



SECOND NUALS NATIONAL MOOT COURT COMPETITION

ON

MARITIME LAW

March 13- 15, 2015

MOOT PROPOSITION

Zeus & Co. v. YA MAVLAYA

With

NAND APARAJITHA & INDIAN GRACE v. ALIAKMON

With

Xiang Ship Building Yard v. ALIAKMON

Orders for construction of a bulk carrier vessel were placed by Blue Star Lines, a Company registered in the Republic of Sparta, with Xiang Ship Building Yard from Republic of Aaron. Xiang Ship Building Yard is public sector undertaking of the Republic of Aaron. The ship construction contract dated. 1st October, 2011 was in the Norwegian Ship Owner's Association

Form. The contract, *inter alia* provided that the vessel would become the absolute property of the buyer along with all machinery, fittings and equipments earmarked for construction, upon the first instalment of the purchase price being paid. The contract also provided that best endeavours would be made for completing the construction by 1st September 2013 and that any defective workmanship or defect in materials if discovered by the buyer within 12 months after the acceptance trials should be made good by the builders or alternatively, the builders should pay to the buyer a sum equal to reasonable cost of repair. Every warranty, condition or guarantee implied by the statute or common law was expressly excluded from the contract. The design and specification of the vessel were to be supplied to the builder by the buyer. In accordance with the custom it was incorporated in the contract that the risk does not pass until delivery of the completed ship. Pursuant to the said contract, orders for engines and materials were duly placed by Xiang Ship Building Yard with different suppliers. Blue Star Lines thus awaited delivery of the vessel as contracted for.

Blue Star Lines already had a fleet of vessels, both bulk and container carriers which were chartered out by them to various companies. During August 2013, they entered into a charter party agreement with Zeus and Co. another public sector enterprise of Republic of Aaron, for chartering out their bulk carrier 'YA MAVLAYA' a vessel flying the flag of Republic of Liberia for transportation of 10,000 MT coal from the port of Minsk in Eastern Europe to Shangze in the Republic of Aaron. The Coal was being transported by Zeus and Co. for supply to the thermal power stations in the

Republic of Aaron, which being a developing country had huge demand for power. The charter party provided for employment of the vessel between port of Minsk and Shangze Port during the period from September 2013 to October 2014. The Captain and officers employed on board 'YA MAVLAYA' were appointed by Blue Star Lines but would be paid by Zeus and Co. during the charter period. At the time when the charter party was entered into, 'YA MAVLAYA' was already performing a voyage from Shebriniska to Kieve as envisaged under an earlier charter. In the charter party with Zeus and Co. it had been undertaken that Blue Star Lines will make available 'YA MAVLAYA' at the port of Minsk or "*so near thereto as she can safely get*" on or before 1st September 2013. Minsk was a riverside port along the river Tista and entry to the port depended on the water draught available in the river which in turn depended on tides. Zeus and Co. had transported 8000 MT of coal to the wharf at the Port of Minsk and awaited for the arrival of 'YA MAVLAYA'. On 29th August, 2013, she reached the Petra, 30 miles down the river and as she missed the tide, she waited there for the next tide which would enable her to enter the port area of Minsk. Petra was the usual place of waiting for the vessels plying to Minsk and a notice of arrival was issued to the agents of Zeus and Co. on behalf of 'YA MAVLAYA'. By the time YA MAVLAYA' berthed at Minsk and the cargo made available was loaded into her holds, the lay time as agreed to in the charter party had expired. A claim for demurrage and dead freight were raised by Blue Star Lines upon Zeus and Co. After loading, since one of her holds was lying empty, the Captain of 'YA MAVLAYA' was instructed by Zeus and Co. to proceed to the nearby Port of Kripsto and take in a cargo of ammunition comprising of shells and

cartridges into her empty hold. The same were intended for use by the Army of Republic of Aaron. 'YA MAVLAYA' complied with the same and thus laden with full cargo, she proceeded on her voyage to Shangze Port.

