

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/ADMIRALTY SUIT NO. 12 of 2023**

PATANJALI FOODS LIMITED

Versus

M T SYRMA (IMO 9204805)

Appearance:

for the Defendant(s) No. 1

MS PAURAMI B. SHETH(841) for the Plaintiff(s) No. 1

CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 20/06/2023****ORAL ORDER**

1. Learned Advocate Ms. Paurami Sheth instructed by Ms. Binita Hathi, BRUS Chambers has submitted that claim arises for losses caused to the Plaintiff on account of short delivery of the cargo of RBD Palm Olein (Edible Grade), that the Plaintiff placed an order for supply of 5000 Metric Tonnes (MT) of RBD Palm Olein (Edible Grade) with MMTC Transnational Pte. Ltd under Sales Agreement dated 30.03.2023, that as per agreement the goods were to be loaded from Kuala Tanjung, Indonesia by MGV Commodity Pte Ltd. and to be received by the plaintiff at Kakinada, Indian Port, that the payment was to be Cash against Documents (CAD), that the plaintiff had to make

the payment through its Bank, State Bank of India, Commercial Branch, Indore on receipt of Documents including Bill of Lading, that the said goods were shipped on board the Defendant Vessel at Kuala Tanjung, Indonesia, that JCL Marine Pte. Ltd. then issued Bill of Lading Nos. SRM/RBD/ KT/CHN-17 to SRM/RBD/KT/CHN-21 all dated 28.03.2023 for a quantity of 4999.574 MT of RBD Palm Olein (Edible Grade) as the Agent on behalf of the Master of the Defendant Vessel wherein the plaintiff is shown as :Notify Party”.

2. Learned Advocate Ms. Paurami Sheth has further submitted that MMTC Transnational Pte Ltd. raised Commercial Invoice dated 30.03.2023 upon the Plaintiff for total quantity of 4999.574 MT of RBD Palm Olein (Edible Grade) for a sum of USD 4,949,578.26 inclusive of USD 4,764,594.02 towards value of goods and USD 184,984.24 towards Freight for the said quantity and also forwarded all the documents including Original Bill of Lading to State Bank of India, Commercial Branch Indore Branch, that the Plaintiff's Bank made payment in two parts of in all for USD 4,949,578.26 for total quantity of

4999.574MT as per Bill of Lading and debited the said amount in the Account of the plaintiff, that meanwhile, as per instructions, the Plaintiff issued Letter of Indemnity dated 30.03.2023 for taking delivery in lieu of presentation of Original Bill of Lading and the Seller also issued Letter of Indemnity dated 03.04.2023 in favour of the Owners, that the Defendant Vessel arrived at the discharge port Kakinada, India on 06.04.2023 and completed discharge of cargo on 07.04.2023, that as per report dated 06.04.2023 of M/s. J.B. Boda Insurance Surveyors & Loss Assessors Pvt. Ltd., Kakinada appointed by the Plaintiff for tanker Ullage Report before discharge, the total quantity on Board the Defendant Vessel was found as of 4987.262 MTs as against the total quantity of 4999.574 MTs as mentioned in Bill of Lading, that finally the Plaintiff was delivered 4930.840 MT amounting to shortage of final 68.734 MT or 1.37% against the Bill Of Lading Quantity. It is further submitted that Bhakuni Insurance Surveyors therefore issued a Letter of Apparent discrepancy dated 07.04.2023 and Letter lodging monetary claim dated 08.04.2023 for such shortage on behalf of the plaintiff upon the Master of the Defendant

Vessel to which there been no response either from the Master or the Owner of the Defendant Vessel or anyone interested in the Defendant Vessel till date, the plaintiff then issued Legal Notice dated 28.04.2023 through BRUS Chambers, its Advocates upon the Owner of the Defendant Vessel calling upon to make the payment for the loss suffered by the plaintiff to which also till date no response. It is also submitted that the plaintiff has not only made payment of entire amount but already paid freight on entire cargo 4999.574 MT of RBD Palm Olein (Edible Grade) and customs duty on 4974.576 MT of RBD Palm Olein (Edible Grade). Since the Plaintiff has not received the complete quantity as a result the Plaintiff has also made claim for the amount paid for freight and customs duty for 43.736 MT of RBD Palm Olein (Edible Grade), that due to negligence less quantity of goods to the tune of 68.734 MT of RBD Palm Olein are delivered for which the plaintiff has suffer loss of INR 63,23,732/-, the Plaintiff has maritime claim falling under Section 4(1)(d) and 4(1)(f) of The Admiralty (Jurisdiction & Settlement of Maritime Claims) Act against the Defendants Vessel for which the plaintiff is constrained to file present suit and inter alia

prayed for arrest of the Defendant Vessel.

