IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(ADMIRALTY JURISDICTION)

Present:

Justice Sikder Mahmudur Razi

ADMIRALTY SUIT NO. 2 of 2023

IN THE MATTER OF:

DRY BULK Shipping (PVT) LTD.

... Plaintiff.

VERSUS

Bangladesh Chemical Industries Corporation (BCIC) and others. ….Defendants.

Mr. Md. Majharul Islam, Adv. with
Mr. Abu Bakar Siddique, Adv.

…For the plaintiff.

Mr. Mohammad Ashraf Uddin Bhuiyan, Adv. with
Mr. Milton Das, Adv. with
Mr. Shyamal Kanti Mondal, Adv.

…. For the defendant Nos. 1 and 2.

Heard on: 20.08.2026, 03.09.2026 & 07.09.2026

And

Judgement on: The 9th September, 2026

1. Nature of the Suit

This Admiralty Suit is a contractual freight claim arising out of the carriage of a consignment of urea fertilizer by the vessel M.V. JIU FEING LING under a Charter Party Agreement dated 12.04.2022. The plaintiff, Dry Bulk Shipping (Pvt.) Ltd., claims the unpaid balance 20% of the agreed freight together with demurrage, interest and costs. The principal controversy is whether the balance freight became payable after completion of the sea carriage and discharge of the cargo at Chattogram, or whether payment remained conditional upon completion of inland delivery to the designated

BCIC godowns and production of the documents contemplated by Clause 55(B) of the Charter Party.

2. Identity of the Parties

The plaintiff is Dry Bulk Shipping (Pvt.) Ltd., a private limited company engaged in shipping and carriage of cargo and which describes itself as the carrier under the relevant Charter Party.

Defendant No.1 is Bangladesh Chemical Industries Corporation (BCIC), a Government corporation and the importer/charterer and consignee in respect of the cargo in question. Defendant No.2 is the Chairman of BCIC; Defendants Nos.3 and 4 are officials of BCIC who rendered their services in various aspects; Defendant No.5 is the controlling Ministry of Defendants Nos.1 to 4; and Defendant No.6, M/s Poton Traders, is the proforma defendant who has been described as the plaintiff's broker/local agent and the local carrying contractor.

3. The Plaint Case

The plaintiff's case, in substance, is that BCIC floated Tender No. COMC-0100 dated 16.03.2022 for transportation of urea fertilizer from Mesaieed Port, Qatar to different buffer Godowns/Factories in Bangladesh. The tender contemplated two operational parts: Part-A is "Foreign Part" for international sea carriage to Chattogram/Mongla Port and Part-B for local carriage from the discharge port to designated BCIC godowns/factories.

The plaintiff states that Defendant No.6, M/s Poton Traders, being a broker, participated in the tender on behalf of the plaintiff in respect of the international carriage. After acceptance of the bid, BCIC entered into the

Charter Party Agreement dated 12.04.2022 with the plaintiff. Separately, Defendant No.6 entered into a Local Carrying Contract dated 24.04.2022 with BCIC for inland transportation of the fertilizer from the discharge port to the designated delivery points.

The plaintiff maintains that the Charter Party and the Local Carrying Contract are distinct and separate contracts concerning separate stages of transportation. Under the freight-payment arrangement, 80% of the freight was payable after discharge of 25% of the cargo at the port, while the remaining 20% was linked and subjected to completion of delivery to the inland destinations and the prescribed documentation.

The plaintiff carried 29,828.764 MT of Prilled Urea from Mesaieed Port, Qatar by M.V. JIU FEING LING under Bill of Lading No. MJT-176811-0001 dated 18.04.2022. The vessel arrived at Chattogram on 01.05.2022, commenced discharge on that date and completed discharge on 15.05.2022. The plaintiff's case is that the entire cargo was then handed over to the local carrier, Defendant No.6, against a receiving certificate, whereafter the vessel sailed and left the territorial jurisdiction of Bangladesh.

BCIC paid 80% of the agreed freight through FDD No.1559824 dated 18.05.2022. The remaining 20% freight, stated to be USD 438,661.80, was not paid.

The plaintiff relies upon Clause 4 of the Local Carrying Contract and stated that that defendant no. 6 even after paying penalties shall have to complete delivery within 71 days i.e. from 15.05.2022 to 26.07.2022. The plaintiff pleads that after expiry of that period on 26.07.2022, BCIC ought to have exercised its contractual right to take over or otherwise arrange delivery of the cargo instead of allowing the matter to remain unresolved.

According to the plaintiff, because BCIC did not ensure completion of the local delivery or invoke the contractual remedial mechanism within the stipulated period, the plaintiff continued to be deprived of the retained 20% freight and suffered additional financial consequences. The plaintiff quantified the claim in the plaint as follows:

> Balance freight USD 438,661.80; demurrage stated to have been paid to the head owner USD 20,000; bank interest at 9% USD 39,479.562; total USD 498,141.362, (US$ 1= Tk.104) to Tk.5,18,06,701.64; plus Tk.2,00,000 as costs, making the suit valuation/claim at Tk.5,20,06,701.64. The plaintiff also prayed for pendente lite interest at 18% per annum from filing of the suit until realization.

4. The Defendants' Case

The contesting defendant's case, as disclosed from the written statement, is that the suit is not maintainable, is false and vexatious, and that the plaintiff has no enforceable entitlement to the balance 20% freight because the contractual preconditions for payment were not fulfilled.

The defendant asserts that the plaintiff participated in the tender as principal and Defendant No.6 acted as its local agent and local carrying contractor. The Notification of Award dated 05.04.2022 was issued in favour of both the plaintiff and Defendant No.6; the Charter Party dated 12.04.2022 was signed by both; and Defendant No.6, as the plaintiff's authorized local carrier, signed the Local Carrying Contract dated 24.04.2022.

The defendant relies particularly on Clause 63(IV) of the Charter Party, according to which the principal's authorized local carrier would sign the contract for Part-B and the principal, local agent and local carrier would be equally responsible for performance of Part-B. BCIC therefore disputes the plaintiff's attempt to treat Defendant No.6's inland obligations as wholly independent of the plaintiff.

BCIC further relies on Clause 55(B) of the Charter Party. Their case is that the balance 20% freight was payable only after issuance of MRR by the godown in-charge and submission of the specified documents, including freight invoice, FDR, cargo receiving certificate, survey report, documents concerning despatch/demurrage and damage/short landing, adjustment of additional/overage insurance premium, the original receiving certificate issued by the General Manager (Marketing), BCIC confirming receipt of the full quantity at the buffer godowns with MRR particulars, and the completion certificate to be issued by the General Manager, Purchase Division, BCIC.

The defendant further asserts that those mandatory documents were not submitted and therefore, the defendant contended that the claim for the retained 20% freight is baseless.

The defendant asserts that 12,223.50 MT out of the cargo referable to M.V. JIU FEING LING remained undelivered to the relevant godowns. They also refer to a wider alleged shortage across several contracts and to internal BCIC inquiries concerning fertilizer entrusted to M/s Poton Traders.

