A SHIPPING CORPORATION OF INDIA LTD.

v.

MARE SHIPPING INC.

(Special Leave Petition (C) No. 19461 of 2006)

B JULY 13, 2011

[ALTAMAS KABIR AND A.K. PATNAIK, JJ.]

***Shipping**: Demurrage charges on account of delay in discharge of cargo – Claim for – Charter Party providing for* C *carriage of crude oil from Ras Sukheir to a safe port on the Indian coastline – No specific port in the Indian coastline mentioned in the Charter Party – Charterers given choice of nominating port for discharge of the cargo – After vessel left Ras Sukheir, intimation given by Charterers for discharge of* D *the cargo at the SBM at Port Vadinar – Vessel reached Port Vadinar on 15.12.1999 and Master of vessel tendered Notice of Readiness (NOR) – However, vessel was not so equipped and could not be moored at the SBM – The Addendum to Charter Party drawn up between Charterer and owner of vessel* E *containing conditions that vessel would be diverted from Vadinar to Mumbai for discharge and all extra cost/ demurrage charges would be borne by Charterer – Thereafter vessel diverted to Mumbai and completed discharge – Claim for demurrage charges made by owner of vessel – Dispute* F *arose and arbitration clause contained in Charter party invoked – Arbitral Tribunal allowed the claim of owner of vessel – High Court upheld the order of the Arbitral Tribunal – On appeal, held: In giving Notice of Readiness upon arrival at the customary anchorage at Vadinar, the Master of the Vessel duly complied with the conditions of the Charter Party* G *– The responsibility for the failure of the ship to moor at the SBM in Vadinar lay squarely on the Charterers and the receiver as they had nominated the SBM for the safe mooring of the vessel –It cannot also be said that the owners of the*

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vessel contributed in any way to such failure since the equipment on board the vessel were made known to the Charterers when the Charter Party was signed – The terms of the Charter Party were agreed upon by the parties with their eyes wide open – Even after the vessel was denied mooring at the SBM for safety reasons, no steps were taken by the Charterers to either arrange for an alternate safe berthing in Vadinar or to give instructions as to where the cargo was to be discharged – Even the subsequent deviation of the vessel from Vadinar to Mumbai was not on account of any laches on the part of the owners of the vessel – Read with the Charter Party, the Addendum made it abundantly clear that the Charterers had accepted the responsibility for the failure of the vessel to discharge her cargo at Vadinar and had agreed to bear all the expenses for the delay in diversion of the vessel from Vadinar to Mumbai, including the time spent at Vadinar port and the expenses incurred towards pilotage, tugs and other port expenses – Apart from that the Charter Party specifically provided that extra expenses incurred on account of any change in loading or discharging ports, has to be paid by the Charterers, and any time thereby lost to the vessel shall count as used lay time – There was no reason to interfere with the award of the Arbitral Tribunal – Arbitration.

On 9.11.1999, the petitioner-Charterers and the respondent-owner entered into a Charter Party in respect of the respondent's vessel for carriage of 8150 metric tones of crude oil from the Egyptian Red Sea port of Ras Sukheir to one/two safe anchorage/lighterage points/ SBMs/one/two safe port(s) one/two safe berth(s) anywhere in India. The vessel was described in the Charter party as being fitted with "AK Tongue Type Bow Chain Stopper of min SWL 2000 Mts." The Charter Party contained arbitration clause.

On 19.11.1999, the vessel arrived at Ras Sukheir at 4.00 a.m. and tendered Notice of Readiness (NOR). The loading commenced at 10 p.m. on 20.11.1999 and was

A completed by 3.15 p.m. on 21.11.1999. The total lay time provided for loading and discharge of cargo was 72 running hours. Out of the said lay time hours, the lay time used at Ras Sukheir was 37 hours and 30 minutes. On account of a mishap involving the vessel's anchor B and the submarine pipe-lines, the vessel was delayed at Ras Sukheir for fourteen days and could leave the port only on 4.12.1999. On 6.12.1999 while the vessel was sailing, the respondents-owners nominated Vadinar Single Berth Mooring (SBM) for discharge of the cargo. C The port of discharge was not nominated earlier. The vessel arrived at Vadinar and the Master tendered NOR at 8 p.m. on 15.12.1999. Since the vessel had only one chain stopper/Bow Panama Chock as specified in the Charter Party, the vessel could not be safely moored at D the SBM and the Master was asked by the Receiver, Indian Oil Corporation on 21.12.1999 to take away the vessel from the Vadinar SBM.

On 21.12.1999, a message was sent to the petitioner's agents by the Manager of the respondents drawing E attention to the fact that the vessel could not be berthed at the SBM and requesting that immediate steps be taken to berth the vessel. But no steps were taken by the petitioners in that regard. Finally a decision was arrived at on 28.12.1999 and Addendum to the Charter Party was F drawn up and signed by the Owner and the Charterers containing the conditions that the vessel would be diverted by the Charterers from Vadinar to L.P.O. Mumbai for discharge into a daughter vessel and all the extra cost/ expenses of daughter vessel/demurrage charges would G be born by the Charterers. Pursuant to this arrangement, the vessel sailed from Vadinar at 1 a.m. on 29.12.1999 and arrived at Mumbai Lighterage point on 30.12.1999 at 2 p.m. The vessel tendered Notice of Readiness at 2 p.m. on 30.12.1999 and completed discharge at 3.30 p.m. on H 1.1.2000. The respondents/owner submitted the

demurrage claims along with supporting documents to the Charterer. As the said claim was disputed, arbitration clause was invoked by the parties under the provisions of the Arbitration & Conciliation Act, 1996. The Arbitral Tribunal passed an award allowing the respondents' demurrage claim in full. Certain other amounts payable under the Addendum were also awarded in favour of the respondents. The petitioner-charterers challenged the award. The Single Judge of the High Court upheld the award. The Division Bench of the High Court affirmed the same.

The question which arose for consideration in the instant special leave petition was whether on arriving at anchorage point at Port Vadinar, despite the destination point being the SBM mooring, it could be said that it was an arrived ship which was competent under the Charter Party dated 9.11.1999, to issue Notice of Readiness of discharge of its cargo; if the finding of the Arbitral Tribunal that the vessel was an arrived ship at Port Vadinar, as upheld by the Single Judge and the Division Bench of the High Court is accepted, would the respondent/owners of the vessel be entitled to damages or demurrage.

