoning that he had found that the end of the sea passage coincided with the vessel's arrival at the entry buoy to the port in question, which was Ras Tanura. In the present case, there was no suggestion that the vessel had reached any such defined point one and a quarter hours before she anchored."

13. In this case, there is no suggestion that the Vessel had not arrived at the place where NOR is customary tendered at the port and there was no contemporaneous objections to it. The validity of the NOR is fact-specific read in conjunction with the Charterparty NOR clauses and there is no indication that the Vessel was not an arrived ship at Kakinada.

14. Charterers refer to Exhibit B as evidence that there was no congestion and the Vessel proceeded straight to berth. Exhibit B, sent over a day before the Vessel's arrival at the port, does no more than nominate the berth that the Vessel was to proceed to berth but subject to a *"line-up of vessels"*, proceeding to berth was subject to the availability of bow thrusters and/or in daylight only (the Vessel in fact arrived in the evening) and the present indication given was that the vessel was expected to berth on the same day as arrival – not immediately but on the same day. In those circumstances, it was reasonable, let alone contractual as per clause 4, for the Vessel to tender her NOR upon arrival at the port when further instructions could be given to proceed to the berth.

15. In any case, even if the NOR was invalid (which is denied), Clause 4 of the Vegoilvoy under the Charterparty provides that "*Laytime shall commence either at the expiration of six (6) running hours after tender notice of readiness, Vessel in or out berth, except that any delay to the Vessel in reaching her berth caused by the fault of the Vessel or Owner shall not count as used laytime; or immediately upon the Vessel's arrival in berth (i.e. finished mooring when at sealoading or discharging terminal and all fast when loading or discharging alongside a wharf) with or without notice of readiness, whichever first occurs*" (emphasis added).

16. It is recorded in all contemporaneous documents referred to above and not disputed that

the Vessel came alongside the berth and was "all fast" on 8 December 2016 at 20:24 hrs **[CS43, 51 – 56]**. Accordingly laytime must commence at the latest by 8 December 2016 at 20:24 hrs even if the NOR was invalid.

ii. 6 HRS NOTICE BENDS UU

17. Charterers are correct that the Charterparty provides for "6 HRS NOTICE BENDS UU", or *"6 hours notice both ends unless used"* and means that the charterers are entitled to 6 hours notice time after commencement of laytime where laytime will not run unless used at *both ends* of the charterparty.

18. The term "BENDS" or "both ends" takes effect only at *two* points at each "end" of the Charterparty – once for loading and once for discharge. It does not apply to *both* discharge ports as the Charterers are seeking to do.

19. Owners had applied the 6 hours notice provision to time used at both Kumai (load port) and Budge Budge (2nd disport), which works in the Charterers' favour. However, the Owners are prepared to amend the calculation so that the 6 hour period runs at the first discharge port, Kakinada. At Kakinada, time was "used" within that 6-hour period. The revised calculation is set out at paragraph 52 below.

iii. Shifting and Gangway Placement

20. No admissions are made as to Charterers' submissions regarding shifting and gangway placement at the first disport as these matters are now irrelevant to the laytime calculations – time no longer counts anyway as per the revised calculations set out further below.

21. We should point out, however, that Charterers have misquoted from clause 3(a). The full provision as amended by the parties is set out at properly in the Claim Submissions and at **CS13** in the Charterparty.

22. In any event, the Charterers' argument that gangway placement time does not count is clearly unfounded as the placement of gangways is not a matter over which the charterers have no control – it is a part of the usual process of discharge for which Charterers are responsible and the Charterers may order it to be stopped or commenced, laytime always counting in the meantime.

Laytime at Budge Budge

23. Paragraphs 8 to 14 of the Defence Submissions deals with Charterers' position as to laytime calculations at the 1st discharge port of Kakinada. It is noted that the Charterers take the position that:-

    a. the NOR tendered on 11 December 2016 at 19:00 hrs is invalid; and

    b. Alternatively, if the NOR was valid, that they are entitled to rely on exceptions to laytime and demurrage under Clause 3(a) of the Charterers Rider Terms.

