



India  
Branch

**CIARB**

## **GMU-CIARB INTERNATIONAL MARITIME ARBITRATION COMPETITION (GIMAC) 2020**

### **MOOT PROPOSITION**



1. Shankvi Agro Products Pvt. Ltd. (hereinafter referred to as “Shankvi Agro”) is a company incorporated in Hind and is one of the leading exporter & distributors of premium food brands in Hind. Established with the intent to serve those having a liking for Hindian taste and flavours worldwide, Shankvi Agro has been in the business of exporting rice, spices, pulses etc. In the last 25 years, Shankvi Agro has enjoyed substantial growth, especially exporting food to Singapore, Malaysia and Australia and promoting Hindian cuisines across the world.
2. Shore & Ross Pte Ltd (hereinafter referred to as “Shore & Ross”) was established in the year 2000 at Changi and is in the business of vessel chartering operations and has branched out to Hind, Bangladesh, Sri Lanka and Thailand. Shore & Ross has worked with major Charterers in South Asia and has proficient knowledge in complying with long term Charter of affreightment for coal, iron ore, agri-products, fertilizers, liquids, food products and project cargo. Shore & Ross has further created new norms and benchmarks in vessel chartering operations including end to end Logistics Solutions to suit the varying demands of its customer. While Shore & Ross was a prominent name in Changi 10 years ago, off-late there has been a decline in its business mainly due to the stiff competition from new entrants in the business.
3. Shankvi Agro recently negotiated a contract with one of the major players in food business at Changi, Sharda Traders Pte Ltd (hereinafter referred to as “Sharda”) for supply of 30,000 bags (25kg each) of Jowar and 50,000 bags (25 kg each) of millets as first shipment and further agreed to ship the products once in every two months. Sharda was buying the said products for resale to other Asian markets and accordingly strongly

insisted that the first shipment ought to be delivered on or before 4<sup>th</sup> June 2019. Sharda accordingly inserted a standard ‘cancellation clause’ and a ‘right of refusal’ clause in its contract with Shankvi Agro.

4. Shankvi Agro in order to deliver the goods to Sharda decided to engage the services of Shore & Ross. Pursuant to the same, the parties signed a Contract of Affreightment dated 15<sup>th</sup> May 2019 (hereinafter referred to as the “Contract”) which clearly stipulated that the goods in the first shipment shall be delivered to Sharda on 2<sup>nd</sup> June 2019 and further mentioned that time was the essence of the Contract. Shankvi Agro agreed to pay 60% of the consideration payable at the time of loading and the remaining 40% at the time of delivery. The Contract was drafted by the Head Legal Counsel of Shankvi Agro, Mr. Harshad Chawla, who is a luminary in the field of maritime law and was further appointed by Shankvi Agro due to a number of maritime disputes it was facing with ship owners and vessel carriers. Mr. Harshad Chawla is further the Chief Patron of a skills and development training centre situated at the capital of Hind named the ‘Academy for Resolving Conflicts in Maritime Arbitration’. The Contract naturally contained an arbitration clause for resolving any disputes and further contained a force majeure clause (see Addendum for extracts).
5. The vessel carrying the cargo of Shankvi Agro was all set to commence its voyage on 25<sup>th</sup> May 2019. However due to labour strikes of sub-contractors of Shore & Ross, the vessel was able to set sail only on the 30<sup>th</sup> of May 2019. In addition on 31<sup>st</sup> May 2019, the vessel further met with a minor collision with another vessel due to bad weather, While Shore & Ross attributed it to a ‘Force Majeure collision’, the owner of the vessel which collided with Shore & Ross claimed that the collision was Shore & Ross’ fault. When Shankvi Agro communicated the imminent delay to Sharda by an email dated 31<sup>st</sup> May 2019, Sharda replied by way of an email dated 1st June 2019 stating that it

cannot accept the goods after 4<sup>th</sup> June 2019 and will be constrained to terminate the contract and further refused acceptance of goods. The vessel reached Changi only on 9<sup>th</sup> June 2019 and Sharda refused to accept the goods and also terminated the Contract. Sharda further initiated an arbitration against Shankvi Agro for compensation receivable for the delay.