As to the additional monetary claim, the defendant relies on Clause 51(II) of the Charter Party to dispute any entitlement to demurrage/despatch at the discharge port and denies liability for the pleaded consequential sums and interest.

BCIC further states that it took penal action in relation to the alleged non-delivery and filed Money Suit No.13 of 2023 against M/s Poton Traders and others, claiming recovery in respect of alleged shortages under several contracts, including 12,223.50 MT connected with M.V. JIU FEING LING. The defendant also states that the matter has been referred through the Ministry of Industries to the Anti-Corruption Commission for investigation.

The defendant accordingly prays for dismissal of the suit with compensatory costs.

5. Issues Framed for Trial

Issue No.1: Whether the plaintiff has the requisite *locus standi* to file and maintain the instant suit?

Issue No.2: Whether the plaintiff has suffered loss and damage as alleged in the plaint?

Issue No.3: Whether the defendants are liable to pay balance freight with incidental cost as claimed by the plaintiff in the plaint?

Issue No.4: Whether the plaintiff and defendants performed all the duties and responsibilities set out in the Charter Party Agreement?

Issue No.5: Whether the plaintiff is entitled to a decree as prayed for in the plaint?

6. Evidence Adduced by the Parties

6.1 Plaintiff's Witness and Exhibits

The plaintiff examined one witness as PW-1 namely Md. Shahadat Hossen, Administrative Officer of Dry Bulk Shipping (Pvt.) Ltd. He stated that he was authorized by the plaintiff to depose and that he was conversant with the facts and circumstances of the suit. His affidavit in support of examination-in-chief substantially reiterated the plaint case concerning the tender, the two stages of carriage, the Charter Party, the voyage of M.V. JIU FEING LING, discharge of the cargo, payment of 80% freight and non-payment of the balance.

In support of the plaintiff's case the following documents have been marked as Exhibits:

Exhibit	Document	Nature / purpose
Exhibit-1	Original Authorization Letter	Authority of PW-1 to represent/depose for the plaintiff.
Exhibit-2	Copy of Memorandum and Articles of Association	Constitutional documents of the plaintiff company.
Exhibit-3	Copy of Certificate of Incorporation	Corporate status of the plaintiff.
Exhibit-4	Copy of Tender Notice	Tender notice floated for carriage of the fertilizer.
Exhibit-5	Copy of Tender Schedule	Terms and conditions of Tender, including Part-A and Part-B.
Exhibit-6	Original Charter Party Agreement dated 12.04.2022	Contract relied on for the sea carriage and freight claim.
Exhibit-7	Copy of Bill of Lading	Shipment/cargo particulars for M.V. JIU FEING LING.
Exhibit-8	Copy of Bill of Entry	Customs/import

		documentation.
Exhibit-9	Copy of Receiving Certificate by Local Carrier	Evidence relied on for handing over cargo at the discharge stage.
Exhibit-10	Copy of Discharge Report / FDR	Evidence of discharge of cargo at the port.
Exhibit-11	Copy of FDD No.1559824 dated 18.05.2022	Evidence of payment of 80% freight.
Exhibit-12	Copy of Local Carrying Contract dated 24.04.2022	Contract between BCIC and the local carrier governing inland carriage.

6.2 Defendants' Witness and Exhibits

Defendant No.1 examined one witness as DW-1 namely Muhammad Maruf Kabir, Manager (Commercial), BCIC. He deposed as the authorised witness of BCIC and substantially supported the defence that defendant no. 6 was the agent of the plaintiff and participated in the same tender package, that Clause 63(IV) imposed equal responsibility for Part-B, that the inland delivery remained incomplete and that the preconditions in Clause 55(B) for release of the final 20% freight had not been fulfilled.

The said witness produced the following documents which were marked as Exhibits.

Exhibit	**Document**	**Nature / purpose**
Exhibit-A	Original Letter of Authority dated 30.05.2023	Authority of DW-1 to depose for BCIC.
Exhibit-B	True copy of Notification of Award dated 05.04.2022	Relied on to show the award arrangement i.e. the same was issued in favour of both principal and local agent.
Exhibit-C	Plaint of Money Suit No.13 of 2023	BCIC's subsequent recovery proceedings relating to alleged non-

		delivery/shortage

7. Arguments on Behalf of the Plaintiff

Learned Advocate for the plaintiff submits that the suit is for recovery of contractual maritime freight arising directly under the Charter Party agreement dated 12.04.2022. The plaintiff is the contracting carrier/disponent owner and therefore has *locus standi* to claim the unpaid freight from BCIC.

The learned advocate argues that the plaintiff fully performed the sea-carriage obligation under Part-A. The entire 29,828.764 MT cargo was carried from Mesaieed to Chattogram within time and discharged by 15.05.2022 and admittedly the plaintiff received 80% of the contractual freight from BCIC.

The learned advocate argues that the tender document was structured into two parts which were Part-A and Part-B. Part-A and Part-B were separately identified in the tender; the Charter Party governed international carriage, while the Local Carrying Contract governed inland carriage. The fact that the two stages were commercially connected but still they are independent and does not, according to the plaintiff, merge the two contracts or make the plaintiff an insurer of the local carrier's subsequent conduct.

As to Clause 63(IV) of the charter party, the plaintiff argues that even if the clause imposes some responsibility on the principal concerning Part-B, it does not create an absolute guarantee that every act or omission of the local carrier is attributable to the plaintiff. The defendants need to prove the plaintiff's own breach, causation and the contractual consequence said to follow from that breach.

As to Clause 55(B), the learned advocate argues that, as per charterparty MRR and other documents are connected and required for payment of the retained 20%, but the clause is merely a payment/documentation mechanism and not an indefinite forfeiture clause. As to this point the learned advocate further argues that the non-generation of MRR/MRC arose from the subsequent inland-delivery stage and could not indefinitely defeat the freight already earned by the plaintiff by complete maritime performance.

The learned advocate further relies and argues on the 71-day provision in the Local Carrying Contract. According to him, BCIC had contractual remedies after prolonged default, including alternative arrangements/takeover and taking penal action. The evidence of DW-1, according to the learned advocate, refers only letters and meetings rather than effective exercise of those remedies. He therefore argues that BCIC cannot allow the inland stage to remain incomplete indefinitely and then rely on the resulting absence of MRR to retain the plaintiff's freight.

The learned advocate further argues that a party must perform the promise it actually undertook; reciprocal promises must be performed in their proper order; a party cannot rely upon non-performance that it caused, prevented or prolonged by its own failure and furthermore, lapse/failure of a later inland-delivery period does not retrospectively extinguish an already completed sea-carriage performance; and the balance freight is the primary contractual debt which the defendant no. 1 is bound to pay with demurrage as those being consequential claims which the plaintiff has been able to prove.