Dismissing the special leave petition, the Court

HELD: 1. The Charter Party dated 9.11.1999 was in respect of a transaction which provided for carriage of crude oil from Ras Sukheir to a safe port on the Indian coastline. The Charterers were given the choice of nominating such port for discharge of the said cargo of crude oil. In the absence of any named port of destination in the Charter Party itself, it was only after the vessel left Ras Sukheir that an intimation was given by the Charterers for discharge of the cargo at the SBM at Port Vadinar in Gujarat. That the said nomination was a conscious decision on the part of the Charterers, despite

A having knowledge of the equipment available on board the vessel for mooring at a SBM, and in keeping with such decision the vessel set its course from Ras Sukheir to Vadinar. The fiasco at Vadinar was occasioned by the fact that no prior checking had been done to see whether B with the mooring equipment on board, the vessel would be able to safely berth at the SBM for discharge of its cargo. [Para 43] [95-A-E]

2. The concept of an arrived ship in shipping C terminology requires that a vessel should reach a destination in a port where she could be safely berthed and thereupon be ready to either discharge or load cargo from and on to the vessel. That is a general concept, but the Charterers and the Owners of the vessel could in the Charter Party agree to a specific destination point within D the port area for discharging or loading of cargo. Once the vessel arrived at the said spot and was ready to discharge its cargo, it could be described as an "arrived ship" with the authority to issue and tender Notice of Readiness. In the instant case, the nominated port for the E arrival of the vessel was Vadinar Port, but the destination point was the SBM where the vessel was to be moored and was to discharge its cargo of crude oil. In fact, in the Charter Party dated 9.11.1999, Clause 6 specifically provided for arrival of the vessel at the port of loading or F discharge and cast an obligation upon the Master or his Agent to give the Charterer or his Agent Notice of Readiness in relation to discharge of the cargo. It is a possibility that since no specific port in the Indian coastline had been mentioned in the Charter Party, the G Master of the vessel or his Agent was required to give Notice of Readiness upon the vessel arriving at customary anchorage. It is only after the vessel sailed from Ras Sukheir that the receiver, IOC, nominated Vadinar to be the port of discharge with the specific H destination point being the SBM within the port. In giving

such Notice of Readiness upon arrival at the customary anchorage at Vadinar, the Master of the Vessel duly complied with the conditions of Clause 6 of the Charter Party and in terms of the said clause irrespective of whether a berth was available or not, lay time commenced upon the expiry of six hours after receipt of such notice. That the vessel could not be moored at the SBM is a different facet of the story. The Charterers had full knowledge of the equipment on board vessel through the questionnaire provided by the respondents/Owners to the petitioners/Charterers. It cannot be denied that despite having such knowledge the IOC nominated the SBM as the destination point for discharge of the cargo. Obviously, the parties to the Charter Party had not made any attempt to verify as to whether the equipment on board the vessel was sufficient for her to be safely moored at the SBM and to discharge her cargo safely. As it turned out later on, the vessel was not so equipped and could not, therefore, be moored at the SBM and had to be requested to move away therefrom. The responsibility for the failure of the ship to moor at the SBM in Vadinar must lie squarely with the Charterers and the receiver as it was they who had nominated the SBM for the safe mooring of the vessel. The lay time must, therefore, be held to have recommenced after the expiry of six hours from the tendering of the Notice of Readiness upon the vessel's arrival at the customary anchorage at Vadinar on 15.12.1999 in keeping with the provisions of Clause 6 of the Charter Party. It was not the case of the Charterers that the failure of the vessel to discharge its cargo at the SBM at Vadinar was for reasons beyond their control. It cannot also be said that the owners of the vessel contributed in any way to such failure since the equipment on board the vessel had been made known to the Charterers when the Charter Party was signed.[Paras 44 and 45] [95-G-H; 96-A-C-G-H; 97-A-H; 98-A-B]

A 3. In the face of the specific conditions indicated in Clause 6 of the Charter Party, the theoretical and/or academic exercise of what constitutes an "arrived ship" loses much of its relevance. The terms of the Charter Party were agreed upon by the parties with their eyes B wide open. Even after the vessel was denied mooring at the SBM for safety reasons on 21.12.1999, no steps were taken on behalf of the petitioners to either arrange for an alternate safe berthing in Vadinar or to give instructions as to where the cargo was to be discharged. In fact, on C behalf of the respondent/Owners a legal notice was addressed to the petitioners on 24.12.1999 pointing out that the vessel continued to await discharge incurring demurrage. It was only thereafter that Addendum to the Charter Party was drawn up and signed on 28.12.1999 by D the Owners and the Charterers, whereby the vessel was diverted by the Charterers from Vadinar to a Lighterage point at Mumbai port for discharge and it was specifically agreed that the Charterers would bear all the costs of discharge, including freight charges and the expenses of E the daughter vessel. It was also agreed that demurrage would be settled as per the terms of the Charter Party. [Para 46] [98-C-G]

4. Once it is held that the vessel was an arrived ship on reaching the customary anchorage at Vadinar port F and it was the Charterers who having the choice of a safe port, had selected the SBM at Vadinar as the discharge point, the suggestion made on behalf of the Charterers that it was the responsibility of the Owners of the vessel to check whether the ship could be safely moored at the G SBM, is untenable. The responsibility of the Owners of the vessel ended with the declaration of the equipment available on board for mooring and berthing for the purpose of discharge of its cargo. Consequently, all the other ancillary issues which arose had to be answered H in favour of the respondents. The fiasco at Vadinar was

occasioned by the fact that no prior checking had been done by the Charterers to ascertain as to whether with the mooring equipment on board the vessel she would be able to moor safely at the SBM for discharge of her cargo. Even the subsequent deviation of the vessel from Vadinar to Mumbai was not on account of any laches on the part of the Owners of the vessel who were awaiting instructions once the vessel had been asked to move away from the SBM. In fact, it took a notice from the Owners of the vessel and a week for the Charterers to galvanize themselves into action, which ultimately resulted in the Addendum dated 28.12.1999. Read with Clause 6 of the Charter Party, the Addendum dated 28.12.1999 makes it abundantly clear that the Charterers had accepted the responsibility for the failure of the vessel to discharge her cargo at Vadinar and had agreed to bear all the expenses for the delay in diversion of the vessel from Vadinar to Mumbai, including the time spent at Vadinar port and the expenses incurred towards pilotage, tugs and other port expenses. Apart from that Clause 4(1) of Part II of the Charter Party specifically provides that extra expenses incurred on account of any change in loading or discharging ports, has to be paid by the Charterers, and any time thereby lost to the vessel shall count as used lay time. There is no reason to interfere with the Award of the Arbitral Tribunal and the decisions, both of the Single Judge and the Division Bench, confirming the Award of the Arbitral Tribunal. [Paras 47- 50] [99-B-H; 100-A-D]

Leonis Steamship Company Ltd. v. Rank Limited **(1908) 1 K.B. 499;** *Armament Adolf Deppe v. John Robinson & Company Ltd.* **(1917) 2 K.B. 204;** *Owners of S.S. Plata v. Ford & Co.* **(1917) 2 K.B. 593:** *Johanna Oldendorff* **(1973) 11 LLR 285;** *Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.* **(2003) 5 SCC 705: 2003 (3) SCR 691 – referred to.**

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Case Law Reference:

(1908) 1 K.B. 499	**referred to**	**Para 14, 18**
(1917) 2 K.B. 204	**referred to**	**Para 14**
(1917) 2 K.B. 593	**referred to**	**Para 14**
(1973) 11 LLR 285	**referred to**	**Para 17,18**
2003 (3) SCR 691	**referred to**	**Para 25**

B

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 19461 of 2004.

