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4TH NATIONAL LAW UNIVERSITY ODISHA

INTERNATIONAL MARITIME ARBITRATION MOOT, 2017

IN THE MATTER OF AN ARBITRATION

CONDUCTED BEFORE THE ARBITRAL TRIBUNAL

BETWEEN:

HINDUSTAN SHIPPING LIMITED …..CLAIMANT

V.

ATLANTIS SHIPPING PTE LIMITED ……RESPONDENT

MEMORANDUM ON BEHALF OF RESPONDENT

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TABLE OF ABBREVIATIONS

ABBREVIATION	FULL FORM
C/P	Charter Party
etc.	Etcetera
Corp.	Corporation
Pvt	Private
HSL	Hindustan Shipping Limited
ASPL	Atlantis Shipping Pte Ltd.
IMAM	International Maritime Arbitration Moot
NYPE	New York Produce Exchange
et al	et alia
mt.	Metric Tonne
Co.	Company
Govt.	Government
ltd.	Limited
Co.	Company

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STATEMENT OF JURISDICTION

The parties, Atlantis Shipping Pte Ltd. and Hindustan Shipping Limited have agreed to submit the present dispute to the arbitral tribunal pursuant to Clause 16 of the C/P dated 11/12/2012.

The parties agree to accept the decision of the arbitral tribunal as final and binding.

STATEMENT OF FACTS

I. The Parties

Atlantis Shipping Pte Ltd. ["Owners"], a company located in Singapore, is the owner of the vessel named M.V. Pequod.

Hindustan Shipping Limited ["Charterers"], a company located in Mumbai, Maharashtra, charter the aforementioned vessel as per a C/P contract.

II. The Charter Party and the delay in delivery of vessel.

ASPL and HSL executed a C/P on 11th December, 2012 in which it was decided that on the date of delivery of vessel to charterer, the hire period of the vessel would start. The owners had written letters on several dates to the charterer, informing about the date on which vessel is to be delivered. The letter dated 10.11.2012 mentioned that the vessel should be ready to deliver by 20.11.2012 to HSL. The owner kept on shifting the itinerary dates and informed the charterer for the same through letters. At port Kant there was decrease in vessel discharging rate of coal. Finally, vessel was ready to deliver by 8.12.2012 and hired period was started from 11.12.2012.

Clause 56 of C/P expressly stated that the owner would be held responsible for delay in delivery, which is not resulting from the shore labour strike, lockout or stoppages or restraints. The charterers made several deductions on account of delay in delivery of the vessel which was informed to the owners.

III. Deductions from the charter hire made by the charterer.

The charterers informed the owners through letter dated 08.02.2014 about the deductions made in respect of charter hire which they paid to other vessels which could not berth owing to defect in crane/ cargo gear. The charterers in doing so incurred significant cost which, as per Clause 32 of the C/P, the charterer was empowered to deduct from the charter hire. The owner has disputed all the deductions stating that it was contrary to the terms of C/P.

IV. Safe port warranty clause in the charter party

The C/P does not have a safe port warranty and hence the charterers ordered the ship into a port where there was an old sunk vessel. The ship while moving from the outer anchorage area, which is outside the legal and geographical limits of the port hit an old

sunk vessel since the master was not careful. The owner is now claiming compensation from the charterer for the accident.

V. Shipping of Adamantium

When the charterer proposed carrying Adamantium, the owner responded in the affirmative at a later meeting after the conclusion of the C/P. The master accepted the cargo of Adamantium after this. The owner now claims that it was not contracted to carry Adamantium.

VI. Invocation of Arbitration

Atlantis Shipping Pte Ltd. invoked the arbitration clause as per Clause 16 of the C/P agreement and appointed Mr. Moby Johnson as their arbitrator. Hindustan Shipping Ltd. appointed Mr. Dick Nicholson as their arbitrator. The disputes will now be heard by this arbitral tribunal.

ISSUES FOR CONSIDERATION

I. Whether there was a delay in the delivery of the vessel?

II. Whether a clause entitling Charterers to deduct sums from charter hire paid to other vessels owing to the deficiency in the cranes/ cargo gear of MV Peqoud is valid?

III. Whether there existed a safe port warranty- incorporated or implied in the instant Charter party? Whether under the same, Charterers as Port Owners and Operators would be liable for the accident?

IV. Whether an oral variation of Charter Parties is permissible?

SUMMARY OF ARGUMENTS

I. There was a delay in the delivery of the vessel to the charterer.

The contract has to be interpreted as per the intention and reasonable expectations of the parties and for that Clause 56 of the C/P has to be given clear meaning in light of the words chosen by the parties at the time of execution of C/P. the contract has to be completed within a reasonable time, if there is no stipulation of any particular date, since non fixation of delivery date doesn't allow owner to act negligently and without reasonable diligence. The owner had acted unreasonably and made overoptimistic calculation regarding the date of expected readiness to load. Further, there was continuous slowdown in discharging rate of coal cargo on subsequent days. All this shows that there was a delay in delivery of the vessel for which owners are liable.

II. The clause entitling charterers to deduct sums from charter hire paid to other vessels owing to deficiency in the crane/ cargo gear of MV Pequod is valid.

The clause entitling the charterer to deduct the alleged sums is valid since the C/P contract provides express right to make such deductions under Clause 32. The owner is liable under his duty to seaworthiness to maintain the vessel in good condition and ensure that it is free from all the defects in respect of crane or cargo gear as in present case. Such clause entitling the deduction would also be valid under the doctrine of equitable set-off which allows the charterer for even an unliquidated sum of deduction from the charter hire. The deductions made are bona fide and reasonable and even though the parties have not provided any calculations for the same, it would regardless be valid and permissible, which in turn proves the validity of the impugned Clause as well.

III. The does not exist a safe port warranty and the charterers are not liable for the accident.

Since safe port warranty is not required to provide business efficacy to the contract, nor does it fulfil the bystander test, hence there cannot exist an implied term of safe port warranty in the C/P. Even in the alternative, the charterer is not liable for the accident since it occurred due to the master not being careful.

IV. <u>Oral variation of the charter party is valid and permissible.</u>

Since there is meeting of minds, evidenced by the master accepting the C/P and signing the Bill of Lading containing Adamantium, there is a variation of the C/P to remove Adamantium from excluded cargo and to ship it in the voyage. The master's and owner's consent makes the oral variation of the C/P valid and permissible.