The learned advocate has also relied upon the inquiry materials of BCIC to contend that the non-issuance of the MRR/MRC and other documents contemplated by clause 55(B) was attributable to BCIC rather than to any failure of delivery. The learned advocate submits that the quantity shown as outstanding against defendant No. 6, M/s Poton Traders, was 71,161 MT as on 30.06.2021 and 71,801.31 MT for the financial year 2021–2022, the difference being only 640.31 MT. The plaintiff further points to 1,307 MT shown as being in transit and argues that, during the latter period, defendant No. 6 carried fertilizer imported through seven vessels of the plaintiff. On that basis, the learned advocate insists that the allegation of non-delivery is not supported by BCIC's own records and that BCIC unjustifiably withheld the documents necessary for release of the retained 20% freight.

The learned advocate further argues that even though there were prior outstanding quantities against M/s Poton Traders before the present transaction, nevertheless, BCIC permitted/retained that concern as broker/local carrier. The learned advocate argues that the consequences of the local carrier's later default should not be shifted to the plaintiff's ocean freight.

The plaintiff refers, inter alia, to *Amir Hossain Sowdagar v. Md. Harunur Rashid and others*, 65 DLR (AD) 130:LEX/BDAD/0008/2013 and *Adaitya Dass v. Prem Chand Mondal*, AIR 1929 Cal 369: MANU/WB/0250/1929 in support of its case.

8. Arguments on Behalf of Defendant No.1

Learned Advocate for Defendant No.1 submits that the plaintiff cannot isolate Part-A from the remaining contractual scheme. The tender was a package arrangement; Defendant No.6 was the plaintiff's local agent/local carrying contractor; and Clause 63(IV) expressly provides that the principal, local agent and local carrier shall be equally responsible for performance of Part-B.

Learned advocate gives special emphasis on Clause 55(B) of the Charter Party. The learned advocate submits that the balance 20% freight was not unconditionally payable after full discharge at Chattogram port. Rather payment was expressly deferred until issuance of the MRR and submission of the listed documents, including certificates confirming full inland receipt of the cargo. Since the plaintiff admittedly did not submit all the required documents, the retained freight did not become payable.

The learned advocate relies upon the cross-examination of PW-1, particularly his admission that all documents required for the final 20% payment had not been submitted to BCIC and his later acceptance/admission that the principal and Defendant No.6 were equally responsible for completing Part-B. According to the learned advocate these admissions undermine the plaintiff's case that the complete delivery at local stage had no contractual relevance to its entitlement of 20% retained freight.

The learned advocate further submits that the inland delivery was not completed and that 12,223.50 MT of fertilizer connected with M.V. JIU FEING LING remained undelivered in different godowns. The learned advocate relies on Clause 4 of the Local Carrying Contract, Clause 10(a), and the alleged right of BCIC to recover loss/payment dues arising from contracts of the same carrier/principal.

In this regard the learned advocate further adds that BCIC formed four committees vide office order dated 18.04.2022 for determining the quantity and the locations of Urea fertilizers of the Poton Traders which was not supplied to the BCIC. Accordingly, the said four committees submitted four reports from which it appears that there is no existence of thousands MT of fertilizer. BCIC further formed three committees vide office order dated 10.11.2022 for determining the quantity and the locations of Urea fertilizers under the custody of Poton Traders which was not supplied to BCIC. According to the reports as per information provided by Poton Traders, the quantity of fertilizer should be 66,222.18 MT but the said committees found only 1307.976 MT and found no existence of rest 64,914.208 MT of urea fertilizer.

Regarding the claim for demurrage, the learned advocate relies on Clause 51(II) of the charter party and submits that no demurrage/despatch is payable at the discharge port in the manner claimed.

The learned advocate next submits that admittedly, the proforma defendant no. 06 is the local agent of the principal and as such they are jointly and severally liable to discharge their liabilities. In developing his argument the learned advocate has referred Chapter X of the Contract Act, 1872 and submits that the said chapter of the Contract Act has construct the framework of rules and regulations that actually evaluate and maintain the performance of any contract as well as the agency contract. The learned advocate next submits that Section 182 of the act defines, ‘agent’ as a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented, is called the 'principal'. According to the learned advocate, as per the said provision the agent is an employee who is hired by the principal to perform the activities on his behalf in his absence. An agent's position also lies between the principal and the third party and as such the plaintiff cannot deny its responsibility for the acts done by its agent, defendant no. 6.

On the whole, the learned advocate for the defendant submits that the plaintiff has failed to establish fulfillment of the contractual conditions required to demand for the final freight and hence the suit should be dismissed.

9. Facts Emerging as Admitted / Not Seriously in Controversy

i. The plaintiff is Dry Bulk Shipping (Pvt.) Ltd. and Defendant No.1 is Bangladesh Chemical Industries Corporation (BCIC).

ii. BCIC floated the relevant tender in March 2022 for transportation of urea fertilizer from Mesaieed Port, Qatar to Bangladesh.

iii. The tender contemplated an international/foreign component (Part-A) and a local/inland component (Part-B).

iv. M/s Poton Traders, Defendant No.6, acted in the tender as the plaintiff's local agent/broker and was also the local carrying contractor.

v. A Notification of Award dated 05.04.2022 was issued in relation to the tender and the Charter Party was executed on 12.04.2022.

vi. A Local Carrying Contract dated 24.04.2022 was executed for Part-B between BCIC and defendant no. 6.

vii. M.V. JIU FEING LING carried approximately 29,828.764 MT of urea from Mesaieed Port, Qatar to Chattogram and completed discharge on 15.05.2022.

viii. BCIC paid 80% of the freight and the balance 20% remains unpaid.

ix. Clause 55(B) connects payment of the balance 20% freight with MRR and specified supporting documents.

x. The plaintiff did not submit all the documents required by Clause 55(B) for release of the final 20% freight.

xi. The Local Carrying Contract contains a delivery period extending to a maximum of 71 days, with penalties/remedies for delay.

xii. MRR is generated at the receiving godown and a final receiving certificate/MRC is issued by BCIC's Marketing Division after receipt of the cargo at the inland destination.

Observations and findings:

10. Though no separate issue has been framed regarding the maintainability of the suit, since the *locus standi* of the plaintiff has been put in issue, it would be appropriate to examine both questions together.

The plaintiff’s claim is for the unpaid balance of 20% freight, demurrage, interest and costs arising out of a Charter Party Agreement dated 12.04.2022 for the carriage of urea fertilizer. Section 3(2)(h) of the Admiralty Court Act, 2000 confers jurisdiction upon the Admiralty Court to hear and determine any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship. A contractual claim for unpaid freight and demurrage arising directly out of a charterparty, therefore, squarely falls within the maritime claims contemplated by the said provision.

