

(2011) 11 NCDRC CK 0007

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Skh Metals Limited

APPELLANT

Vs

German Express Shipping
Agency

RESPONDENT

Date of Decision: Nov. 4, 2011

Citation: 2011 0 NCDRC 665 : 2011 4 CPJ 636 : 2012 1 CPR 100

Hon'ble Judges: R.C.JAIN , S.K.NAIK J.

Final Decision: partly allow

Judgement

1. M /s. SKH Metals Limited (formerly known as M/s. MARK Auto Industries Ltd.), a company registered under the Companies Act, 1956 engaged in the business of manufacturing of various types of auto parts meant for export from its factory at Gurgaon has filed this complaint against the opposite parties alleging deficiency in service on their part arising of the late delivery of an imported consignment and claiming a total compensation of Rs. 32,53,248/- besides cost of litigation.

2. IN nut shell the case of the complainant is that it had imported Tube Mills SM-11 and Tube Mill SM-12 alongwith accessories, parts and allied equipment from IGK Industrieguterkontor GmbH, Germany, which was to be transported to India by SIS International Speditions GmbH, Germany. The said consignment packed in 11 containers was handed over to SIS International Speditions, GmbH, Germany on 10.02.1998 against two Bills of Lading Numbers 301/980216121-1 and 301/980216121-2 for its safe carriage and delivery to the complainant at ICD, Tughlakabad, New Delhi through multimodal transport. It would appear that SIS Internationale Speditions, GmbH, Germany in turn handed over the said

consignment to Hapag Lloyd, against an Express Cargo bill of the even dated 23.2.1998 for its carriage by ship to Nhava Sheva Port in India. Opposite Party no. 1 M/s. German Express Shipping Agency is the agent of Hapag Lloyd in India while opposite party No. 2 M/s. Raina Transcontinental Ltd., New Delhi is the agents of SIS International Speditions GmbH in India. The consignment was carried by Vessel Impex Emperor V No. 828 and reached the port of destination i.e. Nhava Sheva Port in the last week of March, 1998. The complainant was duly intimated about its arrival and to make arrangement for taking delivery at ICD, Tughlakabad. As per the agreement between the complainant and the foreign suppliers, the consignment after its arrival at the Port of destination, was to be handled by O.P. No. 2 Agents of SIS Internationale for its haulage and delivery of the consignment at ICD Tughlakabad, New Delhi. On a demand being made by opposite Party No.2, the complainant paid a sum of Rs. 2,99,900/- and Rs. 25,000/- to opposite party No. 2 towards expenses of inland haulage. It is pertinent to note that out of the 11 containers containing the consignment, 10 containers were brought to ICD Tughlakabad, New Delhi by the Container Corporation of India by Rail around first week of April but the 11th container, which was of somewhat extra-ordinary height and width could not be brought to ICD Tughlakabad by rail and therefore arrangements were made for the transportation of the 11th container by road. It took about a month time for opposite party No. 2 to make arrangement for the transportation of 11th container to ICD Tughlakabad by road as a result of which the delivery of even the 10 containers, which has arrived earlier could not be effected and the entire consignment was delivered to the complainant on 26th May, i.e. after a delay of about one month.

According to the complainant, due to the above delay in the delivery of the consignment of the imported Tube Mills, the complainant has suffered monetary loss as under:

"That the complainant had suffered the following losses due to the negligence and deficiency in services rendered by the respondent: Letter of Credit charges as well as interest Rs.3,16,970.00 Ground rent charges paid by the complainant Rs.5,79,100.00 Amount paid to M/s. Gallium Industries For commissioning the project for delay in Arrival of full consignment. Rs.15,15,000.00 Material/Tubes imported from Italy Rs.8,88,724.00 Travellingallowance paid to Sh. R.S. Ponia, Sr. Officer, for his visit to Respondent No. 1 Rs.18,554.00 Total Rs.33,18,348.00 "

3. AFTER serving a legal notice dated 06.10.1998 calling upon the opposite parties to pay the above amount, the complainant has filed the present complaint.