While passing through the Gulf of Aruba which was en route to Shangze , 'YA MAVLAYA' got into rough weather. The Captain sought port of refuge in the nearest port of Madiba in Republic of Catonia which had a long standing boundary dispute with Republic of Aaron and both countries had already fought three wars. While thus anchored outside the port of Madiba, the local news papers reported that the vessel carried not only coal but also ammunition for the Republic of Aaron which was termed as "contraband goods liable to seizure". The authorities of Republic of Catonia directed the Captain not to leave the port and to come alongside to facilitate inspection by the authorities of Republic of Catonia. Captain of 'YA MAVLAYA' apprehending seizure of arms, ignored the detention order and proceeded on full throttle to the high seas. While crossing the Exclusive Economic Zone of Republic of Catonia, a hot pursuit allegedly ensued and she was finally brought back to Port of Madiba by the coast guard vessels of Republic of Catonia. Proceedings were initiated against the vessel and the Captain and crew were imprisoned and tried for offences on various counts including piracy, smuggling, sedition and illegal arms trade in Republic of Catonia. Pursuant to a Prompt Release action initiated by the Republic of Liberia, the vessel and its crew were later released by Republic of Catonia. However, the cargo on board 'YA MAVLAYA' was seized and declared as forfeited. 'YA

MAVLAYA' later docked in the port of Neva in Scindia State of Republic of Sparta.

Republic of Aaron through Zeus and Co., invoked the admiralty jurisdiction of the High Court of Scindia and initiated an *in rem* action seeking to realise damages from 'YA MAVLAYA' or its owners viz., Blue Star Lines for compensating the loss of goods and for violation of charter party terms. Value of the coal and ammunition forfeited by Republic of Catonia were sought to be recovered from Blue Star Lines. It was alleged that Blue Star Lines had also failed to make the vessel available for loading at the designated port at the designated time as envisaged in the charter party. The claims were defended by Blue Star Lines and a counter claim for demurrages and dead freight was raised against Zeus and Co. Blue Star Lines also contended that 'YA MAVLAYA' during relevant time was under the command of the Captain who was instructed by Zeus and Co. and hence they were not liable for the consequences of the actions of her Captain. Blue Star Lines also contended that the action before the High Court of Scindia is barred in so far as a separate suit for recovery of money value of the ammunition had already been initiated by Republic of Aaron before the local subordinate judge's court in the Port of Shangze and the same was pending. While so, Xiang Ship Building Yard informed Blue Star Lines of the part completion of construction of the vessel in its yard. Blue Star Lines was apprehensive that the vessel once completed would be detained by the Republic of Aaron towards their outstanding claims with respect to the incidents involving 'YA MAVLAYA'. Hence Blue Star Lines insisted on

delivery of the vessel before 1st September 2013 and the new vessel was christened 'ALIAKMON'. Certificate of Registry was obtained in its name from a flag of convenience. Upon the insistence of Blue Star Lines work was speeded through and on 1st September 2013 Engineer's of Blue Star Lines boarded the vessel for trial. While on trial run along the coast of Republic of Aaron, the vessel developed mechanical problems. It was noted by the engineers of Blue Star Lines who were onboard that the construction was wanting in many respects. Serious design and mechanical defects were noted. Vessel started taking in water and was in distress. Assistance was sought by 'ALIAKMON' from vessels in the vicinity and 'NAND APARAJITHA' a container carrier came to her assistance. A hauser was connected and 'NAND APARAJITHA' proceeded to tow 'ALIAKMON' to safety. While within the territorial waters of Republic of Sparta, apprehending her own safety, 'NAND APARAJITHA' abandoned 'ALIAKMON' and sailed away. 'ALIAKMON' was finally towed into the port of Neva by 'INDIAN GRACE'. 'ALIAKMON' thus lay berthed within the said Port.

Xiang Ship Building Yard invoked the Admiralty Jurisdiction of the High Court of Scindia claiming ownership over the vessel and towards the outstanding construction charges from Blue Star Lines. 'NAND APARAJITHA' and 'INDIAN GRACE' moved the High Court of Scindia in the Republic of Sparta seeking to recover remuneration for salvage assistance rendered to 'ALIAKMON'. Blue Star Lines resisted the claims against 'ALIAKMON' contending that the ownership of 'ALIAKMON' had passed on to

them before trials and sued the Xiang Ship Building Yard for breach of the ship building contract and recovery of damages.

The High Court of Scindia, which had admiralty jurisdiction comparable to that exercised by the High Courts of Bombay, proceeded to consider claims and counter claims of all parties together.