In the present suit, no vessel has been impleaded as a defendant and no relief has been sought against any *res*. The suit is, therefore, a pure action *in personam*. Section 4(1) of the Admiralty Court Act, 2000 permits the admiralty jurisdiction of the High Court Division to be exercised *in personam* in all cases, subject to the restrictions contained in Section 5. The restrictions under Section 5 relate to specified categories of *in personam* claims concerning collision, damage caused by a ship, or infringement of regulations relating to navigation. The present claim, being founded upon a commercial contract for carriage of goods and recovery of freight and demurrage, does not fall within those restricted categories. Accordingly, the absence of any *res* does not by itself affect the maintainability of the present suit.

It is, however, necessary for an action *in personam* to have a sufficient territorial nexus or connecting factor with Bangladesh. In this regard, the carriage undertaken under the Charter Party Agreement was for delivery of urea fertilizer in Bangladesh. The sea carriage was completed and the cargo was discharged at Chattogram, Bangladesh. The contractual obligations relating to discharge of the cargo and its subsequent delivery to the BCIC godowns were also performed within Bangladesh. Moreover, the defendants against whom the relief has been sought are Bangladeshi entities. Thus, a substantial and material part of the cause of action arose within Bangladesh, providing a sufficient territorial nexus for this Court to exercise jurisdiction over the defendants *in personam*.

So far as the *locus standi* of the plaintiff is concerned, the materials on record show that the plaintiff was the successful bidder and, pursuant thereto, undertook and performed the sea carriage of the cargo under the Charter Party Agreement dated 12.04.2022. The claim for the outstanding freight, demurrage and other contractual dues arises from such performance. The plaintiff, therefore, has a direct and substantial interest in the subject matter of the suit and is the person claiming entitlement to the unpaid contractual dues. It consequently has sufficient *locus standi* to institute and maintain the present action.

In view of the above, this Court finds that the present Admiralty Suit is maintainable as an action *in personam*. The claim falls within Section 3(2)(h) of the Admiralty Court Act, 2000; the restrictions contemplated under Section 5 are not attracted; and the performance of substantial contractual obligations, including discharge of the cargo at Chattogram and delivery in Bangladesh, provides the necessary territorial nexus. At the same time, the plaintiff, having undertaken and performed the carriage pursuant to the Charter Party Agreement and claiming the unpaid consideration arising therefrom, has sufficient *locus standi* to maintain the suit. Accordingly, both the questions of maintainability and *locus standi* are answered in favour of the plaintiff.

11. The remaining issues, being Issue Nos. 2 to 5, are interconnected and, therefore, are taken up together for determination.

11.1 At this stage, it would be apposite to refer to some of the pivotal terms and conditions of the tender documents, the Charter Party Agreement and the local carrying contract, which are reproduced below:

<u>International Limited Tender Notice (dated 16.03.2022)</u>

Clause 5. Invitation for: Transportation of 30,000 Mt(±10%) Bulk Prilled urea in single shipment from Mesaieed, Qatar and delivery in 50Kg net bag to different buffer Godowns/Factories located at various places in Bangladesh via outer anchorage of Chattogram port (a/b/c anchorage), Bangladesh and/or Harbaria, Mongla port, Bangladesh as package basis.

<u>Tender Schedule (dated 16.03.2022)</u>

The 1st page of Tender Schedule contained the following:

> "Sealed Firm-Quotation(s) are invited on Package Basis from brokers enlisted with the Inter-Ministerial Chartering Committee for transportation of 30,000 Mt ±10% Bulk Prilled urea in Single Shipment from Mesaieed, Qatar to different buffer godowns/factories as mentioned in Part-B via Chittagong Sea Port, Bangladesh and/or Harbaria, Mongla Port, Bangladesh..........."
>
> "A. The tender will be evaluated on the terms and conditions stated in Part A and Part B. Tenderers to quote freight rate in US Dollar, basis free in/liner out for Part A and Local transportation rate/MT in USD/Bangladeshi Taka from Chittagong Sea Port, Bangladesh and/or Harbaria, Mongla Port, Bangladesh Port to designated buffer godowns/factory for Part B. Payment of freight will be made in USD through letter of credit and payment of local transportation will be made in Bangladeshi currency (Taka) in the form of A/C payee cheque [sic- check] "
>
> "B. Tender shall be evaluated on Package Basis.................."
>
> "C. The Contract will be signed for both Parts A and B after submission of Performance Guarantee on the basis of quantity mentioned in the tender documents................. "
>
> Part-A (Foreign Part) (page-2 of the Tender Schedule)

“Transportation of 30,000 Mt ±10% Bulk Prilled Urea in Single Shipment from Mesaieed, Qatar to Different buffer godowns/factories as mentioned in Part-B via Chittagong Sea Port, Bangladesh and/or Harbaria, Mongla Port, Bangladesh.”

“8. Discharge Port & Delivery Point: Different buffer godowns/factories via Chattgoram and/or Mongla Sea Port, Bangladesh”

“9. Discharging Terms: Cargo to be discharged on Liner Terms basis with no provision for demurrage/despatch money/detention money at discharge port, Chittagong and/or Mongla Sea Port, Bangladesh.”

Part-A (Foreign Part) (page-8 of the Tender Schedule)

“30.(b) Upon arrival of the cargo at discharge port in Bangladesh, delivery of goods shall be completed by the bidder to assigned godown/factories. If the Bidder fails to deliver whole cargo as per contract schedule then BCIC will have the right to arrange delivery of the cargo. All costs, charges whatsoever arising due to bidders failure to discharge the cargo as per contract schedule will be deduced from the freight L/C, concern Performance Guarantee and any other bills of the bidder. The bidder agrees to pay such cost without any reservation.”

Part-A (Foreign Part) (page-13 of the Tender Schedule)

“43. Contract.- (i) The contract will be signed for both Parts A and B after submission of performance guarantee on the basis of quantity mentioned in the Tender Documents. But Godown wise quantity shall be finalized after issuance of the Bill of Lading and Part B will be amended accordingly. This amendment shall be integral part of the contract.

(ii) XXX

(iii) The principal will sign the contract for Part-A and the local agent/local carrier will countersign on it. ....