4. ON being noticed the opposite parties have contested the complaint and have filed their separate written versions. In its written version, opposite party No. 1 has raised several preliminary objections in regard to the maintainability of the present complaint on the strength of the principles of waiver, acquiescence and estoppel. It is sought to be explained that Clause 7 of the Bill of Lading clearly envisages that there shall be no liability of the carrier in case of delay and at no point of time it was represented to the complainant that the consignment / shipment would be delivered within any specified time frame. Without prejudice to the above pleas it is contended that the delay, if any, in the arrival of the 11th container at ICD Tughlakabad, New Delhi is solely attributable to SIS International Speditions, GmbH, Germany (SIS), the principal of opposite party No. 2, which had entrusted the consignment to Hapag Lloyd vide their House Bills of Lading dated 10.02.1998 without disclosing therein that the height and width of the 11th container was extra-ordinary. Further that the consignment was shipped on Board at Antwerp to Nhava Sheva, the port of discharge and had reached there within the reasonable time. The entire consignment except the 11th container had reached ICD Tughlakabad by rail but the 11th container reached about a month later on 04.5.1998 as it was carried by road and complainant did not take delivery of the same until 26.05.1998 inspite of having notice of the arrival of the consignment.

In its reply, opposite party No. 2 M/s. Raina Continental Limited also raised preliminary objections about the maintainability of the present complaint and explaining that it had a limited role to play in the whole transaction which was confined to the delivery of the shipping documents to the consignee after collecting service charges to meet the communication expenses for arranging delivery of the relevant documents to the consignee. It is further pleaded that M/s. IGK Industrieguterkontor GmbH of Germany had arranged with M/s. SIS Internationale Speditions-GmbH of Germany to move cargo to Delhi via Bombay (Mumbai) and O.P. No. 2 simply acted as facilitators to M/s. SIS Internationale Speditions-GmbH, Germany to provide them with the information they needed for it as per provisions of Agency Agreement between M/s. SIS Internationale Speditions-GmbH and the opposite party No. 2. On merits it is not denied that on arrival of the consignment at the port of destination, intimation was sent to the complainant and a debit note dated 01.4.1998 for Rs. 2,99,900/- towards inland haulage charges for all the 11 containers was issued and amount besides a sum of Rs. 25,000/- as security. It is not denied that 10 containers out of 11 containers had reached at ICD Tughlakabad on 1.4.1998 but the 11th container could not be transported as it was not possible for the Container Corporation of India to transport the same through rail and its transportation has to be arranged by road which took some time. It is also not denied that the 11th container reached ICD Tughlakabad on 06.5.1998. However, it

is denied that the opposite party No. 2 has committed any deficiency in service or is liable to pay any compensation much less the compensation claimed by the complainant.

5. IN the rejoinders, the complainant has controverted the objections and pleas raised in the written version filed on behalf of opposite party No. 1 and 2 has generally reiterated the averments and allegations made in the complaint.

6. IN support of their respective pleas, the parties have mostly relied upon the documentary evidence viz. the Bills of Lading the correspondence exchanged between the parties. Affidavit of one Mr. K.L. Kathwas, Deputy Manager (Custom & Excise) has been filed on behalf of the complainant while affidavit of Mr. J.S. Arora, Vice President, on behalf of opposite party No. 1. Affidavit of one Mr. Sunil Kapoor, Director has been filed on behalf of opposite party No. 2.

We have carefully perused the entire evidence and material brought on record and have heard Mr. Rajesh Mahna, Advocate representing the complainant and Mr. N. Ganpathy, Advocate for opposite party No. 1 Mr. D.P. Gautam, Advocate for opposite party No. 2 and have given our thoughtful consideration to their submissions.

7. IN the present case, it is not disputed and even otherwise stands fully established on record that in order to set up a high frequency tube mills the complainant had imported two numbers old tube mill, from Germany for manufacture of M.S. Tubes, Aluminized Tubes and Stainless Steel Tubes in various grades. The said consignment was packed / loaded in 11 containers of different sizes and specifications. The said Mills containing the second hand equipment, loose parts and accessories in reconditioned and dismantled condition as packed in 11 containers of different sizes and specifications and was entrusted to SIS Internationale Spedition GmbH Germany for its carriage and delivery to the consignee i.e. complainant at ICD Tughlakabad, New Delhi through Nhava Sheva Port vide two Bills of Lading dated