3. Upon hearing Ms. Paurami Sheth, Learned Advocate for the Plaintiff and upon reading the plaint herein signed at Ahmedabad on 19.06.2023 filed by the Advocate for the Plaintiff herein and the affidavit of Mr. Sachin Somabhai Patel, Constituted Attorney of the Plaintiff above named declared on -19.06.2023 and upon hearing counsel for the plaintiff and upon the Plaintiff giving an undertaking in writing to the Registrar of this Court to pay such sums by way of damages as this Court may award as compensation in the event of the defendants sustaining prejudice by this order, hence, issue **Notice returnable on 26.06.2023**. Furthermore, I hereby order that the Registrar of this Court do issue a warrant for the arrest of the Defendant Vessel M.T. SYRMA (IMO- 9204805) along with her hull, engines, gears, tackles, bunkers, machinery, apparel, plant, furnitures, equipments and all appurtenances, at present lying at Deendayal Port, Kandla within the Indian territorial waters and that the Warrant of Arrest be executed at any time of the day or night or on Sundays or holidays and I do further order that the Port Officer and

the Customs Authorities at Deendayal Port, Kandla do effect the arrest, seizure or detention of the defendant Vessel M.T. SYRMA (IMO- 9204805) at present lying Deendayal Port, within the Indian territorial waters or such other place wherever she may be within the territorial waters of India and I do further order that in the event of the defendant and/ or those interested in her depositing in this Court the principal amount of INR 63,23,732/- towards the entire cost of short delivery of 68.734Mts. Of RBD Palm Olein including of freight and Customs duty and legal cost of INR 15,00,000/- aggregating INR 78,23,732/- together with further interest on INR 63,23,732/- at 18% pa from the date of filing of the Suit till payment and/or realization thereof as per the particulars of claim, the said Warrant of Arrest shall not be executed against the defendant Vessel at present lying at Deendayal Port within the Indian territorial waters.

4. The Port Officer and the Customs Authorities at Deendayal Port are directed to arrest the Defendant Vessel presently at Deendayal Port within the Indian territorial waters and

to keep the vessel under arrest until further orders of this Court. It is further ordered that the Port Officer and the Customs Officer at Deendayal Port shall also intimate about this order to the Master/Chief Engineer of the Defendant Vessel through her Agent and effect the warrant of arrest for the Defendant Vessel.

5. The Registry is directed to send this order to Port and Customs at Deendayal Port through Email at following addresses and the Authorities at Deendayal Port shall act on Email copy of the order and take the Defendant Vessel under arrest.

- 1 signalkpt@gmail.com.
2. hmofficekpt@gmail.com
3. harbourmaster@deendayalport.gov.in
- 4 dydirector@deendayalport.gov.in
- 5 dyconservator@deendayalport.gov.in
- 6 cvo@deendayalport.gov.in
7. trafficmanager@deendayalport.gov.in
8. dychairman@deendayalport.gov.in
9. secretary@deendayalport.gov.in
10. komal.patel@gov.in

11. kandlacustoms@gmail.com

6. It is also open for the plaintiff's advocate to communicate the above order by Email to the Authorities and the Owner/person interested in the Defendant Vessel Owner and the Port and Customs authorities at Deendayal Port are directed to act on Email message with an ordinary copy of this order.
7. The Plaintiff is permitted to serve to the Defendant Vessel through her Owner through email.
8. It is made clear that it will be open for the Defendant to approach this Court even prior to the returnable date with an adequate notice to the plaintiff.

Direct service is permitted today.

Bhoomi

(NIKHIL S. KARIEL,J)