(iv) Principal's authorized local carrier will sign the contract for Part-B. Name and designation of the signatory must be mentioned. The principal, local agent, local carrier will be equally responsible for performance of Part-B"

Part-A (Foreign Part) (page-16 of the Tender Schedule)

"51. Other Terms and Conditions:

(b) Submission of quotations shall mean acceptance of all terms and conditions laid down in this quotation documents"

Part-A (Foreign Part) (page-17 of the Tender Schedule)

Specimen of Bid Security

To
Bangladesh Shipping Corporation
Dear Sir,

You having proposed to participate in the Tender No...................dated ....by...............................(hereinafter referred to as quotationer for transportation of 30,000($\pm$10% at seller's option) Prilled Urea in bulk from Mesaieed, Qatar & delivery in 50 Kg net bag at the risk & responsibility of bidder to different buffer godowns/factories located in Bangladesh through Chattogram and/or Mongla Port, Bangladesh and stipulating the furnishing of a Bank Guarantee for payment to you by us on account of the quotationer an amount of .... We hereby agree:----------------

Part-A (Foreign Part) (page-18 of the Tender Schedule)

Specimen of Performance Guarantee

To
Bangladesh Chemical Industries Corporation
Dear Sir,

You having proposed to enter into a C/P contract with M/s......................................(hereinafter referred to as Principal) vide Notification of Award No........................dated....................for transportation of 30,000($\pm$10% at seller's option) Prilled Urea in bulk from Mesaieed, Qatar

& delivery in 50 Kg net bag at the risk & responsibility of bidder to different buffer godowns/factories located in Bangladesh and stipulating the furnishing of a Bank Guarantee for payment to you by us on account of the supplier an amount of 10% of the gross freight charge, we hereby agree:----------------"

Part-B (Local Transportation) (page-18/19 of the Tender Schedule)

"01. Rate for Local Transportation:

The bidder will quote rate per metric ton of 30,000($\pm$10%) in Bangladesh taka from Chittagong Port and/or Mongla Port to the following buffer godowns including inland VAT, TAX, Ghats Charges in the attached price schedule.......... "

"2(g) The bidder/contractor shall promptly arrange trucks/wagons/barges/coasters etc. as the case may be and load bagged urea with utmost care and safety under their supervision for ultimate delivery to the concerned godowns against proper receipt. The successful bidder/broker/local agent will be responsible and compensate BCIC at double rate i.e. 1:2 ration for any short/loss/damage/pilfereage underweight bags in transit from load port to the assigned godowns. They will arrange transport and equipment that may be required for the loading and despatch of consignment and delay on this account will be their responsibility. "

Charterparty (dated 12.04.2022)

"51.(II) Demurrage/Despatch at Discharge Port: No demurrage/despatch/detention money applicable at discharge port and final destinations.

53.(A) The cargo as per bill of lading shall be discharged by the successful bidder contractor in presence of C&F Agent and surveyor appointed by the charterer. Cargo quantity to be ascertained by the number of bags as per bills of lading and owners/master/vessel shall be responsible to deliver the No. of bags loaded as described in the bills and landing. During transfer of title of the cargo final discharge report (FDR) will be prepared after completion of discharge of cargo at discharge port and signed by the Master/Chief Officer of the ship. ....

"(B) Upon Arrival of Cargo at discharge port in Bangladesh, delivery of goods shall be completed by the bidder to assigned godown/factories. If the bidder fails to deliver whole cargo as per contract schedule then BCIC will have the right to arrange delivery of the cargo. All costs, charges whatsoever arising due to bidders failure to discharge the cargo as per contract schedule will be deducted from the freight L/C, concern performance guarantee and any other bills of the bidder. The bidder agrees to pay such cost without any reservation."

55.(B) 20% (Twenty percent) balance freight shall be paid after issuance of MRR by godown in-charge along with following documents:

(i) Freight Invoice

(ii) Copy of FDR (final discharge report). Final discharge report (FDR) will be prepared after completion of discharge of cargo at discharge port and signed by the master/chief officer of the ship.

(iii) Copy of cargo receiving certificate duly signed by the bidder/ local agent/broker/local carrier, surveyor, C&F agent with seal & signature and endorsed the same by the authorised officer of BCIC, BCIC branch office, Chittagong and/or Camp Office, Khulna.

(iv) Copy of survey report showing condition of cargo at the point where Final Discharging Report (FDR) is prepared.

(v) Documents for settlement of despatch/demurrage at load port and damage cargo/short landing cargo at discharge port and final destination.

(vi) Upon adjustment of additional premium/overage insurance premium, if any.

(vii) A receiving certificate issued by General Manager (Marketing), BCIC in the letter head pad in original confirming the receiving of full quantity of urea at mentioned buffer godowns with MRR. No and date and mother vessel's name.

(viii) Copy of certificate of completion of carrying of full quantity of cargo as per B/L to be issued by general manager, purchase division, BCIC Head Office, 30-31 Dilkusha C/A, Dhaka-1000.

(ix) Specific instruction, if required, given by BCIC. To realize any other claim.

63. Contract:

(i) The contract will be signed for both parts A and B after submission of performance guarantee on the basis of quantity mentioned in the tender documents. But godown-wise quantity shall be finalized after issuance of bill of lading and part B will be amended accordingly. This amendment shall be integral part of the contract.

(ii) The validity of the contract will be 12 (twelve) months from the date of signing of the contract. BCIC will have full right to terminate the contract if the bidder fails to perform as per contract.

(iii) The principal will sign the contract for part-A and the local agent/local carrier will counter sign on it. Name and designation of the signatory must be mentioned.

(iv) Principal's authorized local carrier will sign the contract for part-B. Name and designation of the signatory must be mentioned. The principal, local agent, local carrier will be equally responsible for performance of Part-B.

68. Other Terms and Conditions:

(B) Submission of quotations shall mean acceptance of all terms and conditions laid down in this quotation documents"

11.2 It further appears from clause 57 of the charterparty and clause 3.01 of the local carrying contract that both the principal i.e. the plaintiff and the local agent/carrier i.e. defendant no. 6 relied upon the same Performance Guarantee to ensure their due performance.

11.3 It further appears from Local Carrying Contract that Proton Traders has identified itself as authorised local carrier of Dry Bulk Shipping (Pvt.) Ltd.

12. Therefore, it appears from a conjoint reading of the Tender Notice, Tender Schedule and the Charterparty Agreement, Local Carrying Contract that merely because there was no provision requiring the plaintiff to countersign the local carrying contract, the relationship between the plaintiff, as principal, and defendant No. 6, as its authorised local agent/carrier, did not thereby come to an end. The tender itself was floated on a package basis for transportation of the fertilizer from Mesaieed, Qatar and its ultimate delivery to the designated buffer godowns/factories in Bangladesh through/via Chattogram and/or Mongla Port. The contractual scheme thus contemplated the movement of the cargo up to the designated buffer godowns/factories as a whole, though for operational and payment purposes it was divided into Part-A and Part-B. Significantly, the tender terms further provided that the principal, local agent and local carrier would be equally responsible for performance of Part-B. Therefore, the plaintiff's contractual responsibility cannot be said to have come to an end merely upon discharge of the cargo at Chattogram Port.

This conclusion receives further support from clause 53(B) of the Charter Party Agreement itself. It expressly provides that, upon arrival of the cargo at the discharge port in Bangladesh, delivery of the goods shall be completed by the bidder to the assigned godowns/factories and that, upon failure of the bidder to deliver the whole cargo according to the contract schedule, BCIC would be entitled to arrange such delivery and deduct the consequential costs and charges from the freight L/C, Performance Guarantee or other bills of the bidder. Thus, delivery at the buffer godowns/factories was not an obligation arising exclusively out of the separate local carrying contract between BCIC and defendant No. 6; rather, completion of such delivery was also expressly stipulated and contemplated by the Charterparty Agreement executed by the plaintiff itself.