ARGUMENTS ADVANCED

A. There was a delay in the delivery of the vessel to the charterer

1. There was delay in the delivery of the vessel as **(i)** The contract has to be interpreted as per reasonable expectations of the parties, **(ii)** Both the parties' intended to include delivery time of vessel as the essence of the contract, **(iii)** The owner acted negligently and unreasonably throughout the delivery of vessel, and **(iv)** The risk was reasonably foreseen by both the parties at the conclusion of C/P.

i) The contract has to be interpreted as per reasonable expectations of the parties.

2. The court is to ascertain objectively the intention of the parties by identifying the meaning of the relevant words in the light of, the *natural and ordinary* meaning of the words, the *overall purpose* of the document, *the facts known or assumed* by the parties at the time of execution of document and common sense, ignoring the subjective evidence of any party's intentions.[1] If a contract does not specify the time for performance, the law will imply that the parties intended that the obligation under the contract should be performed within a reasonable time.[2] Further, the court has to avoid any interpretation that would be absurd, commercially unreasonable, or contrary to the reasonable expectations of the parties.[3]

3. It has been held that the intent of a contract does not change simply because the circumstances do not precisely match the scenarios anticipated by the contract.[4] Further, when the parties' intent is clear i.e., unambiguous the contract must be enforced according to the plain meaning of its terms.[5] If the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity.[6]

4. In the present case, though there has not been any mention of particular time at which vessel was required to be deliver, but it had to be within a reasonable time of course. The

[1] Marley v. Rawlings, (2014) U.K.S.C. 2.
[2] Hungerford Investment Trust Ltd. v. Haridas Mundhra, A.I.R. 1972 S.C. 1826 (India); Temloc v. Errill Properties, (1987) 39 B.L.R 30 at 38, CA.
[3] Oppenheimer & Co. v. Trans Energy, Inc., 946 F. Supp. 2d 343, 349 (S.D.N.Y. 2013); Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co., N.A. 957 F.Supp.2d 316 (S.D.N.Y. 2013).
[4] *In re* Foothills Texas, Inc., 476 B.R. 143 (Bkrtcy.D.Del. 2012).
[5] *In re* Lehman Brothers Inc., 478 B.R. 570, (S.D.N.Y. 2012).
[6] *In re* New York Skyline, Inc., 471 B.R. 69, (Bkrtcy. S.D.N.Y. 2012).

C/P is to be examined in the light of business purpose sought to be achieved by the charterer in the present matter. Delay of delivery is bound to injure the interest of the charterer. Further, it is important to note that the present C/P contract puts onus on the owner for any delay in the delivery of the vessel, which itself is evident of the fact the charterers expect the delivery of the vessel within a reasonable time.[7]

ii) Both the parties' intended to include delivery time of vessel as the essence of the contract.

5. In general, time is of the essence in mercantile[8] and commercial contracts.[9] Where there is no express provision as to progress, business efficacy requires the implication of a term that the contractor will proceed with reasonable diligence and maintain reasonable progress.[10] It has been further held that where time is considered to be the essence of the Contract and is extended, the extended date is also of the essence of the Contract.[11]

6. In the present matter, the actual delivery of the vessel took place on 11.12.2012, way after the initial stipulated dates.[12] Further, it had been expressly agreed in the C/P that delivery of the vessel beyond the lay day would attract the cancellation of the C/P by the charterer.[13] Also, Clause 37(g) stipulates the responsibility of the owner to deliver the vessel within the mutually agreed time/ period/ lay days, breach of which would entitle the charterers to claim not only termination but also damages.[14] Further, both the parties had conveyed their intention under Clause 56 of the C/P, which puts the obligation on the owner for delay in delivery of the vessel due to default or want of his due diligence.[15] The very presence of these clauses stipulates the timely delivery of the vessel and are evident of the fact that time was the essence of the C/P, though the lay day/ time/ period may not expressly mentioned in the contract.

7. It should also be noted that all the extended dates of delivery of the vessel by the owner were also of the essence of the time under the C/P. However, the owner kept on defaulting on upcoming expected date of delivery of vessel to the charterer.

[7] IMAM Moot Proposition, 2017, Additional Clauses to M.V. Pequod, Clause 56 at 47.
[8] State Trading Corporation of India v. Golodetz, (1989) 1 W.L.R. 711 (H.L.)
[9] China Cotton Exporter v. Beharilal Ramcharan Cotton Mill Ltd., A.I.R. 1961 S.C. 1295 (India) ¶6.
[10] Stephen Furst et al, Keating on Construction Contracts, 272 (Sweet & Maxwell, 9th ed. 2015) 1955.
[11] Orissa Textile Mills Ltd. v. Ganesh Das, A.I.R. 1961 Pat 107 (India).
[12] IMAM Clarifications, 2017, Clarification 26.
[13] IMAM Moot Proposition, 2017, Clause 13, Lines 87-89.
[14] IMAM Moot Proposition, 2017, Addition Clauses to M.V. Pequod, Clause 37(g) at 39.
[15] IMAM Moot Proposition, 2017 at 47.

iii) The owner acted negligently and unreasonably throughout the delivery of vessel.

8. A person is obliged to complete within a reasonable time and fulfill his obligation, notwithstanding protracted delay, so long as such delay is attributed to cause beyond his control, and he has acted neither negligently nor unreasonably.[16] Statement as to vessel position and expected readiness, such as 'vessel now in the port of Amsterdam'[17], 'vessel now sailed or about to sail from a pitch pine port to UK'[18] are held to be conditions to the contract, any breach of which will entitle the charterer to terminate the contract, as well as to damages owing to the delay. In the case of Louis Dreyfus & Co v. Lauro,[19] the owner was held liable for honest but overoptimistic calculation of the date of the expected readiness to load between Nov. 15 and Nov. 18, and the word "about" was said to mean no date post Nov. 22. Further, if the shipowner wants to make the beginning of one voyage contingent upon the conclusion of the one before, it has be made in express and clear terms in C/P, before passing on the risk to the charterer.[20]

9. The owner would be excused for failure to meet the expected date only when:[21]

- When given, the "expected date" was "honestly made on reasonable ground";
- The vessel "sets out in good time so that under normal circumstances she will arrive at the port of loading at or about the day which she has given as being the one when she expected to be ready to load"; and
- She proceeds direct to the load port without deviation for owner's own purpose.[22]