6. Shankvi Agro consequently sent several emails to Shore & Ross in the subsequent month demanding refund of payments made along with interest and also indemnification for damages suffered. However Shore & Ross strictly maintained that it had not breached the contract since the delay was attributable to force majeure events and accordingly was not liable to indemnify Shankvi Agro of any amount. Shankvi Agro accordingly sent a Legal Notice dated 1<sup>st</sup> August 2019, stating that it had no other option but to initiate arbitration under the Contract and gave two weeks' time as a last opportunity to settle the amount. However Shore & Ross failed to reply to the said Legal Notice. Shankvi Agro then sent another Notice dated 3<sup>rd</sup> September 2019, fully citing the arbitration clause under the Contract and nominated Mr. Shreyas Das, Professor at Maritime Law Institution, Hind as an arbitrator. Shore & Ross replied on 28<sup>th</sup> September 2019, nominating Mr. Mangal Seth, Senior Advocate of Supreme Court of Changi as an arbitrator. As per the arbitration clause, Academy for Resolving Conflicts in Maritime Arbitration appointed Mr. Harish Narain, Barrister from London as the presiding arbitrator on 5<sup>th</sup> October 2019. All three arbitrators submitted their Statement of Independence disclosing that they have no conflict of interest with any of the parties.
7. Shankvi Agro submitted its Statement of Claim on 15<sup>th</sup> October 2019 stating that :
  - i. Shore & Ross has breached the contract due to delay in delivery of goods and the same cannot come within the purview of 'force majeure' events.

Accordingly Shore & Ross is liable to refund the consideration paid by Shankvi Agro along with 18% interest till payment thereof due to breach of contract owing to delay in delivery of goods.

- ii. Shore & Ross is further liable to indemnify Shankvi Agro for damages suffered and are liable to pay damages to the tune of Rs.25,00,000/-.

8. Shore & Ross submitted their Statement of Defence on 1<sup>st</sup> November 2019 stating that:

- i. There has been no breach of contract since the delay is attributable to force majeure events, i.e., labour strikes and force majeure collision.
- ii. Accordingly Shore & Ross is neither liable to refund the amount with interest, nor is liable to indemnify Shankvi Agro for any losses.

9. Meanwhile on 5<sup>th</sup> November 2019, a widely circulated newspaper in Hind, published an article on on-going disputes in maritime arbitration and quoted the CEO of Shankvi Agro, that Shankvi Agro has commenced arbitration against Shore & Ross for breach of contract and will hopefully get compensated for the losses they had suffered in the hands of Shore & Ross. Shore & Ross which was already facing a slump in the business claimed that it faced severe backlash and loss of reputation due to the said interview

10. Shore & Ross with the leave of the arbitral tribunal, on 30<sup>th</sup> November 2019 filed additional pleadings against Shankvi Agro stating the following :

- i. As a consequence of the newspaper article dated 5<sup>th</sup> November 2019, Shankvi Agro has breached confidentiality provision under the latest 2019 amendments to the Arbitration and Conciliation Act, 1996 and accordingly Shore & Ross made a Counter claim of Rs. 20, 00,000/- from Shankvi Agro, being the estimated future losses it may suffer owing to the interview.
- ii. Shore & Ross further brought to the notice of the Tribunal, a recent decision of the Apex Court of Hind which held that unilateral appointment of arbitrator is invalid

and further that a person interested in the outcome of the dispute cannot appoint an arbitrator. Accordingly Shore & Ross filed an application to challenge the appointment of the presiding arbitrator Mr. Harish Narain who was appointed by 'Academy for Resolving Conflicts in Maritime Arbitration'.