C

From the Judgment & Order dated 20.01.2006 of the High Court of Judicature at Bombay in Appeal No. 1158 of 2005 in Arbitration Petition No. 531 of 2003.

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Bhaskar Gupta, Manoj Khanna, R.K. Khanna for the Petitioner.

Prashant Pratap, Siddhartha Dave, Jemtiben AO, Vibha Datta Makhija for the Respondent.

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The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. The Special Leave Petition arises out of the Judgment and Order dated 24.10.2005 passed by the learned Single Judge of the Bombay High Court in A.P.No.531 of 2003 affirming the Award of the Arbitral Tribunal dated 8.9.2005, and the judgment and order dated 20.1.2006 passed by the Division Bench dismissing A.N.No.1158 of 2005 filed by the Petitioners herein.

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2. On 9.11.1999 the Petitioners and the Respondent(s) entered into a Charter Party in respect of the Respondents' vessel, "m.t. Prestige", for carriage of minimum 8150 metric tonnes of crude oil from the Egyptian Red Sea port of Ras Sukheir to one/two safe anchorage(s)/lighterage points/SBM(s)/ one/two safe port(s)one/two safe berth(s) anywhere in India.

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The vessel was described in Clause 41 of the Charter Party as being fitted with "AK Tongue Type Bow Chain Stopper of min SWL 2000 Mts."

3. Clause 9 of the Charter Party provided for settlement of all disputes arising out of the Charter Party by arbitration under the Arbitration & Conciliation Act, 1996, and the Maritime Arbitration Rules of the Indian Council of Arbitration (ICA).

4. The vessel arrived at Ras Sukheir at 4.00 a.m. on 19.11.1999 and tendered Notice of Readiness (NOR). The loading commenced at 10 p.m. on 20.11.1999 and was completed by 3.15 p.m. on 21.11.1999. The total lay time provided for loading and discharge of cargo was 72 running hours. Out of the said lay time hours, the lay time used at Ras Sukheir was 37 hours and 30 minutes. On account of a mishap involving the vessel's anchor and the submarine pipe-lines, the vessel was delayed at Ras Sukheir for fourteen days and could leave the port only on 4.12.1999. On 6.12.1999 while the vessel was sailing, the Respondents nominated Vadinar Single Berth Mooring (SBM) for discharge of the cargo. Port of discharge had not been nominated earlier. The vessel arrived at Vadinar and the Master tendered NOR at 8 p.m. on 15.12.1999. Since the vessel had only one chain stopper/Bow Panama Chock, which had been specified in the Charter Party, the vessel could not be safely moored at the SBM and the Master was asked by the Receiver, Indian Oil Corporation on 21.12.1999 to take away the vessel from the Vadinar SBM.

5. On 21.12.1999 a message was sent to the Petitioners' Agents, M/s. J.M. Baxi & Co. by the Manager of the Respondents drawing attention to the fact that the vessel could not be berthed at the SBM and requesting that immediate steps be taken to berth the vessel. In the absence of any positive response to the said letter, the Respondents' lawyer, Mr. Prashant Pratap, sent a legal notice to the Petitioners on 24.12.1999 indicating that the vessel continued to await discharge incurring demurrage for which the Petitioners were

A held responsible. The Petitioners were also informed that on account of the detention of the vessel at Vadinar, there was a serious possibility of the vessel missing its next engagement.

6. Finally a decision was arrived at on 28.12.1999 and B Addendum No.1 to the Charter Party dated 9.11.1999 was drawn up and signed by the Owners and the Charterers containing the following further conditions agreed upon, namely,

(a) m.t. Prestige will be diverted by the Charterers from Vadinar to L.P.O. Mumbai for discharge.

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(b) Charterers will pay freight basis Ras Sukheir/LPO Mumbai where cargo will be discharged into a daughter vessel and Charterers will pay all the expenses of the daughter vessel, M.T. Maharaja Agrasen.

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(c) Charterers will bear the cost of deviation of m.t. Prestige basis Ras Sukheir/LPO Mumbai v/s Ras Sukheir/Vadinar/ LOP Mumbai which included time at the demurrage rate.

(d) The extra cost of bunkers incurred as a result of the E deviation will be on Charterers' account, subject to the Owners submitting documentary evidence.

(e) All direct expenses incurred by the Owners at Vadinar towards pilotage, tugs and other port expenses and Agency fees, will be settled by the Charterers.

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(f) Demurrage to be settled as per Charter Party terms.

7. Pursuant to the above arrangement, m.t. Prestige sailed from Vadinar at 1 a.m. on 29.12.1999 and arrived at Mumbai G Lighterage point on 30.12.1999 at 2 p.m. The vessel tendered Notice of Readiness at 2 p.m. on 30.12.1999 and completed discharge at 3.30 p.m. on 1.1.2000. The Respondents/Owners submitted their demurrage claims along with supporting documents to the Charterers on 3.2.2000. As the said claim H was disputed, arbitration was invoked by the parties under the

provisions of the Arbitration & Conciliation Act, 1996, hereinafter referred to as "the 1996 Act". Both the parties appointed their Arbitrators and the two Arbitrators appointed a third as the Presiding Arbitrator. The Arbitrators made and published their Award dated 26.8.2003 by which they allowed the Respondents' demurrage claim in full. Certain other amounts payable under the Addendum dated 28.12.1999 were also awarded in favour of the Claimants/Respondents.