10. In the present matter, it should be noted that the actual delivery of the vessel took place on 11.12.2012.[23] In order to complete previous charter, owner kept on delaying the delivery of vessel to charterer on various days. Further, the letter written didn't reflect the honest contemplation of the delivery to the charterer for instance, the one dated 10.11.1012 clearly states that the vessel expected to arrive at port Versus/ Pamplona on 18.11.2012 and should be ready to deliver to HSL by 20.11.2012,[24] which tell that the time gap between these two destinations is of two days and on 19.12.2012, the owner had

[16] Hick v Raymond and Reid, (1893) A.C. 22 at 32, (H.L).
[17] Behn v. Burness, (1863) 3 B & S 751 (Court of Exchequer Chamber).
[18] Bentsen v. Taylor, (1893) 2 Q.B. 274.
[19] Louis Dreyfus & Co v. Lauro (1938) 60 Lloyd's LIL Rep. 94.
[20] Martin Dockray, Cases and Materials on Carriage of Goods by Sea 208 (Cavendish Publishing Ltd. 3rd ed. 2004) (1987).
[21] Evera S.A. Commercial v. N. Shipping Co., (1956) 2 Lloyd's Rep. 367, 370 (Q.B.).
[22] Evera S.A. Commercial v. N. Shipping Co., (1956) 2 Lloyd's Rep. 367, 370 (Q.B.) at 97-98.
[23] IMAM Clarifications, 2017, Clarification 26.
[24] IMAM Moot Proposition, 2017 at 5.

written a letter stating that the time gap between above mention destination is of now three days.[25]

11. The Letter dated 26.11.2012 states that the vessel was expected to depart from port Kant on 3.12.2012 and deliver to HSL by 4.12.2012.[26] However this time gap of earlier 1 day, increased to two days, as per stated in letter dated on 30.11.2012 by the owner.[27] These variations clearly show the overestimation of calculations on the part of owner, for which he has to be held liable. This delay of around 21 days beginning from 20.11.2012, the initial stipulated date of delivery to HSL to the date of actual delivery on 11.12.2012 doesn't fall under the aegis of word "around"[28] or about as per discussed in above case.

12. In addition, the owners didn't exercise due diligence on their part which is evident from the fact that there was slowdown in discharging rate of coal cargo day by day. Total coal discharge from 6:00 a.m. of 3.12.2012 to 6:00 a.m. of 4.12.2012 was 10606 mt., from 4.12.2012 to 5.12.2012 it was of 10100 mt. and 5.12.2012 to 6.12.2012 it was of 7462 mt. only.[29] Therefore, an inference can be drawn from the constant decrease in vessel discharging rate of cargo, that the owner was not willing to deliver vessel in the best exercise of his efforts.

13. In conclusion, it can be fairly construed that the delay was occasioned due to negligence and want of due care and diligence on the part of owner.

iv) The risk was reasonably foreseen by both the parties at the conclusion of Charter party.

14. If there is failure to prove the unforeseen circumstances for delay in delivery of the good by the seller, deficiency of services on his part would be assumed and he would be held liable for the delay and to pay damages.[30] A shortage of labor and transport facilities in the area and all the things of similar nature, which may be beyond his control, are things which the contractor should have consider before giving his commitments.[31] Even

[25] IMAM Moot Proposition, 2017 at 7.
[26] IMAM Moot Proposition. 2017 at 8.
[27] IMAM Moot Proposition, 2017 at 9.
[28] IMAM Moot Proposition, 2017 at 7.
[29] IMAM Moot Proposition, 2017 at 11, 12 and13.
[30] M/s. Vikas Motors Ltd. v. Dr. P.K. Jain, A.I.R. 2000 S.C. 102 (India).
[31] Gwalior Rayon Silk Mfg (Wvg) Co. v. Shri Andavar & Co, A.I.R. 1991 Ker 134 (India).

if there were extraneous circumstances, beyond the control of the person, he can be held liable for the same, if he has expressly contracted for the same.[32]

15. In the present case, Clause 56 of the C/P discusses about the liability of the owner in cases of delay in delivery and has contemplated only four circumstances in which he would not be made liable viz. shore labor strikes, lockouts, stoppages or restraints.[33] This clearly shows that both the parties didn't contemplate the exclusion of liability for delay by the owner in cases of bad weather or rain etc. which are not uncommon to the maritime contract. As the owner has been practicing for a long time in sea, he must be aware about the changes in weather condition and other possibilities of risk involved in any course of business. If the exclusion of liability of owner on this account would have been the intention of the parties, it would have been naturally expressly mentioned in the C/P.

16. Absence of such exclusion, it can be safely assumed that delay due to even the circumstances such as bad weather or rain, which are beyond the control of the owner, his obligation to deliver the vessel on time cannot be diminished.

17. Hence, for the above stated reasons there was a delay in the delivery of the vessel to the charterers.

B. <u>The clause entitling charterers to deduct sums from charter hire paid to other vessels owing to deficiency in the crane/ cargo gear of MV Pequod is valid.</u>

18. The clause entitling charterers to deduct sums from charter hire paid to other vessels owing to deficiency in the crane/ cargo gear of MV Pequod is valid as **(i)** There is an express right of deduction under the terms of C/P in the present contract, **(ii)** The charterers are entitled to make deductions under the principle of equitable set-off, **(iii)** The deductions are reasonable and made in good faith, and **(iv)** There is a breach of duty of seaworthiness.

19. The Court of Appeal in *Federal Commerce ltd*. v. *Molena Alpha Inc (The Nanfri)*,[34] suggested that charterers may not be in breach of their obligations to pay hire if the deduction is permitted by the express provisions of the C/P or by the doctrine of equitable set off, is reasonable and is made in good faith.

[32] Middlesex Water Co. v. Knappmann Whiting Co., 64 N.J.L 240 (1900).
[33] IMAM Moot Proposition, 2017 at 47.
[34] Federal Commerce ltd. v. Molena Alpha Inc (The Nanfri), (1979) A.C. 757.

i) There is an express right of deduction under the terms of Charter party in the present contract.