11. Shankvi Agro filed its reply statement against the Counter claim on 20<sup>th</sup> November 2019, stating that :

- i. The latest 2019 amendments to the Arbitration and Conciliation Act, 1996 is not applicable to the present arbitration. In any event the newspaper article has not disclosed any contents of the arbitration proceedings that might be detrimental to Shore & Ross and hence the said claim is to be dismissed.
- ii. The challenge to appointment of presiding arbitrator is not sustainable since the recent judgement of Hind Court will have a prospective effect and is not applicable to the present arbitration. In any event the present factual circumstances are completely different and furthermore Shore & Ross has already waived its right to challenge the appointment of the Presiding Arbitrator.

12. A conference call was held between the party representatives and arbitrators on 30<sup>th</sup> November 2019. Due to conflicting calendars, the oral hearing is scheduled to be held on 8<sup>th</sup> March 2020 at Gujarat, Hind. The Tribunal issued a Procedural Order as follows:

## **PROCEDURAL ORDER**

- i. The parties have chosen not to let in oral evidence.
- ii. The matter has been posted for arguments of both parties on 8<sup>th</sup> March 2020 and the Tribunal shall hear the all the issues on the same day.
- iii. The Arbitral Tribunal shall hear the following issues:
  - a) Is the challenge upon presiding arbitrator valid?
  - b) Are the 2019 amendments to Arbitration and Conciliation Act applicable to the present dispute? Has Shankvi Agro breached confidentiality as provided in the statute and accordingly is Shore & Ross entitled to receive damages?
  - c) Has Shore & Ross breached the contract? Is the delay attributable to force majeure events?
  - d) Is Shore & Ross liable to refund the consideration along with 18% interest till payment thereof?
  - e) Is Shore & Ross liable to indemnify Shankvi Agro for damages suffered thereof.
- iv. Laws of Hind are pari materia to the laws of India.
- v. Laws of Changi are pari materia to the laws of Singapore.

## **ADDENDUM (Excerpts from Contract of Affreightment)**

### **Clause 4 – Time is the Essence**

Time is the Essence of Contract and Shankvi Agro shall have the right to claim full refund of the consideration paid along with an interest of 18% p.a in the event of breach of this provision

### **Clause 8 – Indemnification**

Both parties mutually agree to protect, indemnify and hold harmless the other party from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, arising out of, or in any way connected with, actions or omissions of the indemnifying party, any injury or other cause of action involving alleged defects in such party's services or promises.

### **Clause 10 – Limitation of Liability**

Neither party shall be liable to the other for any special, consequential, incidental, punitive, or indirect damages arising from or relating to any breach of this Agreement, regardless of any notice of the possibility of such damages. The aggregate liability of the either party, its directors, officers, employees, agents, sub-contractors in respect of any claims, losses, costs or damages arising out of or related to this Agreement shall in any event be restricted to Rs.25,00,000/- (Rupees Twenty Five Lakhs only).

### **Clause 13 – Force majeure**

The parties shall strictly abide to the terms and conditions of this Contract subject to the standard Force majeure events such act of god, strikes, riots etc.

### **Clause 16 - Arbitration**

All disputes arising between the parties shall be resolved by arbitration under the Arbitration and Conciliation Act, 1996 or any amendment thereof. The number of arbitrators shall be three where Shankvi Agro shall appoint one arbitrator, Shore & Ross shall appoint another arbitrator and the presiding arbitrator shall be appointed by 'Academy for Resolving Conflicts in Maritime Arbitration'. The place of arbitration shall be Gujarat, Hind.





**Transitory Campus :**

At GNLU Campus | Attalika Avenue Knowledge Corridor |  
PDPU Road | Koba | Gandhinagar-382426 | Gujarat | INDIA  
Ph: +91-79-23241161 | E: info@gmu.edu.in

[www.gmu.edu.in](http://www.gmu.edu.in)

 GMUGANDHINAGAR

 GMUGANDHINAGAR

 GMU\_GANDHINAGAR