8. The said Award was challenged by the Petitioners/Charterers in the Bombay High Court on the ground that the Respondents had not proved that the Notice of Readiness had been tendered at Vadinar and consequently the Respondents were not entitled to demurrage for the period that m.t. Prestige was detained at Vadinar. The learned Single Judge of the High Court accepted the submission made on the Petitioners' behalf and by his order dated 25.4.2005 remitted the matter to the Arbitration for a proper finding in this regard, with leave to the Respondents/owners to lead evidence to prove tender of the Notice of Readiness to the Petitioners/Charterers.

9. After remand, the Arbitrators passed another Award on 8.9.2005 after admitting fresh evidence, including documentary evidence, holding that the service of the Notice of Readiness by the Master of the vessel on the Agents of the Petitioners at Jamnagar had been duly proved in view of the evidence of the Petitioners' witness, Mr. Sunil D'Souza that he had asked Captain Jude D'Souza for a copy of the Notice of Readiness sent by the Master to the Petitioners' Agents at Jamnagar. The said fact was also confirmed by Mr. S.J. Joshi during his evidence before the Tribunal. The Arbitrators also noted that no attempt had been made by the Charterers to rebut Mr. Sunil D'Souza's evidence by producing Captain Jude D'Souza.

10. The Tribunal accordingly held that the Respondents/Owners were entitled to receive demurrage in the amount of U.S. $220376.48, together with interest and costs, as awarded in the earlier Award of 26.8.2003.

A 11. On receiving a copy of the Award of the Tribunal dated 8.9.2005, the Petitioners applied for amendment of the Petition under Section 34 of the 1996 Act. However, by order dated 24.10.2005 the learned Single Judge dismissed the Arbitration Petition No.531 of 2003. An appeal, being No.1158 of 2005, B was filed by the Petitioners before the Division Bench of the Bombay High Court which dismissed the same on 20.1.2006.

12. The present Special Leave Petition has been filed against the said Award of the Arbitration dated 8.9.2005, as well as the judgments and orders dated 24.10.2005 and C 20.1.2006 passed by the learned Single Judge and the Division Bench of the Bombay High Court confirming the Award.

13. Mr. Bhaskar Gupta, learned Senior Advocate, who appeared for the Petitioners, focused his submissions on the D sustainability of the Respondents' claim for demurrage. Urging that a claim for demurrage can only arise after the expiry of the "lay days", namely, the time specified for loading or discharging the cargo from the vessel, Mr. Gupta submitted that the all-important question in respect of such a claim is when do the E lay days commence and when are they used up. Mr. Gupta submitted that the commencement of lay days depends on three factors :-

(a) Firstly, the ship must be an "arrived ship" in order to give Notice of Readiness.

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(b) Secondly, she must have given the prescribed notice to load or discharge, as the case may be.

(c) Thirdly, she must be ready to load or discharge, as the case may be.

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14. Mr. Gupta submitted that whether the ship is an "arrived ship" or not depends on the point designated as the destination in the mutual understanding of the parties in the Charter Party itself or the terms thereof – the degree of precision being a

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matter of agreement between the parties. Mr. Gupta urged that in practice, the destination is usually a part or a specified area within the port such as a basin, a dock, or a buoy at a certain distance from the shore or a river. A still more precise point would be where the loading or discharge is to take place, e.g., a particular quay, pier, wharf or mooring. Mr. Gupta submitted that a ship is said to be an "arrived ship" only when she has reached the particular point and has moored there. Mr. Gupta urged that the said propositions are well-established and have been laid down in (1) *Leonis Steamship Company Ltd. Vs. Rank Limited* (1908) 1 K.B. 499; (2) *Armament Adolf Deppe Vs. John Robinson & Company Ltd.* [1917] 2 K.B. 204; and (3) *Owners of S.S. Plata Vs. Ford & Co.* (1917) 2 K.B. 593. We shall have recourse to refer to the aforesaid decisions later in this judgment.

15. Mr. Gupta submitted that Clause 'D' of the Charter Party dated 9.11.1999, specifies "discharging port" as one/two safe anchorage(s)/lighterage point(s)/SBM(s), 1/2 safe Ports, 1/2 safe Berth(s) and full India. Mr. Gupta also submitted that the Charter Party provides that on arrival of the vessel for discharge at Vadinar, the vessel was to maintain 70% of her deadweight on board for safe mooring at a SBM.

16. Mr. Gupta urged that by a communication dated 6.12.1999, the Petitioners/Charterers designated Vadinar SBM as the destination and not a 'Port'. The destination was, therefore, a specific point and not a large area like a Port. Vadinar SBM, therefore, became the destination as if incorporated in the Charter Party itself. Mr. Gupta submitted that inspite of the best efforts of the Terminal Authorities, IOC, who were also the receivers of the cargo, m.t. Prestige was unable to moor at the Vadinar Single Berth Mooring (SBM) on account of the fact that it had only one bow chain. It may be of interest to note that Vadinar is the only SBM in the whole of India. Mr. Gupta urged that inspite of the various attempts of the Port Authorities, the vessel could not be berthed at the

A Vadinar SBM and was asked to move away. Mr. Gupta contended that since the vessel could not be moored at Vadinar, it was not an "arrived vessel' and "lay time" could not be said to have commenced running on 15.12.1999. The Notice of Readiness given by the Petitioners could not, B therefore, be treated as valid and the period spent at Vadinar could not be taken into consideration while computing the number of lay days utilized.

17. In support of his aforesaid contention, Mr. Gupta referred to and relied on the decision of the House of Lords in C the case of *Johanna Oldendorff*, (1973) 11 LLR 285, in which Viscount Dilhorne laid down ten tests for determining when a ship is an arrived ship. Mr. Gupta referred to the first and fifth tests as being relevant in the context of this case and the same are extracted hereinbelow :

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(i) That under a port Charter Party to be an "arrived ship", that is to say a ship at a place where a valid Notice of Readiness to load or discharge can be given, she must have ended her voyage at the port E named; and

(ii) A vessel has not reached her port of destination until it has ended its voyage within the port, either in its legal, or if it differs, in its commercial sense. If it is refused permission and ordered to wait outside the F port by the Port Authority, it is not an "arrived ship".

18. Mr. Gupta submitted that the mere fact that the vessel had arrived near the SBM and had anchored there would not make the vessel an "arrived ship", because the destination was G the SBM and not the port and the vessel could end her voyage only when she was moored at the SBM, which the vessel was unable to do. Mr. Gupta submitted that the decision in *Johanna Oldendorff's* case was an affirmation of the Kings Bench decision in the case of *Leonis Steamship Company Ltd. Vs.* H *Rank Limited* (1908) 1 K.B. 499. Mr. Gupta urged that not

having been allowed to berth at the SBM, the vessel could not be categorized as an "arrived ship" for the purpose of issuing Notice of Readiness, which Mr. Gupta submitted had not been served on the Petitioners in the first place.