20. It is a settled rule of law that the charterers may deduct from payments of hire those amounts which are specifically permitted by the terms of the charter.[35] Since these provisions which expressly empower the charterer to make deductions in specified circumstances,[36] are agreed in the contract, they must be given effect to.[37] These deductions do not of course depend upon establishing a breach of contract or recoverable damage per se. [38]

21. Under the NYPE form, charter hire is payable in full without deductions, other than those deductions which are permitted by Clause 5 and Clause 15 and other express provisions as are described in the charter.[39]

22. The NYPE form also make express provisions for valid deductions from hire in various cases such as breakdown or damages to hull, machinery and equipment, grounding, detention, speed reduction due to defect in any part of machinery etc.[40]

23. In the *The Nanfri* case, charterers were allowed to make deductions from instalments of hire on the basis of disputed claims which arose due to under- performance of the vessel.[41] Further, the freight rule, which requires it to be collected without any deductions, has held to have no application to time charter, entitling charterers to deduct from hire without the consent of the owners,[42] valid claims which arose under can express clause of the C/P or constituted an equitable set off.[43]

24. In the present case, there is an express provision which enables the charterer to deduct the charter hire if at the load/ discharge port, there is an extended stay of the MV Pequod owing to the deficiency in crane(s)/ grabs(s)/ breakdown of machineries/ want of spares etc., and if any other vessel is forced to wait at the outer anchorage for want of

[35] Terence Coglin, et al., Time Charters p. 291 ¶16.56 (6th ed.2008); Compania Sud Americano de Vapores v. Shipmair BV (The Teno), (1977) 2 Lloyd‟s Rep. 289.
[36] Bassindale, John (ed), Deductions from freight and hire, (1996), Clifford Chance Maritime Review 18.
[37] Indian Contract Act, No. 9 of 1872, India Code (1872).
[38] Bassindale, John (ed), Deductions from freight and hire, (1996), Clifford Chance Maritime Review 18.
[39] The Uranus, 1977 AMC 586 (Arb. Ay N.Y. 1977).
[40] NYPE Form, Clause 15.
[41] The Nanfri, (1979) A.C. 757 at 7.
[42] Century Textiles and Industry Ltd. v. Tomoe Shipping Co (Singapore) Pte Ltd. ('The Aditya Vaibhav'), (1991) 1 Lloyd's Rep. 573.
[43] The Nanfri, (1979) A.C. 757 at 3, 38.

this particular berth.[44] This clause empowers the charterer to make deductions from the charter hire dues payable to the owner with respect of the charter hire of the waiting vessel and bunker consumption apart from full off hire of the vessel.[45]

25. Further, the other express provisions in the present C/P contract also puts the onus on the owner of the vessel firstly, to keep its hull, machinery and equipment in a thoroughly efficient state,[46] then if there is any speed reduction owing to any defect or breakdown of any part of her hull, machinery or equipment, the owner shall bear the cost of the time lost, extra fuel consumed and all other extra expenses, which are permitted to be deducted from hire.[47] The C/P contract clearly lays down that owner shall maintain the gear of the ship as per description,[48] and he shall be held responsible if there is any disabled crane or insufficient power to operate the crane in lieu of which there is time loss.[49] The charterers even have the remedy to terminate the time charter if, after the delivery, the declaration of the performance levels of any part of her hull, machinery including cargo gear and other equipment are estimated or observed to be incorrect.[50]

26. The nature of all these provisions shows that the ultimate liability regarding maintaining of ship, free from defects lies on the owner under express provisions of the present C/P.

27. Proceeding to whether such deduction is valid or not, it is important to note that the present C/P contract has been approved by the New York Produce Exchange Form.[51] The NYPE form permits the charterer to deduct the hire if there is delay owing to the defect or damages in the hull, machinery or equipment of the vessel.[52]

28. Hence, the deductions permitted under the clause are the valid deductions which imply that the clause entitling the same is also valid.

[44] IMAM Moot Proposition, 2017, Additional Clauses to M.V. PEQUOD, Clause 32 at 36.
[45] IMAM Moot Proposition, 2017, Additional Clauses to M.V. PEQUOD, Clause 32 at 36.
[46] IMAM Moot Proposition, 2017, Clause 1, Line 28 at 27.
[47] IMAM Moot Proposition, 2017, Clause 14, Line 90-96 at 29.
[48] IMAM Moot Proposition, 2017, Clause 20, Line 120-124 at 30.
[49] IMAM Moot Proposition, 2017, Clause 21, Line 125-127 at 30.
[50] IMAM Moot Proposition, 2017, Additional Clauses to M.V. PEQUOD, Clause 37 at 37.
[51] IMAM Moot Proposition, 2017 at 26.
[52] Bassindale, John (ed), Deductions from freight and hire, (1996), Clifford Chance Maritime Review 18.

ii) The charterers are entitled to make deductions under the principle of equitable set-off.

29. The doctrine of set-off allows a debtor's to reduce the amount of a debt by any sum which the creditor owes the debtor.[53] The Hon'ble Supreme Court of India has also held that set-off signifies the subtraction or taking away of one demand from another opposite or cross-demand, so as to distinguish the smaller demand and reduce the greater by the amount of the less; or, if the opposite demands are equal, to extinguish both.[54]

30. It has been recognized by Parker J. in *Compania Sud Americana de Vapores* v. *Shipmair B.V. (the Teno)*,[55] that hire was the subject of set off. Also, Goff LJ in the case of *The Nanfri*,[56] holding the charterer's right to set off, accepted it as not merely a means of preventing the owner obtaining judgment or, at any rate, execution, but also as an immediate answer to charterer's liability to pay hire otherwise due.

31. There are 3 criteria for equitable set off against charter hire,[57] which allow the charterer to claim even an unliquidated amount,[58] which are:

(1)Both the claim and the counterclaim must arise from the same contract, i.e. the C/P contract.

(2)The counter claim must be directly connected with the claim.

(3)There must be a "manifest injustice" in allowing the claim to be asserted without taking into account the counter claim.

32. Even in the absence of any set- off clause in C/P, the right to adjustment is 'implied'[59] and it manifested with the charterers.