24. In reply, the Owners aver the following which will be expanded upon:-

    a. The NOR was validly tendered as Sandheads anchorage is the anchorage location for the port of Budge Budge and it is within the port of Budge Budge for the purposes of determining whether the Vessel was an "arrived ship";

    b. Alternatively, if the NOR was invalid, the Owners are entitled to claim damages for detention in a sum equivalent to demurrage during the relevant period from 11 December 2016 at 19:00 hrs to 16 December 2016 at 05:15 hrs as the Charterers did not procure a berth reachable on arrival; and

    c. The Charterers are not entitled to rely on Clause 3(a) as the plain wording of the clause mandates that it only applies to the period "for and on an inward passage" when the Vessel is "moving from anchorage" and cannot apply where the Vessel is waiting at anchorage. Moreover, the part of the clause that Charterers rely upon is of materially similar wording to the provision under consideration in ***The Laura Prima***. Finally, the Charterers' attempt to attribute any part of the delay at Sandheads as being to "awaiting day light" is unsustainable because this was not the cause of the delays.

i. NOR validly tendered at Sandheads

25. The Charterers allege that the NOR tendered at Sandheads anchorage was invalid as it

was not "within the port". However, Charterers' own evidence proves precisely the opposite for the purposes of tendering the NOR.

a. Exhibit C appended to Charterers' submissions lists the various docks and mooring areas within the Kolkata Dock System (KDS) up the Hooghly River, including Budge Budge. All of the docks are part of the KDS. Budge Budge is therefore not an independent port but is under the jurisdiction of the Kolkata Port Trust.

b. Also listed are the anchorage areas designated for these docks. Sandheads is expressly listed as the anchorage area for Budge Budge. On Charterers' own evidence, therefore, Sandheads is the appropriate anchorage location upon arrival at Budge Budge.

c. Exhibit C further provides that no seagoing vessel is allowed to navigate the river without a qualified pilot of the Kolkata Port Trust. The document specifies that the total pilotage distance is 221km. There is nothing objectionable about the fact that Sandheads is located "over 200 kms upstream from Budge Budge" (paragraph 9(i)(b), page 12 of Defence Submissions). Vessels are required to wait at the port's designated anchorage until the vessel can be safely escorted by a pilot up the Hooghly river to Budge Budge when a berth is available. Kolkata port pilotage procedure mandates that all vessels must contact the pilot station before arriving at Sandheads and cannot proceed further north without being advised to do so.

d. The Kolkata dock complex is operated together with the Haldia dock complex, which is located on the opposite bank of the Hooghli River and described by the Kolkata Port Trust on their website as being *"complementary to each other"*. Exhibit C refers to the fact that the KDS *"is situated on the left bank of the river"*. As set out further below, arbitration tribunals have already found that Sandheads was the appropriate place to tender NOR for a Haldia discharge and by implication it is the appropriate place to tender NOR for Budge Budge too which is part of the same river and port system.

e. Charterers have also submitted that "*vessel movement after arrival at sandhead to budge budge was prevented by order of Kolkata port trust authority, which*

governs movement to all ports within Kolkata port trust I.e. Haldia, Kolkata and Budge Budge" (paragraph 9(ii)(c), page 14 of Defence Submissions). Not only do Charterers' submissions therefore confirm that the Kolkata Port Trust Authority had jurisdiction over the passage to Budge Budge and the anchorage but also that Haldia was part of the same control.

26. In London Arbitration 5/90 (1990) LMLN 274, the tribunal considered if NOR tendered at Sandheads anchorage was valid where the port of discharge was stated to be "Haldia". It was not disputed by the parties that the operation of Haldia came under the management of the Kolkata Port Trust. However, the charterers contended that NOR was invalid as Sandheads was outside the jurisdictional limits of the Kolkata Port Trust.

27. The tribunal held that NOR was validly tendered at Sandheads as:-

a. The evidence showed that vessels immediately came under the control of the port authority upon arrival at Sandheads, which then either arranged for a pilot to bring the vessel into dock or gave orders regarding anchoring. The same applies here.

b. Vessels customarily waited at Sandheads and commercial practice had developed such that vessels would give NOR upon arrival at Sandheads. Again, the same applies here as confirmed in Charterers' documents.

28. The arbitration was cited in Laytime and Demurrage at [3.114], where the editors commented that:-

"Notice of readiness was given by the vessel on arrival at the Sandheads anchorage, some two hours' steaming from Haldia, in accordance with commercial practice. Sandheads was, however, outside the legal limits of the jurisdiction of the Calcutta Port Trust, although they exercised de facto control of the anchorage, giving orders as to anchoring and arranging pilots. This, the arbitrator held, was sufficient and she was an Arrived ship".