19. By way of an alternative argument, Mr. Gupta submitted that under Clause 6 Part II of the Charter Party, the delay at Vadinar could not be counted as lay time, because it was the receivers (I.O.C.) and not the Charterers who declared that safe berthing of the vessel at Vadinar was not possible because of infra-structural deficiencies and not because of any fault on behalf of the Petitioners since the Petitioners had no control over the situation. Accordingly, the entire time from the tender of the Notice of Readiness on 15.12.1999, if at all tendered, till the vessel started discharge in Bombay, had to be excluded in calculating lay time.

20. Mr. Gupta submitted that service of the Notice of Readiness had not been proved even after remand, as the only evidence tendered was that of Sunil D'Souza which, in any event, did not prove anything beyond the fact that he had been asked to get a copy of the Notice of Readiness from the Agent. Furthermore, the entire evidence of Sunil D'Souza was hearsay.

21. On the question of Safe Port Warranty, Mr. Gupta contended that only after all attempts had been made to berth the vessel at the SBM that it was asked to move away from the mooring. Consequently, even if the finding of the Arbitrators that the Petitioners had failed to designate a safe port was accepted, at best the ship owners could be entitled to damages and not demurrage and would be subject to the ordinary rules as to remoteness, mitigation etc., as available under Section 73 of the Contract Act. Mr. Gupta submitted that the Respondents had claimed damages before the learned Arbitrators who, however, allowed demurrage in their Award on the ground that demurrage is a genuine pre-estimate of damages. Mr. Gupta submitted that even if there was a breach of warranty on the Petitioners' part, the same would give rise

A to a claim for damages and not demurrage within the scope of Sections 73 and 74 of the Contract Act.

22. Mr. Gupta submitted that in the Addendum dated 28.12.1999 to the Charter Party dated 9.11.1999 since the Charterers had agreed to bear the cost of deviation basis Ras B Sukheir/LPO Mumbai vs Ras Sukheir/Vadinar/LPO Mumbai, which included time at the demurrage rate, there could not be a separate claim for demurrage as that would amount to double jeopardy. Mr. Gupta submitted that it is the said provision contained in Clause (f) of the aforesaid Addendum which has C given rise to this arbitration. Mr. Gupta submitted that although the Award has relied on Clause 4(1) of Part II of the Charter Party, which provides that extra expenses incurred in connection with any change in loading or discharging ports, has to be paid by the Charterers, and any time thereby lost to the D vessel shall count as used lay time, the said clause would have to be read in the context of Clauses 4(a) and 4(b) where certain ports, other than any Indian Port, have been named.

23. On the question of mitigation of damages, Mr. Gupta E urged that the Petitioners/Owners had done everything in its power to safely berth the vessel at the SBM Vadinar, which was perhaps the only SBM in operation in India at the relevant point of time and would otherwise have been ideal for discharge of the cargo of crude oil. Mr. Gupta contended that it was IOC, F the receiver, who had taken almost two weeks to decide to redirect the vessel from Vadinar to Mumbai. Mr. Gupta submitted that it was, in effect, the Respondents who did not take any steps to mitigate the damages.

24. On the quantum of demurrage or damages, Mr. Gupta G submitted that since the demurrage rate was fixed at US $16000 per day and the same has really a genuine pre-estimate of damages, the Tribunal should have awarded damages at a reasonable rate, instead of making its Award on the consideration of damage as fixed in the Charter Party. H Mr. Gupta urged that the Tribunal had gone completely wrong

in giving a go-bye to the provisions of Sections 73 and 74 of the Contract Act in awarding compensation in keeping with the provisions for fixed demurrage in the Charter Party, particularly when all the lay days had not been used up.

25. Mr. Gupta submitted that the scope of a petition under Section 34 of the 1996 Act had been considered by this Court in detail in *Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.* [(2003) 5 SCC 705], and it was indicated therein that if the Award passed by the Arbitral Tribunal was contrary to any of the provisions of the Act or the substantive law governing the parties or was against the terms of the contract, the same could be set aside. Mr. Gupta urged that even in the instant case, the law had been misapplied by the Arbitrators who had missed considering the all-important issue that no valid Notice of Readiness could have been tendered by a ship which was not an "arrived ship". In such circumstances, the petition under Section 34 of the 1996 Act was clearly not maintainable.

26. In conclusion, Mr. Gupta drew our attention to the wording of Clause 6 of the Charter Party which deals with Notice of Readiness and in particular, to the last sentence thereof where delay in getting a berth for a vessel after giving Notice of Readiness, for any reason over which the Charterer has no control, shall not count as used lay time. Mr. Gupta submitted that the facts of the case would clearly indicate that the Arbitral Tribunal failed to take into consideration the facts in their true sequence and ended up in a "cart before the horse" situation, since no demurrage, which is the consequence of using up all the lay time, could have been awarded without a correct computation of the used "lay time".

27. Going to the heart of the matter, Mr. Prashant Pratap, learned Advocate, submitted that the case of the Petitioners/ Charterers of the vessel depended primarily on the terms and conditions of the Charter Party on the basis whereof the Arbitral Tribunal had awarded demurrage to the Respondents/Owners of the vessel. As was also done by Mr. Gupta, special

A emphasis was laid by Mr. Prashant Pratap on Clause 6 of the Charter Party relating to Notice of Readiness. Learned counsel emphasized the fact that in terms of the said clause, the Master of the vessel or his Agent would give the Charterer or his Agent notice by letter, telegraph, wireless or telephone B that the vessel is ready to load or discharge cargo, berth or no berth, and lay time would commence upon the expiration of six hours from receipt of such notice or upon the vessel's arrival in berth, which would mean finished mooring when at a sea loading or discharging terminal and all fast when loading or C discharging alongside a wharf *whichever first occurs*. Then follows the rider that, however, where the delay is caused to the vessel getting into berth after giving Notice of Readiness for any reason over which the Charterer has no control, the delay caused could not be counted as used lay time.