33. In the present case, claim is the owner's claim on the charter hire and counter claim is deduction in the hire with respect to charter hire paid to other vessels owing to deficiency in crane and cargo gear by the charterer. It should be noted that both are arising from the same C/P contract. The counter claim is also directly connected with the claim as firstly, it is owner's obligation to maintain the crane and the cargo gear and

[53] Henry Campbell Black, Black's Law Dictionary, (Bryan A. Garner ed., West Group, 7th ed. 1999) (1891).
[54] Union of India v. Karam Chand Thapar and Bros (Coal Sales) Ltd and Ors., (SCSuppl) 2004 (3) CHN 144 (India).
[55] Compania Sud Americana de Vapores v. Shipmair B.V. (the Teno), (1977) 2 Lloyd's Rep. 289.
[56] The Nanfri, (1979) A.C. 757 at 982.
[57] The Nanfri, (1979) A.C. 757.
[58] Hanak v. Green, (1958) 2 Q.B. 9.
[59] Pan Ocean Shipping Co. Ltd. v. Creditcorp Ltd. ('The Trident Beauty'), (1994) 1 Lloyd"s Rep. 365.

further, the Additional clause 32 also allows the charterer to deduct the sums from the hire if the charter hire is paid to the other waiting vessels.

34. There would be apparent injustice if the owner claims the full charter hire without allowing for permitted deductions due to specified reasons which in fact had already agreed by the owner himself while signing the contract.

35. Hence, the doctrine of equitable set off applies in the present case and the deductions are valid and permitted which makes the clause entitling such deductions also valid.

iii) The deductions are reasonable and made in good faith.

36. It is permissible that the charterer makes a payment of the hire less a deduction which is bona fide[60] and reasonable[61] in respect of an item for which there is a right under the C/P to make some deduction,[62] even though the amount which he deducts turns out to have been too much.[63] If the owner by his conduct, deprives the charterer of part of the consideration for which the hire was paid, charterer should in fairness be able to recoup himself by making a deduction from the next month's hire, so as to compensate him for the loss of use- equivalent to the hire of the same.[64]

37. Therefore, the charterer is entitled to quantify his loss by a reasonable assessment made in good faith and deduct the sums so quantified from the hire and then the actual figure can be ascertained later, either by agreement between the parties or failing agreement, by arbitration.[65] It has been established that as long as deduction falls within the scope of the clause, and the clause does not require the charterer to follow any procedural requirement for notice, and hence, the right to deduct is established, there is no need for it to be agreed by the owners in advance, unless clause provides so.[66]

38. An agreement would be considered as complete although it might not have worked out in meticulous detail,[67] unless it is too uncertain to be enforced.[68] The right to deduct

[60] SL Sethia Liners v. Naviagro Maritime Corp ('The Kostas Melas'), (1981) 1 Lloyd"s Rep. 18.
[61] Century Textiles and Industry Ltd. v. Tomoe Shipping Co (Singapore) Pte Ltd. ('The Aditya Vaibhav'), (1991) 1 Lloyd's Rep. 573.
[62] The Nanfri, (1979) A.C. 757, as per Kerr, J.; Martin Dockray, Cases and Materials on Carriage of Goods by Sea 317 (Cavendish Publishing Ltd. 3rd ed. 2004) (1987).
[63] Owneast Shipping Ltd v. Qatar Navigation QSC, (2010) 2 C.L.C. 42 ¶46.
[64] Martin Dockray, Cases and Materials on Carriage of Goods by Sea 317 (Cavendish Publishing Ltd. 3rd ed. 2004) (1987).
[65] Martin Dockray, Cases and Materials on Carriage of Goods by Sea 317 (Cavendish Publishing Ltd. 3rd ed. 2004) (1987).
[66] Bassindale, John (ed), Deductions from freight and hire, (1996), Clifford Chance Maritime Review 18.
[67] First energy (UK) Ltd. v. Hungarian International Bank Ltd., (1993) 2 Lloyd's Rep. 195, 205.
[68] Joseph Chitty, Chitty on Contracts, Vol. 1, 205 (Professor Hugh Beale ed., Sweet & Maxwell Publications, 13th ed. 1896) 1826.

would be useless to the charterer if he had to wait until a figure was agreed or established, for then it might be postponed indefinitely.[69] In another case,[70] where buyer and seller of corn feed pellets agreed on various cardinal terms such as price, quantity, period of shipment, range of loading ports. The agreement was held to be valid though they had not reached agreement on various other points such as loading port, rate of loading and certain payments (other than price), which might arise later.

39. In the present case, there is a deduction of INR 25,67,491 which has been made by the charterers in respect of the charter hire paid to the other vessels which could not berth owing to the extended stay of MV Pequod on the berth due to its defective crane cargo gear.[71] There have been multiple instances of delay due to such defect, at various ports during different months. The deduction is a sum total of the same.[72] This cost is paid the other waiting vessels by the charterers and hence, there is no question of bad faith element which the charterers can be accused of. Though the calculations with respect to charter hire paid to other vessels is not stipulated within the clause, the clause would not be invalidated solely on this ground.

iv) There is a breach of duty of seaworthiness.

40. It has been held by Channell J in *McFadden* v. *Blue Star Line*,[73] that a vessel has to have that degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it, and should be free of all the defects before sending the ship to sea.

41. The seaworthiness is generally taken to mean as the responsibility of the owner to put the vessel in question at the disposal of the charterer in a seaworthy condition and properly equipped in such a manner as to carry out the voyage specified in the charter-party and his responsibility to keep the vessel in such condition throughout the voyage.[74]

42. In the present case, there exists a seaworthiness clause which requires vessel to be ready to receive cargo with clean- swept holds and tight staunch, strong, having sufficient power to run all the cranes at one and the same time, and in every way fitted

[69] The Nanfri, (1979) A.C. 757 at 41.
[70] Pagnam SpA v. Feed Products Ltd., (1987) 2 Llyod's Rep. 601.
[71] IMAM Moot Proposition, 2017 at 16.
[72] IMAM Clarifications, 2017, Clarification 51.
[73] McFadden v. Blue Star Line, (1905) 1 K.B. 697.
[74] UAE Maritime Law, 1981, Federal Law No. 26 of 1981 on Maritime Commercial Law, Article 227.

for carrying lawful merchandise…[75] therefore, having defect in crane and cargo which is causing inconvenience to not only the charterer but also to other vessels which could not berth owing to such deficiency, the owners are in violation of their obligation to provide a seaworthy ship. Hence, the owners shall be held responsible for the same and the cost bore by the charterer should be allowed to be deducted from the charter hire as valid deduction.

43. For the reasons stated above, the claims made by the charterer by way of deductions are valid deductions in law and hence, the clause entitling the same is also valid.