More significantly, clause 55(B) leaves little room for doubt as to the consequence of non-completion of such delivery upon the plaintiff's entitlement to the retained freight. The clause specifically provides that the balance 20% freight shall be paid after issuance of MRR by the godown in-charge and upon production of the stipulated documents. Amongst those documents are a certificate of the General Manager (Marketing), BCIC confirming receipt of the full quantity of urea at the mentioned buffer godowns**,** with the relevant MRR numbers and dates, and a certificate of completion of carriage of the full quantity of cargo as per the Bill of Lading**,** to be issued by the General Manager, Purchase Division, BCIC. The payment clause, therefore, does not merely postpone payment of an otherwise fully earned freight for a specified period; rather, it makes completion of delivery at the designated godowns and production of the prescribed evidence of such delivery the contractual event upon which the plaintiff's entitlement to the retained 20% depends.

12.1 At this stage, it is necessary to address an important submission advanced by the learned Advocate for the plaintiff regarding the eventual full delivery of the cargo at the godowns/factories of BCIC, which submission is based on the inquiry reports of BCIC. In this regard, it is pertinent to mention that BCIC produced those reports before this Court in compliance with an order passed upon the plaintiff's application for discovery of documents. Although neither party sought to have those documents formally marked as exhibits, both parties placed substantial reliance upon them in support of their respective contentions.

Now, reverting to the submission of the learned Advocate for the plaintiff regarding the full delivery of the cargo, the same cannot be accepted upon a complete reading of the inquiry materials. Annexure X-8, the forwarding letter dated 24.01.2023 by which the inquiry report was sent to the Ministry of Industries, records a recurring practice whereby fertilizer remaining undelivered from an earlier period was adjusted against fertilizer subsequently handed over to defendant No. 6 for carriage. Paragraph 5 of the report is material and is reproduced below:

> মেসার্স পোটন ট্রেডার্স, ঢাকা সবচেয়ে বেশি পরিমাণ সার পরিবহণের দায়িত্ব পাওয়ায় সবসময়ই প্রতিষ্ঠানটির নিকট ট্রানজিটে বিপুল পরিমাণ সার রয়ে যেতো। প্রতিষ্ঠানটি কখনই ট্রানজিট/পাইপলাইনে সমুদয় সার সরবরাহ করেনি। এমনকি বিভিন্ন সময়ে দেশে সারের সংকট পরিলক্ষিত হলে প্রতিষ্ঠানটিকে তাগিদ দিয়েও পাইপলাইনের সার আদায় করা সম্ভব হয়নি। যেমন ৩০ জুন, ২০২০ খ্রি. তারিখে প্রতিষ্ঠানটির নিকট পাইপলাইনে/ট্রানজিটে ৮৮,৬৮৮.২০ মে.টন এবং ৩০ জুন,২০২১ খ্রি. তারিখে পাইপলাইনে/ট্রানজিটে ৭১,১৬১.০০ মে.টন ইউরিয়া সার ছিল। এরূপ পরিস্থিতিতে বিসিআইসি কর্তৃপক্ষের নিকট সন্দেহের উদ্রেক ঘটে যে, প্রকৃতপক্ষেই পাইপলাইনে প্রতিষ্ঠানটির নিকট সারের মজুদ আছে কি না? এরূপ সন্দেহ থেকেই ২০২১-২০২২ অর্থবছরের শুরু থেকে প্রতিষ্ঠানটিকে ট্রানজিটের সার সরবরাহের জন্য জোর চাপ প্রয়োগ করা হয়। কয়েকবার প্রতিষ্ঠানটির স্বত্বাধিকারীর সহিত ব্যক্তিগত সভা, পরিবহণ ঠিকাদারদের সহিত সভা, প্রতিষ্ঠানটিকে তাগিদপত্র প্রেরণ প্রভৃতি কার্যক্রম গ্রহণ করা হয়। প্রতিষ্ঠানটিকে সার পরিবহণের পরবর্তী টেন্ডারসমূহে অংশ গ্রহণ হতে বিরত রাখার জন্য টেন্ডার সিডিউলে কতিপয় শর্তারোপ করা হয়। এরূপ ব্যবস্থা গ্রহণের পরও বাফার গুদামে সার সরবরাহে প্রতিষ্ঠানটি হতে আশানুরূপ সাড়া না পাওয়ায় সর্বশেষ তদন্ত কমিটি গঠনপূর্বক সরেজমিনে তদন্তক্রমে সার আত্মসাতের সন্দেহ প্রকৃত সত্যে পরিণত হয়। সারা বছরব্যাপী

প্রতিষ্ঠানটি সার পরিবহণের দায়িত্ব পালন করায় এবং একই সময়ে একাধিক জাহাজের সার বরাদ্দ প্রাপ্ত হওয়ায় সাধারণত উত্তোলিত সার হতে পূর্বের বকেয়া সারের হিসাব সমন্বয় করেছে। এভাবে পূর্ববর্তী বছরসমূহের সারের হিসাব বুঝিয়ে দিয়েছে। কিন্তু প্রতিষ্ঠানটিকে নতুন করে পরিবহণ দরপত্রে অংশগ্রহণ হতে বিরত রাখার ফলে ২০২১-২০২২ অর্থবছরের ৭টি জাহাজের সম্পূর্ণ সার গুদামে সরবরাহ সম্পন্ন করতে ব্যর্থ হওয়ায় সার আত্মসাতের বিষয়টি ধরা পড়ে। বিসিআইসি এর তথ্যানুযায়ী অনুযায়ী ২০২১-২০২২ অর্থবছরের ৭টি জাহাজের সর্বমোট ৭১,৮০১.৩১ মে.টন সার মেসার্স পোটন ট্রেডার্স এর নিকট সংরক্ষিত নেই। অর্থাৎ এ পরিমাণ সার প্রতিষ্ঠানটি আত্মসাৎ করেছে (সংলাপ-১)

The report thus explains why the two outstanding figures, though numerically close, do not establish that the cargo handed over during 2021–2022 had in fact reached the designated BCIC godowns. On the contrary, it records that earlier deficiencies were being adjusted against fertilizer subsequently received for carriage and that, after defendant No. 6 was restrained from participating in further tenders as the activities of defendant no. 6 created doubt that process of adjustment could no longer continue. It was then found deficit of 71,801.31 MT of fertilizer imported during 2021–2022 through 7 (seven) vessels including the vessel namely M.V. JIU FEING LING. The reference to 1,307 MT as being in transit cannot be read in isolation so as to neutralise that ultimate finding of the inquiry. Accordingly, the difference of only 640.31 MT between the two year- end figures does not prove full delivery of the cargo under the present contractual arrangement, nor does it establish that BCIC itself prevented issuance of the MRR/MRC. Rather, the inquiry material supports the existence of a substantial quantity of undelivered fertilizer and thereby reinforces, rather than displaces, the contractual significance of clause 55(B).

