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IS DEMURRAGE AN EXCLUSIVE REMEDY FOR THE SHIP-OWNERS IN THE EVENT OF DETENTION?

Andrew Baker J, sitting in the Commercial Court division of the High Court of England & Wales, aptly stated, "From time to time, a case provides the opportunity to resolve a long-standing uncertainty on a point of law of significance in a particular field of commerce." The *Eternal Bliss* is certainly such a case.

In the case of *K Line Pte Ltd v Priminds Shipping (HK) Co Ltd – The Eternal Bliss*, where the ship (Owned/operated by K Line) on voyage charter under (Priminds Shipping) was delayed at the discharge port in China for 31 days due to alleged congestion or possibly lack of storage space ashore

for the cargo of soybeans, due to which, the condition of the cargo deteriorated.

K-Line settled the receivers' and their insurers' claims at a total cost of about U\$1.1 million, and commenced proceedings against Priminds (Charterers) seeking indemnity in respect of that cost and for failure to discharge the subject cargo at the rate (within contractual laytime).

It is well-established that demurrage is by nature liquidated damages for failing to discharge at the required rate, but in respect of what does demurrage, calculated in accordance with the voyage



I learned that courage was not the absence of fear, but the triumph over it. The brave man is not he who does not feel afraid, but he who conquers that fear

- NELSON MANDELA



charter, fix or limit the owner’s recovery?

In *Reidar v Arcos1* and in *Suisse Atlantique2* it was held that, if damages in addition to demurrage are to be recovered, it is necessary to show breach of a separate obligation as well as damage of a different kind from delay in the completion of the loading and discharging operation, however Andrew Baker J held that it is unnecessary to prove a separate breach in order to recover damages in addition to the detention of the ship, i.e. demurrage and quoted “Agreeing a demurrage rate gives an agreed quantification of the owner’s loss of use of the ship to earn freight by further employment in

respect of delay to the ship after the expiry of laytime, nothing more. Where such delay occurs, the demurrage rate provides an agreed measure by which the parties are bound for the owner’s claim for damages for detention, but it does not seek to measure or therefore touch any claim for different kinds of loss [emphasis added], whatever the basis for any such claim.”

The judgment by Andrew Baker J, contains a forensic analysis of the cases and legal commentary on the issue, and in summary held that “demurrage is not and/ or should not be the exclusive compensation where failure to load within the contractual laytime has

consequences other than the detention of the ship” and therefore, where a shipowner has suffered a different type of loss arising from a failure to load or discharge the vessel within laytime (such as cargo claim liabilities) there should be no need for the owner to establish a separate and independent breach of contract in order to recover damages in addition to demurrage.

The decision have brought some delight to vessel owners, but it has yet to be determined since the Charterers have been granted permission to appeal to the Court of Appeal.

KERALA HIGH COURT GIVES DIRECTON TO REACTIVATE DIN AND DSC TO AVAIL CFSS SCHEME 2020



When the entire country was under confusion on dealing with cases related to disqualified directors of company, Kerala high court had come up with a fine verdict, giving breathing

time for the directors to cure their defect which they had committed earlier that had led to disqualification under section 164 (2) (a) of the companies act 2013. The Kerala high court

in one of their case **THIRUNAVUK-KARASU RAGUNATHAN and another Vs union of India and others vide W.P(c). No.6863 of 2019** had directed the registrar of companies Kerala,

Tamil Nadu and Andaman Nicobar to immediately reactivate the DIN and DSC of the petitioners to utilize the CFSS Scheme 2020. The said judgment comes as a great relief for the disqualified directors whose DIN's and DSC's were blocked and they were not given permission to act as a director of the struck off companies or any other companies in which they were acting as a director. The highlights of the said judgment are as follows:

1. The Ministry of Corporate Affairs through their circular had introduced a scheme called CFSS

Scheme 2020 which provides the stake holders a once in a life time opportunity to file all annual returns without paying any penalty.

2. The said scheme provides a fresh cause of action for the directors to challenge the disqualification vide their active companies.
3. The court came to a firm view that to have the effective implementation of the scheme, the reactivation of the DIN and DSC were very much vital.
4. The court also felt that the

suspension of the DIN doesn't only affect the petitioner but also the active companies and they came to conclusion that the continuance of suspension of DIN and DSC will lead to the scheme becoming nugatory.

The said judgment of the Kerala high court has been most welcomed by all over the country since, the verdict has given some breathing time for all the directors who were disqualified for non-filing of returns not only in the strike off companies but also in the companies which were active



HOT TIPS

20 TIPS TO IMPROVE MENTAL HEALTH

1. Start your day with positive thoughts
2. Work on your strengths
3. Experiment and learn new skills
4. Learn to love animals
5. Smile and Laugh as much as you can
6. Cry and let you heart out too
7. Find a confidante either family or friends
8. Listen to fun music or get into an impromptu dance while doing household work
9. Sleep as body needs rest
10. Take a warm bath often
11. Get off your phone
12. Make trips
13. Good diet and Exercise
14. Practice Forgiveness
15. Do something for somebody as a sweet gesture



16. Send a thank you note
17. Enjoy sunshine and stroll around with nature
18. Make mistakes
19. Be nice to yourself
20. Count your blessings.

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