C. <u>There does not exist an implied safe port warranty in the present Charter party and the charterers are not liable for the accident.</u>

44. There did not exist an implied safe port warranty in the present C/P and the charterers are not liable for the accident as **(i)** There does not exist an implied safe port warranty, **(ii)** The Charterer is not liable for the accident during movement of the ship from outer anchorage area to the berth under the safety clauses in the C/P, **(iii)** The charterers are not liable for the accident and the owners are liable for the same, and **(iv)** The charterers are not liable to compensate for the accident.

i) There does not exist an implied safe port warranty.

(a)<u>Safe port warranty is not necessary for business efficacy.</u>

45. A term is implied into a contract when such a term is necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it.[76] Court are to not imply a safe port term unless such implication is pertinent to bring business efficacy to the charter[77]The term must be so obvious that it goes without saying,[78] and the officious bystander test[79] that while the parties were making their bargain, an officious bystander, were to suggest some express provision for it in their agreement, they would testily suppress him with a common "Oh, of course!"[80] should be fulfilled for a term to be implied. The language of the C/P is to be used to determine the

[75] IMAM Moot Proposition, 2017, Lines 20-25 at 26.
[76] The Moorcock, [1886-90] All ER 530.
[77] Kodros Shipping Vorp of Monrovia v. Empress Cubana de Fletes (THE EVIA NO.2), (1983) 1 AC 736.
[78] BP Refinery (Westernport) Pty Ltd v. The Shire of Hastings, (1978) 52 AJLR 20.
[79] United India Insurance Co. Ltd v. Manubhai Dharmasinhbhai Gajera, (2008) 10 S.C.C. 404 (India).
[80] Satya Jain v. Ahmed Rushdie, A.I.R. 2013 S.C. 434 (India).

existence of an implied warranty and language showing that safety is not intended shall lead to the conclusion of no implied safe port warranty.[81]

46. In the present case, business can be carried out, despite the absence of a safe port warranty clause, because a safe port warranty clause is not fundamental to the C/P, like a clause for hire of vessel would be. A safe port warranty does not impede the transaction between charterer or owner of hire of the vessel. The fact that there exists standard forms without or with qualified safe port/berth warranties[82] show that it is not necessary to provide business efficacy. The fact that the business of the current C/P agreement was conducted without the safe port warranty shows that it is not necessary to provide business efficacy or efficient carrying out of the contract of C/P. Hence there is no safe port warranty.

(b)The language of the Charter party does not indicate for an implied safe port warranty.

47. The safe port warranty clause in standard NYPE 46 has been deleted in the present case, much like the term 'safely' is struck off,[83] and hence there is no intention in the language of the C/P for the parties to have a safe port warranty. Further, the fact that safe port have been envisaged by reason of risk from ice[84] excludes safety of port to be considered from any other risk except ice, such that risk in any other manner has been struck off and hence there is no implied safe port warranty for any risk other than that arising from ice.

48. The *ejusdem generis*[85] arising in "That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place"[86] doesn't include port as to be included in the meaning of 'place' since wharf or dock is a specific place within a port where the ship unloads and load, while port is a huge structure involving of a lot of wharfs and dock, at each individual dock the ship loads and unloads. Thus the *ejusdem generis* cannot be extended for a place to mean port and hence there is no safe port warranty.

[81] Mediterranean Salvage And Towage Ltd v. Seamar Trading And Commerce Inc., (2009) 2 Lloyd's Rep 639.
[82] Shelltime 3 Form.
[83] Mediterranean Salvage And Towage Ltd v. Seamar Trading And Commerce Inc., (2009) 2 Lloyd's Rep 639.
[84] IMAM Moot Proposition, 2017, Clause 23, Line 172 at 32.
[85] Amar Chandra Chakraborty v. The Collector of Excise, Govt. of Tripura, Agartala and others, A.I.R. 1972 S.C. 1863 (India); Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal A.I.R. 2010 S.C. 1325 (India).
[86] IMAM Moot Proposition, 2017, Clause 6, Line 62 at 28.

Thus, the officious bystander test also fails that reasonably the two parties need not mean a port to be safe when they mean a wharf to be safe, because both connote two functionally different structures. Thus there is no implied safe port warranty.

ii) The Charterer is not liable for the accident during movement of the ship from outer anchorage area to the berth under the safety clauses in the Charter party.

49. There does not exist an obligation in the absence of a safe port warranty for the charterer to provide a safe entry and exit from the port, even if there is a safe berth warranty.[87] A safe berth warranty is to exist only to cover movements within the port, and does not cover approach or departure from the port[88] and charterer is not liable to provide safe approach under safe berth warranty.[89] Water in front of wharf or dock does not constitute premises of the wharf/dock.[90]

50. Since there is no safe port warranty in the present case, and the maximum that maybe implied into the contract is a safe berth warranty, accident during movement of the ship from the outer anchorage area, which is outside the boundary of the ship, into the port does not make the charterer liable, nor is there an obligation on the charterer to provide a safe approach in the absence of a safe port warranty.

iii) The charterers are not liable for the accident and the owners are Liable for the same.

(a) <u>The charterers are not liable for the accident</u>

51. There exists no safe port obligation and hence there is no liability on the part of the charterers for the accident. Even in case one may be implied, the owner, through the master, are held primary responsibility for choosing a safe port for the vessel[91] since the master knows best about navigation and charterer knows only about commercial aspects[92] and this decision has never been weakened by any subsequent judgment.[93] The master relying on charterer's instruction shall be saved from liability only if there is an

[87] APJ Priti, (1987) 2 Llyod's Rep 37 (C. A).
[88] The Greek Fighter (2006) 1 Llyod's Rep. Plus 99, 320-323.
[89] APJ Priti, (1987) 2 Llyod's Rep 37 (C. A).
[90] Nautical Pilots Co (Fiji) Ltd v. Ports Terminal Ltd, (2002) FJCA 26.
[91] Atkins v. Fiber Disintegrating Co.85 U.S. (18 Wall.) 272, 299 (1873).
[92] Grant Gilmore & Charles L. Black, Jr., The Law of Admiralty 204 (2nd ed. 1975) (1957).
[93] Orduna, S.A. v. Zen-Noh Grain Corp, 1991 AMC 346 (5th Cir. 1990).

express authorization of safety from the charterer which he relies on.[94] The charterer cannot be made liable for the master obeying such orders of the charterer that the charterer has no authority to give.[95] A charterer is not liable to the ship owner under the safe port clause when the ship owner is negligent,[96] or has not undertaken good navigation[97] and seamanship.[98]

52. In the current case, while the charterers have directed the vessel towards the port, there is no authorization that the charterer has made with respect to the safety of the port. It is in such a case the duty of the master to ascertain the safety of the port. Since there is no assurance that the master relies on to move to the port, and hence the defence of reliance on orders by the charterer is not available to the master. Since the owner was negligent in ascertaining the safety of the port, which he is obligated to ascertain as he has a right to refuse entry into an unsafe port,[99] the charterer cannot be held liable for the accident which occurred by negligence on part of the master to ascertain safety of the port by seeking the opinion of local agent on safety, inter alia.[100] Further, in the wake of no assurance of safety provided by the charterer, the master cannot claim liability of the charterer since he relied on an order about moving into an unsafe port, which the charterer had no authority to give if a safe port warranty is implied.