10.02.1998 and the SIS Internationale, GmbH had in turn handed over the said consignment to M/s. Hapag Lloyd vide internal House Bills of even dated for its carriage by ship to Nhava Sheva. It is also not in dispute that the entire consignment of 11 containers reached Nhava Sheva Port towards the end of March, 1998 but out of the 11 containers, only 10 reached ICD Tughlakabad in the first week of April, 1998. However, 11th container had to be transported by road and it reached ICD Tughlakabad, New Delhi on 6th May, 1998 and the delivery of the entire consignment was effected to the complainant only on 26th May, 1998. It is also not in dispute that opposite party No. 2 are the agent of SIS Internationale Spedition, Germany in India under an Agency Agreement and they had charged a sum of Rs. 2,99,900/- towards their service charges besides a security of Rs. 25,000/-.

8. FROM the above noted factual position, it is apparent that there was delay of about one month in the carriage of one container due to which the complainant could not take delivery of the consignment as according to them it was not possible to first check and make part assessment of used equipment and the Custom Authorities wanted to examine the entire consignment for complete assessment. Now the crucial question is as to whether the opposite parties can be held liable for the said delay in the delivery of the consignment.

Mr. Ganpathy, counsel representing the opposite party No. 1 submitted that the opposite party No. 1 is not the carrier but merely a disclosed agent of Hapag Lloyd Carrier in the present case, which have not been made party in the present proceedings and therefore, the complaint against the opposite party No. 1 is not maintainable. In this regard, reliance has been placed on a Supreme Court decision in the case of Marine Container Services South Pvt. Ltd. Vs. Go Go Garments (1998) 3 SCC 247.

9. IN our view there appears to be force in the contention because firstly there exists no agreement between the complainant and opposite party No. 1 or even with the principals of opposite party No. 1 as the freight was paid by the complainant / foreign supplier in Germany to SIS Internationale Spedition GmbH for carriage of goods from Hamberg to Nhava Sheva Port and thereafter money was paid to opposite party No. 2 Raina Transcontinental for haulage of the consignment from

Nhava Sheva Port to ICD Tughlakabad, New Delhi for making payment to Container Corporation of India and also to the road transporter for carriage of the 11th consignment container to ICD Tughlakabad by road. Since Hapag Lloyd was only responsible for shipment of the consignment from Port to Port and no delay was occasioned in the carriage of the consignment upto the port of Nhava Sheva, in our opinion no liability can be fastened on opposite party No. 1 as agent of Hapag Lloyd. However, opposite party No. 2 as agent of SIS Internationale Spedition GmbH cannot escape their liability for the delay in delivery of the consignment to the complainant.

10. LEARNED counsel representing opposite party No. 2 has strongly argued that the delay in delivery of the consignment in the present case was not on account of any fault or neglect on the part of the opposite party No. 2 or its servants because all requisite steps were taken to effect the timely delivery of the consignment inasmuch as 10 containers out of 11 had reached ICD Tughlakabad, New Delhi within a few days of discharge at Nhava Sheva Port and only one consignment which was of extra height and width could not be so carried to ICD Tughlakabad along with the other 10 containers. That prompt steps were taken for arranging a special transport trawler for transporting the 11th container by road to ICD Tughlakabad, New Delhi and in that process some delay was occasioned. It was also submitted that such transport trawler are not readily available and had to be arranged in special cases, which take some time. We are not satisfied with this explanation because in the present case, the delay in transportation of the 11th container was primarily due to the reason that in the Bills of Lading while giving the description of the 11 containers only the length of the container was given and not the width and height of container. The SIS Internationale Spedition GmbH Germany having accepted the consignment for its safe carriage and delivery at ICD Tughlakabad, New Delhi should have recorded any abnormal factor like the height and width of the 11th container so as to enable their agent, opposite party No. 2 in India, to have envisaged that out of the 11 containers, one container with unusual height and width could not be transported by rail from Nhava Sheva Port to ICD Tughlakabad, New Delhi and special vehicle like road trawler was required to transport the said container. Had the full description of the 11th container been given by SIS, the opposite party No. 2, could have envisaged and made appropriate advance arrangements for special road trawler required for transporting the said container from Nhava Sheva Port to ICD Tughlakabad, New Delhi. In any case, there is a delay of about 36 days in transporting the 11th container to ICD Tughlakabad, which in our opinion is unduly long and remains unexplained.