12.2 Now, let us examine the authorities relied upon by the parties. The authorities relied upon by the plaintiff must be considered in the above mentioned factual and contractual setting. In *Amir Hossain Sowdagar v. Md. Harunur Rashid and others*, 65 DLR (AD) 130: LEX/BDAD/0008/2013, the Appellate Division, in the context of reciprocal promises under a contract for sale of immovable property, applied the settled principle that a party who by his own default prevents the other party from performing a reciprocal obligation cannot thereafter take advantage of the resulting non-performance. Paragraph 12, upon which the plaintiff places reliance, states:

> *"12. In a contract containing reciprocal promises, if one party fails to perform his part of obligation thereby he prevents the other party performing his promise and in such eventuality the contract becomes voidable at the option of the party so prevented and the party so prevented is entitled to compensation from the other party for any loss which he may sustain in consequence of non-performance of the contract. The reason is that one who prevents a thing from being done is not allowed to avail himself of the non-performance which he himself has occasioned, since it is his own act which has brought about that result, and, therefore, he cannot complain that he is damnified. No one can be permitted to find a claim upon his own inequity or to take advantage of his own wrong. Prevention by one party to fulfil the promise is tantamount to a fulfillment of the promise by the party prevented in a case of conditional contract or a contract containing reciprocal promises."*

There can be no disagreement with that principle. Its application, however, depends upon proof that the party seeking to rely upon the unperformed condition was itself responsible for preventing its fulfillment. That essential factual foundation is absent here. The MRR and completion certificates under clause 55(B) could arise only upon receipt of the cargo at the designated godowns. The inquiry material does not show that BCIC obstructed such delivery and the plaintiff also did not plead such case; rather, it identifies substantial non-delivery by defendant No. 6. Moreover, clauses 53(B) and 63(iv) of the Charter Party expressly preserved the plaintiff's responsibility in relation to Part-B. *Amir Hossain Sowdagar* therefore does not permit the plaintiff to treat the condition in clause 55(B) as fulfilled when the very event upon which the documents depended i.e. full inland delivery has not been established.

The plaintiff's reliance on section 25 of the Contract Act, 1872 also does not carry the matter further. Section 25 concerns agreements without consideration and the statutory exceptions by which such agreements may nevertheless be enforceable. The validity of the Local Carrying Contract for want of consideration is not in issue in this suit. Nor is the plaintiff's responsibility for Part-B founded merely upon its signature, or absence of signature, on that separate instrument. It arises from the Tender Schedule and the Charter Party to which the plaintiff itself was a party, particularly the express stipulation that the principal, local agent and local carrier would be equally responsible for performance of Part-B. Section 25 therefore has no material application to the question presently before the Court.

Likewise, *Adaitya Dass v.Prem Chand Mondal*, AIR 1929 Cal 369:MANU/WB/0250/1929, concerned a promise to bring a deity to a religious festival which was held not to constitute an enforceable contract for want of consideration. The principle that mere reliance on a gratuitous promise, or expenditure made in expectation of its performance, does not amount to consideration is well settled. However, that principle has no application to the present dispute. Here there is an admitted and supported commercial bargain contained in the tender documents and Charter Party; the issue is not whether a contract came into existence for want of consideration, but whether the contractual conditions governing payment of the retained 20% freight were fulfilled. *Adaitya Dass* is therefore distinguishable both on fact and principle.

12.3 The decision relied upon by the defendant, *Union of India (UOI) and others v. Chinoy Chablani and Co.*, AIR 1982 Cal 365:MANU/WB/0089/1982, arose in a different factual setting. There, the claim was brought against steamer agents in respect of loss/damage to urea carried under a bill of lading issued by their disclosed foreign principal, and the Court examined sections 226 to 234 of the Contract Act, 1872 to determine when an agent may be personally bound by, or sued upon, a contract made on behalf of the principal. The case therefore does not directly decide the present question of entitlement to retained freight under a charterparty. Nevertheless, the discussion in *Chinoy Chablani* is relevant to the limited question of the legal effect of an admitted principal-agent relationship. The Court recognised, consistently with section 226 of the Contract Act, that contracts entered into through an agent and obligations arising from acts done by the agent have the same legal consequences as if the contracts were made or the acts done by the principal personally, subject of course to the statutory rules governing an agent's personal liability. In the present case, the position is stronger in one material respect: the Court is not being asked to infer the plaintiff's responsibility merely from general agency law. The Tender Schedule and clause 63(iv) of the Charter Party expressly identify defendant No. 6 as the principal's authorised local carrier and expressly provide that the principal, local agent and local carrier shall be equally responsible for performance of Part-B. Thus, read with the express terms of the tender documents and Charter Party, the agency principle supports the conclusion that the separate execution of the Local Carrying Contract by defendant No. 6 did not sever the plaintiff's expressly retained responsibility for Part-B.

12.4 Here, in the instant case, the inquiry reports when read together with the contractual provisions already discussed, lead to a consistent conclusion. The plaintiff completed the sea-carriage stage and earned the 80% freight which BCIC paid. But the remaining 20% was made payable upon a further contractual event i.e. full delivery to the designated godowns and production of the MRR and completion documents specified in clause 55(B). The materials placed before the court does not establish that BCIC prevented that event from occurring; rather, it establishes non-completion of inland delivery by the plaintiff's authorised local carrier, for whose performance the plaintiff had expressly accepted equal responsibility under clause 63(iv) of the charterparty. The plaintiff cannot, therefore, invoke the prevention principle to dispense with the condition, nor can it rely upon the separate form of the Local Carrying Contract to detach Part-B from its own Charter Party obligations. Therefore, in absence of concrete proof by the plaintiff as to full delivery of the fertilizer to the designated godowns/factories of BCIC the right to the retained 20% freight did not accrue in favour of the plaintiff.

12.5 Furthermore, the plaintiff's reliance upon BCIC's right to arrange alternative delivery after expiry of the stipulated period is also misplaced.

Clause 53(B) conferred a contractual remedy upon BCIC; it did not impose upon BCIC an obligation to complete the performance which the bidder had undertaken. Non-exercise of that remedy did not amount to prevention, waiver of Clause 55(B), or deemed completion of inland delivery.