(b) The owners are liable for the accident

53. Owners of the ship are liable for the accident and not charterers if the accident was caused by negligence,[101] lack of good navigation and seamanship,[102] which if were exercised the accident could have been avoided.[103] Master's failure to have proper lookout using GPS amounts to unsound navigation practice.[104] Owner's right to rely on safe port warranty does not warrant ignoring the obvious risks.

[94] Cities Service Transportation Co. v. Gulf Refining Co, (1935) AMC 1513 (2d Cir. 1935).
[95] The Sussex Oak, (1949) 83 Ll.L Rep 297.
[96] National Marine Service, Inc. v. Gulf Oil Co, 433 F. Supp. 913 (E.D. La. 1977).
[97] The Evia No. 2, Emraldian v. Wellmix Shipping Ltd. (The Vine), (2010) EWHC 1411 (Comm.).
[98] Tweedie Trading Co. v. New York & Boston Dyewood Co. 3127 F. 278 (2d Cir. 1903).
[99] The Kanchenjunga, [1990] 1 Lloyd's Rep. 391.
[100] The Star B SMA 3813 (Arb. At N. Y. 2003).
[101] The M/VAurora S.M.A. No. 3609 (Fox, Nelson and Busch: 2000).
[102] The M/V Bahama Spirit, S.M.A. No. 3849 (Berg, Wiswell and Martowski; 2004).
[103] Leeds Shipping, Ltd. v. Socijtj Francaise Bunge (The Eastern City), (1958) 2 Lloyd's Rep. 127.
[104] The MV Chesapeake Bay, S.M.A. No. 3677 (Arnold, Berg and Szostak; 2001).

54. In the present case the master if had inspected the berth, as is the practice,[105] before berthing, the accident could have been avoided. Thus, the negligence on part of the master in not inspecting the berth before berthing, especially in the wake of no express safety assurance provided by the charterer has broken the chain of causation[106] as the old sunk vessel would have revealed on inspecting the dock and the accident avoided upon the master exercising his duty of due diligence and ordinary care.[107] Hence it is not the act of the charterers of ordering to a port that has led to the accident, but a subsequent negligent omission of the master and hence the owner is liable for the accident.

55. Also, since GPS, SONAR, etc. are the common technology used in navigating a ship and ascertaining the depth of waters, and non-usage of the same is an unsound navigational practice, the accident occurred as a result of bad navigation and seamanship, for if the common sound navigational practice of employing GPS and SONAR were used then, the accident could have been avoided. Hence the owners are liable for the accident since it was there intervening negligence and not exercising ordinary duty of care, coupled with unemployment of good navigation practices and seamanship that led to the accident and not the nomination of Port Zanpar.

(c) The charterers as port owners are not liable for the accident

1. The charterers do not have an obligation to provide safe port.

56. The rule laid down in the case Charolette C[108] about port owners have a liability to provide safe port is not applicable on all cases uniformly since the liability of the port owners arose from statutory duty of care envisaged in the Occupiers Liability Act 1957. In the absence of a statutory duty, there is no necessity to scan anchorages and approaches to ensure there is no hazard to navigation[109] Since Indian jurisdiction lacks an Occupiers Liability Act, the ratio in Charolette C is not applicable in the current scenario.

57. Thus, in the absence of a statutory duty being imposed on ports by a statute in India, there is no obligation on the port owner to provide safe port warranty. Thus, the charterers as port owners are not liable to provide a safe port in India

[105] Venore Transport v. Oswego Shipping Corporation, 498 F. 2d 469.
[106] American President Lines, Ltd. v. United States, (1968) A.M.C. 830 (N.D. Cal. 1961).
[107] Hastorf v. O'Brien, 173 F. 346, 347 (2d Cir. 1909); The MV Chesapeake Bay, S.M.A. No. 849 (Sauer, Zubrod and Stam; 1974).
[108] CaRisbrooke Shipping v. Bird Port Limited "Charlotte C", (2005) EWHC 1974.
[109] In Frescati Shipping Co. Ltd. (Athos I), (2011) AMC 1090 (Ed. Pa. 2011).

2. The port owner is not liable as the accident was caused by the negligence of the master

58. The duty of wharfinger or dock owner has only a duty of due diligence and is not the guarantor of the safety of a ship coming to his wharf.[110] The Indian statutes also do not impose a duty on the port officers to remove an obstruction in the approach.[111] Since the master, and not wharfinger, is not responsible for mooring ships, when the master can by good navigation avoid the risk or accident[112] and the obstruction is obvious,[113] then the wharfinger does not have incur liability.

59. In the current case, the obstruction was easily ascertainable using sound navigation practices like GPS or SONAR, which the master failed to exercise, hence master has failed in carrying out its duty resulting in the accident, at which instance the port owners cannot be held liable for the accident.

iv) The charterers are not liable to compensate for the accident.