29. Similar considerations applied in London Arbitration 11/95 (1995) 409 LMLN 3, where

the tribunal held that NOR was validly given outside port limits where the port authorities had designated another area within their administration where vessels had to wait before proceeding to a berth. The tribunal noted that this principle was *"widely accepted in commercial arbitrations and made good commercial sense"* as the vessel has effectively become an *"arrived ship"* when waiting off port at a place *"where it was customary for vessels to be held pending the availability of a berth"*.

30. Given that Budge Budge operates under the same port management system and share the same unique riverine features as Haldia, an analogy ought to be drawn such that NOR can be validly tendered upon arrival at Sandheads anchorage as is customary.

31. It is well established that what constitutes a port for the purposes of determining whether the vessel is an "arrived ship" can be wider than the legal port limits. The discussion in ***Laytime and Demurrage***, John Schofield, 7th Ed., a textbook cited by the Charterers, at [3.55] to [3.61] states that:-

"What constitutes a port, is the first of the definitions given in The Laytime for Charterparties Definition 2013 and is as follows:

1. *PORT shall mean any area where vessels load or discharge cargo and shall include, but not be limited to, berths, wharves, anchorages, buoys and offshore facilities as well as places outside the legal, fiscal or administrative area where vessels are ordered to wait for their turn no matter the distance from that area.*

... The limits of a particular port may vary according to the purpose for which the limits are being defined. Thus port limits may be defined by law or by custom and the extent of the port may be different for administrative, fiscal, geographical and commercial purposes." (emphasis added)

32. Charterers purport to rely on Exhibit E to show that the Vessel only anchored at Budge Budge at 1442 hours on 16 December. The key time is that the Vessel anchored at Sandheads anchorage at 1748 on 11 December awaiting permission to proceed to berth. After anchors aweigh at 0412 on 16 December, the vessel was piloted up the river. It is to be noted that the Vessel proceeded to berth very shortly after arrival at Budge Budge.

ii. Detention if NOR is invalid

33. The Charterers are under a strict warranty to provide a berth that is "reachable on arrival" pursuant to Clause 6(a) of the Vegoilvoy Part II under the Charterparty:

"*…the Vessel shall load and discharge at any safe place or wharf… **reachable on her arrival**, which shall be designated and procured by the Charterer, **provided that the vessel can proceed thereto, lie at, and depart therefrom always safely afloat**, any lighterage, being at the expense, risk and peril of the Charterer*" (our emphasis).

This constitutes a warranty by the Charterers that the Vessel will be able to proceed without delay to the discharge berth upon arrival. Charterers also warrant that the Vessel shall be able to proceed and depart from the discharge place *"always afloat"*, which was not the case given the tides at the time.

34. Accordingly, if the NOR tendered at Sandheads Anchorage is considered invalid (which is denied), Owners claim damages in the alternative for an equivalent amount for detention of the Vessel at Sandheads by the Charterers who were in breach of the above warranties. Moreover, such damages are not subject to any laytime or demurrage exceptions as the period of detention does not count as laytime.

35. In ***Charterparties: Law, Practice and Emerging Legal Issues***, edited by Bariş Soyer and Andrew Tettenborn, it is set out at [10.3.1] that:-

"The nature of the warranty is such that the ship may be regarded as having arrived so as to put the risk of delay on Charterers, even though she has not yet become an 'arrived ship' for the purpose of the laytime clause, and the cause of the delay is itself beyond the control of Charterers. Such a situation may arise where the Charterers have to name a place which the ship can reach when she arrives. If they fail to do so they will be liable to pay damages for detention suffered by the shipowners, unless there exist appropriate words which relieve them of that liability. The shipowners are entitled to claim damages for actual time lost; the laytime exceptions do not apply until laytime has begun."

*This was established in **The Angelos Lusis** [1964] 2 Lloyd's Rep 28 where Megaw J stated:*

The parties, in using the words 'on her arrival,' did not have in mind, or at least did not have solely and exclusively in mind, the technical meaning of 'arrival' in respect of an 'arrived vessel' in a port charterparty: they had in mind her physical arrival at the point, wherever it might be, whether within or outside the fiscal or commercial limits of the port, where the indication or nomination of a particular loading place would become relevant if the vessel were to be able to proceed without being held up.