What is the consequence of such delay and resultant loss to the complainant is the next question which needs to be considered. Complainant has claimed a sum of Rs. 3,16,970/- towards the Letter of Credit charges and interest but no evidence has been brought on record to establish any such loss having been occasioned to the complainant on this account. In any case, Letter of Credit charges would have been payable by the complainant irrespective of the delay. Therefore, the complainant is not entitled to any compensation under this Head.

11. COMPLAINANT has claimed a sum of Rs. 5,79,100/- as the ground rent charges paid by the complainant, receipts of which have been filed. Complainant had in fact represented to the opposite party No. 2 and requested them to waive atleast the said charges in view of the delay occasioned in the delivery of the entire consignment but it did not find favour with opposite party No. 2. In our view, the complainant is entitled to some reasonable amount of compensation under this head because had the entire consignment been received in the first week of April, the complainant would have taken its delivery within a few days of its arrival in the month of April, 1998 itself. However, due to the non-arrival of the 11th container which arrived on 6th May, 1998 there was delay in delivery as the concerned authorities declined to inspect and assess the part cargo. It is however, noteworthy that despite the arrival of the 11th container on 6th May, 1998, the complainant took the delivery of the consignment only on 26th May, 1998 i.e. after about 20 days. In our view the opposite party No. 2 can at best be held liable for the delay of about 36 days in the delivery of the consignment i.e. upto 6th May, 1998 and not for the subsequent period from 6th May, 1998 to 26th May, 1998 for which delay complainant is to blame himself.

12. IN our view it would adequately meet the ends of justice if we direct the opposite party No. 2 to pay a sum of Rs. 3.00 lacs out of the said amount of Rs. 5,79,100/- paid by the complainant as the ground rent charges.

So far as the next claim of Rs. 15,15,000/- is concerned, we may simply observe that this claim made by the complainant is wholly untenable because this amount was paid by the complainant to Gallium Industries pursuant to a contract of erection between the complainant and Gallium Industries Ltd., dated 07.03.1998. As per the

clauses of the said agreement, the period of erection provided under the said agreement was from 09.3.1998 to 10.09.1998 and the charges agreed to be paid for Rs.

13. 20 LACS. As against the said amount the complainant had paid only a sum of Rs. 18,51,000/- for the work executed by Gallium Industries under the above referred contract, meaning thereby that complainant had not paid any extra amount to the said Gallium Industries for any delay due to the non-delivery of the consignment in time. It was argued by Mr. Mahna that this amount was spent by the complainant on the lodging and boarding expenses of the German Engineers / experts, who carried out the work of erection and commissioning of the mills. No evidence has been brought on record to establish any extra expenditure incurred by the complainant under this head. We therefore, reject this claim. 19. Complainant had further claimed a sum of Rs. 8,88,724/- as the cost of material / tubes imported from Italy. From the perusal of the goods purchased / imported, list of documents the bill of entry are for the period 18.12.1995, 09.06.1995 etc. and therefore we can safely presume that material / tubes imported in the year 1995 and therefore by no stretch of imagination it can be said that the complainant had suffered any loss and can be related to the loss occasioned to the complainant on account of the delay in the delivery of the consignment. This claim is wholly misconceived and is rejected as such.

14. THE last claim being of Rs. 18,554/- on account of travelling allowances paid to Shri R.S. Puniya. In our view, the complainant is not entitled to this amount. The complainant was kept apprised with the factual position in regard to the non-arrival of the 11th container at ICD Tughlakabad and the reasons thereof. Therefore the visit of Shri R.S. Puniya if any, made to Mumbai was unwarranted and complainant cannot seek any compensation in that behalf.

In view of the foregoing discussions we partly allow the complaint against the opposite party No. 2 and dismiss the same as against opposite party No. 1. Opposite party No. 2 is hereby called upon to pay a compensation of Rs. 3.00 lacs (Rupees Three Lacs) to the complainant alongwith interest @ 9% per annum with effect from the date of the complaint till its payment. The payment shall be made within a

period of four weeks from the date of this order, failing which rate of interest shall stand enhanced to 12% per annum. Parties to bear their own cost.