D 28. Mr. Prashant Pratap referred to Clauses 8 and 9 of the Charter Party dealing with Demurrage and Safe Berthing Shifting. Clause 8 provides that the Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all the time taken for loading and E discharging when the time taken for discharging the cargo exceeds the allowed lay time specified. If, however, delay in discharge of the cargo is caused at the port of loading and/or discharge by reason of fire or other unavoidable circumstances, the rate of demurrage would be reduced to one-half of the F amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. It was also stipulated that the Charterer would not be liable for demurrage for delay caused by strike, lockout, stoppage or restraint of labour for master, officers and crew of the vessel or tugboat or pilots. Mr. G Prashant Pratap also pointed out that Clause 9 of the Charter Party which provides for Safe Berthing Shifting indicates that the vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighterage point reachable on her arrival, which shall be designated and procured by the H Charterer, provided the vessel could proceed thereto, lie at and

depart therefrom always safely afloat. Clause 9 also enables the Charterer to shift the vessel at ports of loading and/or discharge from one safe berth to another on payment of towage and pilotage for shifting to the next berth and other expenses and the time consumed on account of such shifting would count as used lay time, except as otherwise provided in Clause 15.

29. Mr. Prashant Pratap then contended that the question as to whether M/s. m.t. Prestige was an "arrived ship" or not at port Vadinar, had never been raised either before the learned Single Judge or the Division Bench of the High Court, nor was it taken as a ground in the Special Leave Petition. Learned counsel submitted that even the ground taken with regard to the Notice of Readiness being invalid, as the vessel was allegedly not ready in all respects to discharge its cargo, was neither argued before the learned Single Judge or the Division Bench nor was the ground taken in the Special Leave Petition before this Court.

30. Coming to the question as to what constitutes an "arrived ship", Mr. Prashant Pratap submitted that the said question was extensively considered by the House of Lords in the case of *Johanna Oldendorff* (supra), which was also relied upon by Mr. Gupta, where the House of Lords was of the view that the vessel should have reached a position in the port where she is at the immediate and effective disposition of the Charterers and for practical purposes it is so much easier to establish that if the ship is at the usual waiting place within the port where waiting vessels would normally lie before proceeding to the berth nominated by the Charterers for discharge of cargo. If the vessel is at such a place, then the vessel is considered to be an "arrived ship". It is only thereafter that the vessel can tender Notice of Readiness. Furthermore, if the Charter Party provides for the location where the vessel should arrive and tender Notice of Readiness, then if the vessel has reached that location, the vessel is considered to be an "arrived ship". Mr. Prashant Pratap submitted that in the present

A Charter Party, the parties have expressly agreed in Clause 6 for the vessel to arrive at *customary anchorage* (emphasis supplied) at the port of loading or discharge and tender Notice of Readiness. Accordingly, once the vessel arrived at anchorage at Vadinar, it became an arrived ship in terms of B Clause 6 of the Charter Party and was entitled to tender Notice of Readiness.

31. Mr. Prashant Pratap submitted that it was not disputed that M/s. m.t. Presitge was at customary anchorage at Vadinar Port when Notice of Readiness was tendered. Mr. Prashant C Pratap also placed emphasis on the expression "berth or no berth", included in Clause 6 of the Charter Party which meant that even if a berth was not available or the vessel had not reached the berth, the vessel is entitled to tender Notice of Readiness. Mr. Prashant Pratap submitted that the term had D been explained in the case of the NOTOs where dealing with a clause identical to Clause 6 of the Charter Party, it was held that the meaning of the said words indicated that the Notice of Readiness could be given upon arrival at the customary anchorage and could take effect whether or not a berth was E then available or not for the vessel.

32. Mr. Prashant Pratap then argued that the submission made on behalf of the Petitioners/Charterers that since the destination in the Charter Party had been shown as "SBM" and F the vessel had failed to be moored at the SBM, no demurrage could be claimed, was wholly erroneous on account of the fact that such notice could be tendered on the arrival of the vessel at the customary anchorage. The vessel is not, therefore, required to be at the destination within the port for the purpose of becoming an "arrived ship" and for tendering of Notice of G Readiness.

33. Referring to Mr. Gupta's submissions that for the purpose of tendering Notice of Readiness, the vessel must be an arrived ship, Mr. Prashant Pratap submitted that the vessel, H therefore, must be at the effective disposal of the Charterers

who would have unrestricted access to the vessel's cargo tanks and the vessel pumps must be in working order to pump out the cargo upon the hoses being connected, provided that the Charterers were ready to receive the cargo. In this regard, Mr. Prashant Pratap referred to the decision in the *Leonis Steamship Co. Ltd.* (supra), where it was observed by Lord Justice Kennedy that "the ship's obligations, therefore, under such a Charter Party the performance of which much precede the commencement of the lay days (as the fixed loading period is commonly termed) are three : Firstly, the ship must have arrived at her destination and so be within the designation of an arrived ship. Till then she is not entitled to give a Notice of Readiness to load. Secondly, she must have given the prescribed Notice of Readiness to load. Thirdly, she must, in fact, be so far as she is concerned, ready to load. The ship owner cannot claim against the Charterer that the lay days begin to count until the ship is an arrived ship; ...." Mr. Prashant Pratap submitted that the aforesaid passage made it clear that the vessel has to be ready to load or discharge, as the case may be. The Tribunal's findings are that the vessel was ready, but the terminal was not. The Tribunal held that the vessel was at the immediate and effective disposition of the Charterers when Notice of Readiness was given.

34. Mr. Prashant Pratap then urged that from the Charter Party it is quite clear that the responsibility of providing a berth where the vessel could moor safely was that of the Charterers and the same would be clear from the use of the word "safe" in Clause D of Part I of the Charter Party which precedes the words "Ahchorage/Lighterage Points/SBM". Even in terms of Clause 9 of the Charter Party, the place of discharge must be safe and has to be designated and procured by the Charterers. Mr. Prashant Pratap referred to various other judgments such as the *Sea Queen* [(1988) Vol.1 KKR 500] and *Fjordaas* [(1988) Vol.1 LLR 336]. In the later case, it has been indicated that "reachable" or "arrival" are well-known expressions and mean precisely what they say. It was further observed that if

A the berth cannot be reached on arrival, the warranty is broken, unless there is some relevant protecting exception. Such berth, in its term, is required to have two characteristics: it has to be safe and it also has to be reachable on arrival. By nominating SBM at Vadinar as the destination of the vessel and also the B place for discharge of the cargo, it was the responsibility of the Charterers to ascertain as to whether the vessel could be moored there safely and be in a position to discharge the cargo safely.

C 35. Apart from the aforesaid questions regarding the vessel being an arrived ship, Mr. Prashant Pratap urged that service of the Notice of Readiness by the Master on the Agents of the Charterers have been duly proved and is a finding based on appreciation of evidence by the Arbitrators, which has been upheld by the learned Single Judge and the Division Bench, D whose orders were under challenge in the Special Leave Petition.