60. Retention of benefit by a person that is unjust or inequitable amounts to unjust enrichment.[114] A person interested in the payment of money, which another is bound to pay by law and hence pays is bound to be reimbursed.[115] It is unjust if the levy I in excess leading to a retention unauthorised by law, and such excess charge is not property of the person charging and amounts to unjust enrichment.[116]

61. Even in the alternative that the charterers are responsible and liable for the accident, charterers shall still not be liable to pay for the accident as such payment would amount to unjust enrichment in the wake of insurance.[117] 55. In the present case, since the vessel is insured, it would be unjust enrichment to the owner if he were to obtain compensation from the charterer as well as get benefit from the insurance for the accident. If at all the charterer maybe sued it may be done only by the insurance company and not the owner

[110] Trade Banner Line, Inc. v. Caribbean Steamship Co., 521 F.2d 229 (5th Cir. 1975).
[111] Indian Ports Act, No. 15 of 1908, § 10 India Code (1908).
[112] Petro United Terminals, Inc. v. J.O. Odfjell Chemical Carriers, 756 F. Supp. 269 (E.D. La. 1991).
[113] Bunge Corporation v. M/v Furness Bridge, 558 F.2d 790 (5th Cir. 1977).
[114] Sahakari Kand v. Commissioner of Central Excise and Customs, A.I.R. 2005 S.C. 1897 (India).
[115] Indian Contract Act, No. 9 of 1872, §69 India Code (1872).
[116] Mafatlal v. Union of India, 2002 (83) ECC 85 (India).
[117] IMAM Moot Proposition, 2017, Clause 1, Line 26-27 at 27 & Clause 24, Line 175-176 at 32.

as subrogation is a statutory right available to the insurers.[118] Thus the charterer is not liable to pay compensation to the owners for the accident.

D. <u>An oral variation of Charter parties is permissible.</u>

62. An oral variation of Charter parties is permissible as **(i)** An oral variation of the present C/P which has taken place is valid, and **(ii)** An oral variation regarding excluded cargo is valid if authorised by the master/owner and may supersede the C/P.

i) An oral variation of the present Charter party which has taken place is valid.

63. A contract is valid if there is meeting of minds and consent from both parties.[119] Intention of parties to be is to be ascertained by words and conduct as ascertained by a reasonable man and the intention is to be given effect to.[120] For an oral variation to be not valid, the terms of the contract must be really ambiguous.[121]

64. In the present case, the intention of the parties was to carry Adamantium as is evidenced in their conduct. It was agreed in the meeting that the vessel shall carry Adamantium upon questioning about the same and the conduct of the master in accepting Adamantium as cargo without protest along with signing of Bill of Lading containing Adamantium evidences authorization of the master by the owners to carry the same. The master having agreed that the owner has given permission for carriage of Adamantium I and II[122] is sufficient evidence to show the intention on the part of owners to the carry Adamantium I and II in the voyage and consequentially alteration of the C/P to exclude Adamantium out of Excluded Cargo.

ii) An oral variation regarding excluded cargo is valid if authorised by the master/owner and may supersede the Charter party.

65. Parties may make an agreement orally, subsequent to the signing of C/P [123] and if this contract supersedes on the conclusion of a prior contract, then the contract is carried as to give effect to the subsequent contract as according to general rules of contract.[124] Oral variations to a written C/P, solely by virtue of them being oral are not disregarded and

[118] Marine Insurance Act, No. 11 of 1963, § 79 India Code (1963).
[119] Indian Contract Act, No. 9 of 1872, §13 India Code (1872).
[120] Bhagwandas Goverdandhas Kedia v. Girdharilal Puushottamdas, A.I.R. 1966 S.C. 543 (India).
[121] Flack v. Williams, (1900) A.C. 176 (PC Can.).
[122] IMAM Proposition, 2017, Newspaper Report Wednesday, February 2, 2017 at 26.
[123] Mayhew Foods Limited v. Overseas Containers Ltd., (1984) 1 Lloyd's Rep. 317 (Q.B.).
[124] Anglo Overseas Transport v. Titan Industrial Corporation, (1959) 2 Lloyd's Rep. 152 (Q.B.).

are perfectly valid.[125] In case the cargo agreed upon is varied at the time of loading, and the master accepts this, this amounts to alteration of terms of contract by conduct[126] and a subsequent signing of Bill of Lading by the master[127] without protest evidences the variation in contract[128] concluded right prior to the issue of the Bill of Lading by offer of cargo and acceptance of the same by the master[129] and the owner is bound by this signature.[130] There exists a valid superseding if the master, in the service of the shipper has sufficient knowledge of the content and has consented to the same tacitly or expressly and the new terms prevail in case of a contradiction between the prior terms and latter.[131]

66. In the present case, the parties to the C/P having expressly agreed to carrying Adamantium, and further, the master accepting Adamantium with full knowledge, shows a superseding of the clause in the written C/P about Adamantium being an excluded cargo. The master is within authority to sign the Bill of Lading since the orally modified C/P allows for carriage of Adamantium and hence it is a risk the owner has contracted to bear;[132] as the owners have agreed for carriage of Adamantium Grade I and II.[133]

67. Hence there is no moving away from the terms of the C/P through the signing the Bill of Lading since the risk is one that the owner chosen to bear[134] and hence the oral variation of the C/P is completely valid and permissible.

[125] Evans & Sons v. Merzario, (1976) 1 WLR 1078.
[126] Globe Motors Inc. v. TRW Lucas Varity Electric Steering Limited, (2016) EWHC 396 (C.A.); I-Way Ltd v World Online Telecom Ltd (2004) EWHC 244 (Comm); G.Jayashree v. Bhagwandas S.Patel, (2009) 3 S.C.C. 141 (India).
[127] Manchester Trust v. Furness, (1895) 2 Q.B. 539.
[128] Electrosteel Castings v. Scan-Trans Shipping & Chartering Sdn Bhd, (2003) 1 Lloyd's Rep. 190 (Q.B.)
[129] Armour and Co. v. Leopold Walford (London) Ltd, (1921) 8 Ll.L.Rep. 446 (K.B.).
[130] Leduc v. Ward, (1888) 20 QBD 475.
[131] Northern Pacific Ry. Co. v. American Trading Co., 195 U.S. 439 (1904); The Ardennes, (1951) 1 K.B. 55.
[132] The "Athanasia Comninos" And "Georges Chr. Lemos", (1990) Lloyd's Rep 977 (Q.B.).
[133] IMAM Proposition, 2017, Newspaper Report Wednesday, February 2, 2017 at 26.
[134] Sea Success Maritime v. African Maritime Carriers, (2005) 2 Lloyd's Rep. 692 (Q.B.).

PRAYER

In the light of the above submissions, Charterers request the tribunal to:

ADJUDGE that

I. There was a delay in the delivery of the vessel.
II. The clause entitling the charterers to deduct sums from charter hire paid to other vessels owing to deficiency in the crane/ cargo gear of MV Pequod is valid.
III. There is no implied safe port warranty and that the charterers are not liable for eh accident.
IV. There was a valid oral variation of the C/P as per which carrying Adamantium was permissible and hence the charterers are not liable for shipping the same