…There may, therefore, be an 'arrival' of the ship sufficient to bring into operation the duty of the Charterers to provide a place 'reachable on her arrival', although she is not otherwise an 'arrived ship'." (emphasis added)

36. Unlike the WIBON clause, there is no requirement that the cause of delay must be congestion to establish a breach of the "reachable on arrival" (***The Sea Queen*** [1988] 1 Lloyd's Rep 500). It is set out in the same source as above that:-

*"Two High Court decisions have held that the Charterers will be in breach of the clause whatever the nature of the obstruction, be it congestion or bad weather, that prevents the designated berth from being reachable on the vessel's arrival. The first is the decision of Saville J in **The Sea Queen**, where the vessel was first delayed in getting to the berth by non-availability of tugs, and then by bad weather…*

*The second decision is that in **The Fjordaas**, where berthing was delayed owing to, first, a port prohibition on night navigation, then bad weather, and then a strike by tug officers. Steyn J stated:*

*In my judgment the distinction between physical causes of obstruction, and non-physical causes rendering a designated place unreachable, is not supported by the language of the contract or common sense; it is in conflict with the reasoning in **The Laura Prima**; and it is insupportable on the interpretation given to that provision in **The President Brand**. Quite independently of authority I believe it to be wrong."* (emphasis added)

37. Thus, in the alternative to their primary demurrage claims, Owners claims damages for detention in a sum equivalent to demurrage for the period between 11 December 2016 to 16 December 2016 when the Vessel was compelled to wait at Sandheads anchorage as no berths were reachable by reason of the tides.

iii. Clause 3(a) does not apply

38. The Charterers allege that, if the NOR had been validly tendered, they are nevertheless entitled to rely upon the exception to laytime and demurrage under Clause 3(a) of the Charterers' Rider Terms on the basis that:-

a. "Inward passage to port in navigational context refers to a (*sic*) inward route to the port and not movement" thus time spend waiting at Sandheads must also be considered part of the "inward passage" to Budge Budge.

b. The finding in the ***The Laura Prima*** must be restricted to its facts and charterers may continue to rely on an excepting laytime / demurrage for delays caused by "*any other reason whatsoever over which charterers have no control*" notwithstanding the inclusion of a "reachable on arrival" clause.

c. Time from 11 December 2016 at 19:00 hrs to 12 December was spent awaiting day light as night navigation is not permitted in Budge Budge.

a. "Inward Passage"

39. The Charterers' allegation that "inward passage" includes time spent waiting at anchorage in a "navigational context" is baseless and clearly erroneous. The meaning of what constitutes an "inward passage" was briefly discussed in ***Laytime and Demurrage*** at [4.470] to [4.472]:-

"What is meant by "inward passage" will again depend on the wording used in the particular charter. It would appear that the phrase has a different meaning from charter to charter, depending on the words in conjunction with which it is used. Thus, in the Texacovoy 71 charter, the time excluded is that spent or lost "on an inward passage moving from anchorage or other waiting place ..." whereas in the BPvoy 2 charter, the corresponding clause excludes time "on an inward passage, including awaiting tide, pilot or tugs and moving from anchorage ..."

Clearly, the second example quoted is much wider. The wording of the first example suggests that time does not start to be excluded until the vessel starts moving, i.e. the anchor is raised, whereas in the second example time will stop somewhat earlier. How

much earlier is a question yet to be decided." (emphasis added)

40. There is no doubt from the wording used in Clause 3(a) ("*inward passage moving from anchorage*") that the relevant exceptions thereunder only apply to the period when the anchor has been raised and the Vessel starts *moving from anchorage*. It therefore cannot apply to time spent waiting at the anchorage prior to such an "inward passage".

b. The Laura Prima

41. It is acknowledged that there is authority to say that laytime exceptions may be relied upon even where a "reachable on arrival" clause is present. However, that only applies to expressly defined exceptions and not to a provision as broad as "*any other reason whatsoever over which charterers have no control*" as provided in Clause 3(a).

42. This point was specifically dealt with by the House of Lords in ***The Laura Prima***, where the effect of the last sentence in clause 6 of the Asbatankvoy was considered. The relevant sentence contains wording extremely similar to Clause 3(a), providing:-

"However, where delay is caused to Vessel getting into berth after giving notice of readiness *for any reason over which Charterer has no control*, such delay shall not count as used laytime." (emphasis added)

43. In that case, the vessel was unable to proceed to berth after tendering NOR due to congestion. The arbitrator rejected the shipowners' demurrage claim on the basis that the above-sentence protected the charterers, but this was overruled by the by the Court at first instance. The Court noted that there was no express provision in the charter putting risk of congestion on the owners and that the effect of clause 6, if construed in the manner asserted by the Charterers, would deprive the "*reachable upon arrival*" provision of contractual effect. Thus, it was held that clause 6 would only apply if some intervening event causing delay was to occur *after* the charterers have first fulfilled their obligation to designate and procure a berth reachable on arrival. This was subsequently affirmed by the House of Lords.