36. Mr. Prashant Pratap urged that if the Notice of Readiness was valid, as had been found not only by the Arbitral E Tribunal but also by the learned Single Judge and the Division Bench of the Bombay High Court, then lay time commenced six hours after the tender of Notice of Readiness. Accordingly, lay time expired on 17.12.1999, and, thereafter, the vessel was on demurrage all throughout, till discharge of the cargo was F completed. Since in the instant case, the Charterers had failed to nominate a safe berth at which the vessel could safely lie and discharge the cargo and failing to provide a berth which was reachable upon arrival of the vessel at Vadinar, the consequent delay in berthing and discharge of the cargo, was G the responsibility of the Charterers for which demurrage was payable by them. Mr. Prashant Pratap pointed out that at no stage did the Charterers question the validity of the Notice of Readiness tendered at Vadinar either on the ground that the vessel was not an arrived ship, or on the ground that the vessel was not ready to discharge the cargo. On the contrary, the

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Charterers signed the Addendum dated 28.12.1999 by which they agreed to bear all the expenses incurred by the vessel at Vadinar and also agreed to pay additional freight charges for discharge of cargo at Mumbai. Significantly, the Charterers also agreed that the time taken for the vessel to proceed from Vadinar to Mumbai would count as demurrage time. Mr. Prashant Pratap urged that the Charterers would not have agreed to the terms and conditions of the Addendum if it was their contention that the vessel was not an arrived ship or that the Notice of Readiness was invalid.

37. Mr. Prashant Pratap then submitted that the only requirement as far as the vessel was concerned was that it had to maintain 70% of the dead weight on board for safe mooring at the SBM at Vadinar and it is nobody's case that the vessel did not conform to such condition.

38. On the question of designation of the SBM as the destination point within Vadinar Port by the Charterers, Mr. Prashant Pratap contended that the Charterers had been put on notice regarding the berthing arrangement both in the Charter Party as well as in the questionnaire setting out the vessel's mooring arrangements provided to the Charterers. Learned counsel submitted that it was for the Charterers to check the vessel equipment vis-à-vis facilities available at the Port of loading and discharge, before nominating the same. Since the Charterers had failed to undertake such an exercise, there was a resultant problem faced at Vadinar whereby the vessel could not discharge its cargo at Vadinar but had to be diverted to Mumbai. Mr. Prashant Pratap also pointed out that while the entire Indian coastline was available to the Charterers to nominate a safe port for discharge of the cargo, it made a conscious decision to nominate the SBM at Vadinar which ultimately turned out to be unsafe for mooring of the vessel, given the equipment available on board the ship.

39. Mr. Prashant Pratap submitted that it had been agreed on behalf of the Charterers that demurrage is a genuine pre-

A estimate of damages and even if the Charterers' argument is to be accepted that the owners are entitled to damages and not demurrage, the calculation of such damages would have to be the demurrage rate in the facts and circumstances of the case.

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40. Mr. Prashant Pratap, accordingly, submitted that the award of the Arbitral Tribunal, as upheld both by the learned Single Judge and the Division Bench of the Bombay High Court, did not warrant any interference and the Special Leave Petition was liable to be dismissed with appropriate costs.

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41. Having gone through the submissions made on behalf of the respective parties in the background of the facts as disclosed, it is clear that we are required to consider two basic questions for the purpose of deciding the present Special D Leave Petition, namely :-

(a) Whether on arriving at anchorage point at Port Vadinar, despite the destination point being the SBM mooring, it could be said that it was an arrived ship which was competent under the Charter Party dated 9.11.1999, to issue Notice of Readiness of discharge of its cargo?

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(b) If the finding of the Arbitral Tribunal that the vessel was an arrived ship at Port Vadinar, as upheld by the learned Single Judge and the Division Bench of the Bombay High Court is accepted, would the Respondents/Owners of the vessel be entitled to damages or demurrage?

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G 42. Various ancillary questions connected with the aforesaid two questions also crop up, which we shall consider shortly.

43. From the undisputed facts, the position that emerges is as follows :-

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(i) The Charter Party dated 9.11.1999 was in respect of a transaction which provided for carriage of crude oil from Ras Sukheir to a safe port on the Indian coastline. The Charterers were given the choice of nominating such port for discharge of the aforesaid cargo of crude oil.

(ii) In the absence of any named port of destination in the Charter Party itself, it was only after the vessel left Ras Sukheir that an intimation was given by the Charterers for discharge of the cargo at the SBM at Port Vadinar in Gujarat.

(iii) That the aforesaid nomination was a conscious decision on the part of the Charterers, despite having knowledge of the equipment available on board the vessel for mooring at a SBM, and in keeping with such decision m.t. Prestige set its course from Ras Sukheir to Vadinar.

(iv) The fiasco at Vadinar was occasioned by the fact that no prior checking had been done to see whether with the mooring equipment on board, the vessel would be able to safely berth at the SBM for discharge of its cargo.

(v) Who was responsible for the detention of the vessel at Vadinar since its arrival at the anchorage point and its final departure from the said Port? Whether there was contributory negligence on the part of both the parties in the cause of such delay?

44. The concept of an arrived ship in shipping terminology requires that a vessel should reach a destination in a port where she could be safely berthed and thereupon be ready to either discharge or load cargo from and on to the vessel. That is a general concept, but the Charterers and the Owners of the vessel could in the Charter Party agree to a specific destination

A point within the port area for discharging or loading of cargo. Once the vessel arrived at the said spot and was ready to discharge its cargo, it could be described as an "arrived ship" with the authority to issue and tender Notice of Readiness. In the instant case, the nominated port for the arrival of the vessel B was Vadinar Port, but the destination point was the SBM where the vessel was to be moored and was to discharge its cargo of crude oil. In fact, in the Charter Party dated 9.11.1999, Clause 6 specifically provided for arrival of the vessel at the port of loading or discharge and cast an obligation upon the C Master or his Agent to give the Charterer or his Agent Notice of Readiness in relation to discharge of the cargo. Since the decision in this case will to a large extent depend on the interpretation of Clause 6, the same is extracted hereinbelow :

"Clause 6 Notice of Readiness :

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Upon arrival at customary anchorage at each port of loading or discharge, the Master or his Agent shall give the charterer or his Agent notice by letter, telegraph, wireless or telephone that the vessel is ready to load or E discharge cargo berth or no berth and lay time as hereinafter provided shall commence upon the expiration of six (6) hours after receipt of such notice or upon the vessel arrival in berth – finished mooring when at a sea loading or discharging terminal and all fast when loading F or discharging alongside a wharf which ever first occurs. However, where delay is caused to vessel getting – berth after giving notice of readiness for any reason over which charterer has no control, such delay shall not count as used lay time."