12.6 In this context, the decision in *James Richardson & Sons Ltd. v. 158,200 Bushels of No. 1 Northern Manitoba Wheat*, MANU/FESC/0093/1937, appears to be useful. There also the contract of affreightment divided the freight into two components and provided:

> *"80% of the total freight is due and payable on arrival of boats at Destination, the balance, together with demurrage and towing and/or other proper charges is due and payable after delivery has been made and actual outturn weights ascertained, subject to deduction of shortage allowances, or other substantiated claims under this particular charter."*

While dealing with an attempt to depart from that agreed allocation of freight, the United States Court of Appeals for the Second Circuit emphasised that the contractual bargain must be given effect according to its terms and pertinently observed:

> *"Why should the court make for the shipper a different and more favorable contract than the one he was content to make for himself? No adequate reason has been advanced and no authority cited which seem to us to justify so doing."*

The factual setting of *James Richardson* is not identical to the present case, but the principle is apposite. Where parties themselves divide freight into an immediately payable portion and a retained portion and expressly prescribe the event upon which the retained portion becomes payable, the

Court has to give effect to that bargain rather than treat the retained portion as having become payable independently of the stipulated event. In the present case, the parties went further: clause 55(B) expressly linked payment of the retained 20% with MRRs and certificates establishing receipt and completion of carriage of the full quantity of cargo at the designated buffer godowns/factories. To direct payment of that 20% notwithstanding non-fulfillment of those requirements would, in effect, amount to relieving the plaintiff of a condition which it had itself accepted under the Charter Party.

12.7 The principle becomes still clearer from *National Trailer Convoy, Inc. v. United States*, 345 F.2d 573: MANU/USFD/0238/1965. There, although part of the transportation service had already been performed before the cargo was destroyed, the Court held that entitlement to freight was governed by the contractual terms concerning delivery. In adopting the reasoning that actual receipt at destination was necessary for payment, the Court held that:

> *"In sum, 'the' evidence upon which the carrier may rely for payment is the 'accomplished,' or surrendered, bill of lading, accompanied by the 'Certificate of Delivery' signed 'on receipt of the shipment,' with the 'receipt' subject to the loss or damage report."*

The court further held that-

> *"Without receipt of the goods, the bill was not, and could not have been, filled in under the strict terms of the standard form which we have stressed, so as to be 'properly accomplished' for purposes of payment to the carrier."*

More significantly, the Court approved the principle in the following unequivocal terms:

> *"The Bill of Lading cannot be 'properly accomplished' until there has been a receipt of the shipment by the consignee at destination. Delivery of the shipment is a condition precedent to liability for freight."*

The Court further rejected recovery on quantum meruit, observing that where the action is founded upon an express contract of carriage, there can be no recovery contrary to its terms. The principle emerging therefrom is that whether freight has become payable depends primarily upon the contractual event selected by the parties as the basis for payment. Where delivery at the stipulated destination is made a condition of payment, performance of part of the carriage does not by itself give rise to a right to freight contrary to the express bargain.

12.8 The present case stands on an even clearer contractual footing so far as the retained 20% is concerned. BCIC has already paid 80% of the freight upon performance of the stage for which such payment was stipulated. The dispute concerns only the remaining 20%, for which the parties themselves prescribed additional conditions relating to final delivery. Here, in the present case it is not necessary, for determination of the plaintiff's present claim, to hold the plaintiff vicariously liable in tort for every act of defendant No. 6. The narrower and decisive question is whether the plaintiff has established the occurrence of the contractual event upon which its right to receive the retained 20% freight depended. In the absence of any evidence of full delivery at the designated buffer godowns/factories and absence of the documents contemplated by clause 55(B), that contractual event did not occur and consequently the plaintiff's right to the retained freight did not accrue as he failed to prove its own case.

12.9 The fact that the physical inland carriage was entrusted to defendant No. 6 does not alter this conclusion. In *Missouri Pacific Railroad Co. v. Reynolds-Davis Grocery Co.*, 268 U.S. 366 (1925) MANU/USSC/0029/1925, the contractual transportation covered delivery up to the consignee's warehouse, although the contracting carrier's own line did not extend to that warehouse and it had engaged another railroad to perform the final switching service. The Supreme Court held that the latter "was simply the agent of the Missouri Pacific for the purpose of delivery" and that Missouri Pacific remained the delivering carrier and liable as such.

Though arising in a different statutory and factual setting, the decision illustrates the broader proposition that where the contractual undertaking extends to an ultimate destination, the contracting carrier cannot necessarily treat its responsibility as exhausted merely because the final part of the transportation is physically performed through another carrier or agent.

12.10 Accordingly, in the present case, even the execution of a separate local carrying contract between BCIC and defendant No. 6 cannot be viewed in isolation from the plaintiff's own contractual undertaking. The plaintiff expressly accepted that the cargo would ultimately be delivered to the designated buffer godowns/factories, that the principal, local agent and local carrier would be equally responsible for performance of Part-B, and, above all, that its remaining 20% freight would be payable only upon production of documents establishing completion of that delivery. The plaintiff therefore had not merely an implied but an express contractual obligation to ensure due performance up to the stipulated final destinations for the purpose of earning the retained freight which he evidently failed to perform.

12.11 This conclusion is also consistent with the general principles of agency stated in Chitty on Contracts, 36th Ed., Vol. I, Chapter 22. Paragraphs 22-002 and 22-006 explain that agency rests upon the parties' consent, which may be inferred from their words, conduct and relative positions, and that, in determining the true relationship, the substance of the matter is more important than the form; the mere use or denial of the word "agent" is not conclusive. Applied here in the instant suit, the decisive considerations are not merely that defendant No. 6 signed a separate local carrying contract or that the plaintiff did not countersign it, but that the tender documents and Charter Party expressly identified defendant No. 6 as the plaintiff's authorised local agent/carrier, made the principal, local agent and local carrier equally responsible for Part-B, and linked the plaintiff's retained freight to proof of completed delivery at the ultimate destinations. The separate instrument for operational performance of Part-B therefore cannot, by its form alone, sever the agency and responsibility expressly preserved by the governing contractual documents.

12.12 Consequently, even if it is assumed in favour of the plaintiff that the separate local carrying contract imposed independent obligations upon defendant No. 6 and that the plaintiff cannot automatically be made liable in tort for the alleged misappropriation committed by defendant No. 6, that does not advance the plaintiff's claim for the retained 20% freight. Liability for the loss of cargo and contractual entitlement to the retained freight are two distinct questions. The present claim falls on the latter. Since full delivery to the designated buffer godowns/factories, being the stipulated condition for release of the balance freight, was not completed and the documents evidencing such completion were not produced, the plaintiff cannot claim that the retained 20% became due merely upon completion of discharge at Chattogram Port.

13. In view of the foregoing discussion, Issue No.2 is answered against the plaintiff, as it has failed to prove any legally recoverable loss or damage caused by a breach of contract on the part of BCIC. Issue No.3 is also answered against the plaintiff, since the retained 20% freight did not become payable in the absence of proof of full delivery and production of the documents required under Clause 55(B). The claim for demurrage is further excluded by Clause 51(II), while the claims for bank interest /other incidental costs have not been independently established by legally sufficient evidence. As to Issue No.4, although the plaintiff completed the sea-carriage part but failed to ensure delivery at the ultimate destination point. No corresponding breach on the part of BCIC has been proved. Consequently, Issue No.5 is answered against the plaintiff, and it is held that the plaintiff is not entitled to the decree sought.

14. Hence, it is ordered that the instant suit is dismissed, however, without any order as to cost.

(Sikder Mahmudur Razi,J:)