44. Indeed, the sources relied upon by the Charterers also emphasised that ***The Laura Prima*** remains good authority in this context, stating that the case "*was concerned with the effect if any to be given to the exception in the last sentence of clause 6 in the charter*

there under consideration" and that it "*referred specifically to the application of the last sentence of clause 6 of Asbatankvoy*".

45. Accordingly, the Owners reiterate paragraphs 14 to 15 of the Claim Submissions.

c. Daylight irrelevant

46. It is clear from all contemporaneous evidence that the main and, in fact, only reason for time spent waiting for a berth at Sandheads was due to the tides. The port agents stated unequivocally that no docking can be carried out during the bore-tides period from 11 to 16 December 2016 **[C/83]**. Whilst it was also stated that vessel movements at Budge Budge can only be carried out during day light, this was not the cause of the delay, otherwise the Vessel would have proceeded to berth at Budge Budge upon first light.

47. The burden of proof is upon the Charterers to bring themselves within the exception that they intend to rely upon. They have not shown that the timing of the Vessel's arrival at Sandheads was causative of the relevant delay in any way, particularly as they have not procured a reachable berth in Budge Budge at the relevant time in any case.

Conclusion

48. This is a voyage charterparty with specifically named load and discharge ports. It was known by the parties at all material times during the fixture negotiations that the Vessel would be proceeding to discharge at Budge Budge and that the discharge port may be affected by the seasonal tides. The fact that the word "tides" had been expressly deleted from Clause 3(a) of the Charterers' Rider Terms is telling of the parties' intention for the risk of delay resulting from the tides to be borne by the Charterers. The Charterers' attempt to now deny the same and avoid the consequences of their own bargain makes a mockery of the original commercial agreement.

49. Furthermore, although the Charterers now dispute the validity of the NORs tendered at all three ports, they had expressly accepted them at the material time without raising any objections. If they genuinely take issue with the NORs, they could very well have rejected or protested against the same.

50. Accordingly, it is submitted that:-

a. Valid NOR was tendered at Kumai and laytime calculations as set out in the

Claim Submissions are correct;

b. Valid NOR was tendered at Kakinada. Even if NOR was invalid, laytime must start at the latest by 8 December 2016 at 20:24 hrs. The Owners have applied the "6 HRS NOTICE BENDS UU" provision at the first disport Kakinada below rather than at Budge Budge.

Date	**From**	**Until**	**Description**	**Time Used**	**Total Time Used**
KUMAI					
19.11.2016	10:00	16:00	NOR +6	00:00	0d 0h 0m
	16:00	-	Loading	09:30	9d 9h 30m
29.11.2016	-	01:30			
	01:30		**Vessel on Demurrage**		
	01:30	02:30	Vessel cleared	01:00	9d 10h 30m
KAKINADA					
8.12.2016	17:00	20:45	NOR +6 until used	00:00	9d 10h 30m
	20:45	24:00	Discharging	03:15	9d 13h 45m
9.12.2016	00:00	-		28:30	10d 18h 15m
10.12.2016	-	04:30			
BUDGE BUDGE					
11.12.2016	19:00	-	NOR, waiting at Sandheads	106:15	15d 4h 30m
16.12.2016	05:15	18:00	Shifting	00:00	15d 4h 30m
	18:00	-	Discharging	46:36	17d 3h 6m
18.12.2016	-	16:36			
				TOTAL TIME USED:	17d 3h 6m
				TIME ON DEMURRAGE:	7d 17h 36m (7.73d)

Moving the applicable 6 hours from Budge Budge to Kakinada, Demurrage has accrued in the sum **US$92,760.00** (US$12,000 x 7.73).

c. Valid NOR was tendered at Sandheads Anchorage. Even if NOR was invalid, the Owners may claim damages for an equivalent sum in detention.

51. Accordingly, Owners reiterate their claim as follows:

a. US$92,760 as per paragraph 52(b) above;
b. Alternatively, US$89,975 as per the Claim Submissions;
c. Alternatively, an equivalent sum in damages;
d. Interest; and
e. Costs

Yours faithfully,

Campbell Johnston Clark Singapore LLP

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