G 45. As will be evident from the above clause, the Master of the vessel was under an obligation to give Notice of Readiness on arrival at the customary anchorage at the port of discharge. It is a possibility that since no specific port in the Indian coastline had been mentioned in the Charter Party, H the Master of the vessel or his Agent was required to give

Notice of Readiness upon the vessel arriving at customary anchorage. It is only after the vessel sailed from Ras Sukheir that the receiver, IOC, nominated Vadinar to be the port of discharge with the specific destination point being the SBM within the port. In giving such Notice of Readiness upon arrival at the customary anchorage at Vadinar, the Master of the Vessel duly complied with the conditions of Clause 6 of the Charter Party and in terms of the aforesaid clause irrespective of whether a berth was available or not, lay time commenced upon the expiry of six hours after receipt of such notice. That the vessel could not be moored at the SBM is a different facet of the story. The Charterers had full knowledge of the equipment on board m.t. Prestige through the questionnaire provided by the Respondents/Owners to the Petitioners/Charterers. It could not be denied that despite having such knowledge the IOC nominated the SBM as the destination point for discharge of the cargo. Obviously, the parties to the Charter Party had not made any attempt to verify as to whether the equipment on board the vessel was sufficient for her to be safely moored at the SBM and to discharge her cargo safely. As it turned out later on, the vessel was not so equipped and could not, therefore, be moored at the SBM and had to be requested to move away therefrom. Although, an attempt has been made on behalf of the Charterers to convince us that it was really the duty and responsibility of the Owner of the vessel to check whether the vessel could be safely moored at the SBM in Vadinar, we are unable to convince ourselves that such a duty was that of the Owners of the vessel and not the Charterers which had a choice of all the ports in India for discharge of the cargo, as was subsequently done in Mumbai port. As has been held by the Arbitral Tribunal and subsequently affirmed both by the learned Single Judge and the Division Bench of the Bombay High Court, the responsibility for the failure of the ship to moor at the SBM in Vadinar must lie squarely with the Charterers and the receiver as it was they who had nominated the SBM for the safe mooring of the vessel. The lay time must, therefore, be held to have recommenced after the expiry of six hours from

A the tendering of the Notice of Readiness upon the vessel's arrival at the customary anchorage at Vadinar on 15.12.1999 in keeping with the provisions of Clause 6 of the Charter Party. It was not the case of the Charterers that the failure of the vessel to discharge its cargo at the SBM at Vadinar was for B reasons beyond their control. It cannot also be said that the owners of the vessel contributed in any way to such failure since the equipment on board the vessel had been made known to the Charterers when the Charter Party was signed.

46. In the face of the specific conditions indicated in C Clause 6 of the Charter Party, the theoretical and/or academic exercise of what constitutes an "arrived ship" loses much of its relevance. The terms of the Charter Party were agreed upon by the parties with their eyes wide open. What is also significant and cuts at the root of the submissions advanced D on behalf of the Charterers is that even after the vessel was denied mooring at the SBM for safety reasons on 21.12.1999, no steps were taken on behalf of the Petitioners to either arrange for an alternate safe berthing in Vadinar or to give instructions as to where the cargo was to be discharged. In E fact, on behalf of the Respondents/Owners a legal notice was addressed to the Petitioners on 24.12.1999 pointing out that the vessel continued to await discharge incurring demurrage. It is only thereafter that Addendum No.I to the Charter Party was drawn up and signed on 28.12.1999 by the Owners and the F Charterers, whereby m.t. Prestige was diverted by the Charterers from Vadinar to a Lighterage point at Mumbai port for discharge and it was specifically agreed that the Charterers would bear all the costs of discharge, including freight charges and the expenses of the daughter vessel, m.t. Maharaja G Agrasen. It was also agreed that demurrage would be settled as per the terms of the Charter Party. In our view, the various decisions cited on behalf of the Petitioners/Charterers do not help them in the facts of this case. We do not, therefore, think it necessary to consider all the decisions cited on behalf of the H respective parties and those referred to hereinbefore are

sufficient for our purpose. The decisions relied upon by the parties lay down certain propositions of law which are well-established and with which there cannot be any disagreement, but for the purposes of this case they are basically academic.

47. Once we have affirmed the finding that m.t. Prestige was an arrived ship on reaching the customary anchorage at Vadinar port and once we have also held that it was the Charterers who having the choice of a safe port, had selected the SBM at Vadinar as the discharge point, the suggestion made on behalf of the Charterers that it was the responsibility of the Owners of the vessel to check whether the ship could be safely moored at the SBM, is untenable. The responsibility of the Owners of the vessel ended with the declaration of the equipment available on board for mooring and berthing for the purpose of discharge of its cargo. Consequently, all the other ancillary issues which arise have to be answered in favour of the Respondents herein. As indicated hereinbefore, the fiasco at Vadinar was occasioned by the fact that no prior checking had been done by the Charterers to ascertain as to whether with the mooring equipment on board the vessel she would be able to moor safely at the SBM for discharge of her cargo. Even the subsequent deviation of the vessel from Vadinar to Mumbai was not on account of any laches on the part of the Owners of the vessel who were awaiting instructions once the vessel had been asked to move away from the SBM. In fact, it took a notice from the Owners of the vessel and a week for the Charterers to galvanize themselves into action, which ultimately resulted in the Addendum No.1 dated 28.12.1999.

48. Read with Clause 6 of the Charter Party, the Addendum dated 28.12.1999 makes it abundantly clear that the Charterers had accepted the responsibility for the failure of the vessel to discharge her cargo at Vadinar and had agreed to bear all the expenses for the delay in diversion of the vessel from Vadinar to Mumbai, including the time spent at Vadinar port and the expenses incurred towards pilotage, tugs and other port expenses.

A 49. Apart from the above, Clause 4(1) of Part II of the Charter Party specifically provides that extra expenses incurred on account of any change in loading or discharging ports, has to be paid by the Charterers, and any time thereby lost to the vessel shall count as used lay time. We are not inclined to B accept Mr. Gupta's submission that the aforesaid clause has to be read in the context of Clauses 4(a) and 4(b) which refer to ports other than Indian Ports in a different context.

50. We, therefore, see no reason to interfere with the Award of the Arbitral Tribunal and the decisions, both of the C learned Single Judge and the Division Bench, confirming the Award of the Arbitral Tribunal and, accordingly, dismiss the Special Leave Petition. In the facts of the case, the parties shall bear their own costs as far as these proceedings are concerned.

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D.G. Special Leave Petition dismissed.