TEAM NO. 22

CLAIMANT/OWNER
Zeus Shipping and Trading Company

RESPONDENT/CHARTERER
Hestia Industries

ANANYA DAS
TANVI TUHINA
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WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT
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STATEMENT OF FACTS

1. The parties in this matter are Zeus Shipping and Trading Company\(^1\) and Hestia Industries.\(^2\) The respondents are traditionally into the business of port management and tug services in Hades. However, after investment of huge sums of money, they ventured into the production of Hades Liquefied Natural Gas (HLNG). In pursuance of this new venture, on July 1, 2014, the respondent sent a request for proposal to the claimant for conveyance of HLNG from Hades to Poseidon. After negotiations between the parties, a voyage charterparty was entered into, for the use of Athena, a vessel technologically equipped to convey HLNG, carrying the Hades flag. The one point of negotiation which was highlighted was the need to have a provision that would enable arbitration on disputes which arise out of the charterparty. On July 21, 2014, the voyage charterparty was finalised and entered into.

2. The vessel arrived at the Port of Hades on October 3, 2014. After loading was completed, it set sail on October 7, 2014. However, following a coup orchestrated by the Leader of Opposition, Jacqueline Simmons with the help of General Makepeace, leader of Hades military, a presidential decree was passed ordering the coast guard to ensure the return of Athena back to the port. Upon return of the vessel to the port, the vessel was detained and not allowed to continue with its voyage. Such detention led to a claim for demurrage by claimant, from the respondent. Due to the immense delay in execution of the charterparty, the respondent claimed frustration of the charterparty.

\(^1\) Hereinafter Claimant.
\(^2\) Hereinafter Respondent.
3. Subsequently, on September 30, 2015, President Simmons tendered her resignation amidst accusations of bribery and corruption against her government. Athena was finally released by the coast guard after such resignation. The master employed tug services of Hestug for departure from the port. After the tug released Athena and the vessel set sail in open waters, its propeller shafts broke, rendering it immobile. Hestug’s tug came to its rescue and saved millions of dollars’ worth of cargo and vessel.

4. The claimant sent a notice of arbitration on November 16, 2015 to the respondent claiming demurrage for the days of detention. The respondent, in turn, claimed for a salvage reward for saving Athena from maritime peril.

ARGUMENTS ADVANCED

1. THE ARBITRAL TRIBUNAL DOES NOT HAVE THE REQUISITE JURISDICTION TO ADJUDICATE UPON THE FRUSTRATION CLAIM

5. The respondent contends that the arbitral tribunal does not have the requisite jurisdiction to adjudicate upon the frustration claim because

A) The pre-contractual negotiations have made the intentions of the parties clear as to the exclusion of the frustration claim from arbitration

B) A dispute concerning frustration does not arise under the arbitration clause

C) The issues of frustration and demurrage are claims that can be adjudicated separately at different fora and need not be heard together.
A) THE PRE-CONTRACTUAL NEGOTIATIONS HAVE MADE THE INTENTIONS OF THE PARTIES CLEAR AND THE ARBITRATION CLAUSE SHOULD BE CONSTRUED ACCORDINGLY:

6. The respondent submits that the pre-contractual negotiations have made clear the intentions of the parties and that the arbitration clause in the contract (hereafter “Clause 30”) should be construed accordingly. The Australian High Court in Codelfa Constructions v. State Rail Authority of New South Wales\(^3\) (hereafter “Codelfa”) held that in cases where a clause of a contract is ambiguous or capable of more than one meaning, then the surrounding circumstances (including pre-contractual negotiations) can be taken into account in the interpretation of the contract.\(^4\)

7. The term “arising under” in Clause 30, has demonstrated that it is capable of having multiple meanings with possibilities of wide and narrow construction. Therefore, as per Codelfa, the respondent contends that the pre-contractual correspondence can be looked into to construe the scope of the arbitration clause. The respondent submits that the letters exchanged between the parties can therefore be used for construing the scope of the arbitration clause.

B) A DISPUTE CONCERNING FRIUSTRATION DOES NOT ARISE UNDER THE CHARTERPARTY

8. The respondent contends that a dispute concerning frustration does not arise under the charterparty. The House of Lords in Fiona Trust & Holding Corporation v. Yuri Privalov\(^5\) (hereafter “Fiona Trust”) held that if the arbitration clause made it clear that some questions are out of contention from the arbitration, then those questions will not be arbitrable before the tribunal. It was further held that the true meaning of terms like “arising under” must be garnered from the intention of the parties.\(^6\)

\(^3\) 149 C.L.R. 337.
\(^4\) Ibid at 352.
\(^6\) Ibid at 43.
9. In the instant case, a charterparty was sent by the claimant to the respondent, who had specifically, in a letter dated July 16, 2014, requested that certain changes be made, and stated that these changes were non-negotiable. This involved an amendment of the dispute resolution clause of the contract (hereafter “Clause 30”), so as to narrow down its scope. The language of the contract was therefore amended by the claimant in the final charterparty that the parties entered into, dated 21 July, 2014.

10. Clause 30 of the initial charterparty read as follows:

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity, or termination, shall be referred to arbitration.”

Clause 30 of the charterparty amended upon the request of the respondent read as follows:

“Any dispute arising under this contract shall be referred to arbitration.”

11. The respondent contends that the amendment made to Clause 30 of the contract is substantial in character, as it involves the explicit removal or the words, ‘out of’, ‘in connection with’, ‘existence’, ‘validity’, and ‘termination’. The removal of the term ‘existence’, relates directly to the intention of the parties, as a claim of frustration would directly attack the existence of the contract at any given point of time.

12. Additionally, the letter dated July 16, 2014 clearly stated that the respondent wished to arbitrate issues arising out of provisions of the charterparty, such as issues about demurrage, and did not wish to arbitrate matters that relate to, but do not arise out of

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8 Ibid.
9 Moot Proposition, “Charterparty”, 45.
11 Moot Proposition, “Charterparty”, 45.
the terms of the charterparty.\textsuperscript{13} It is clear that there is no term in the charterparty that provides for frustration, and therefore the respondent further submits that the intention of both parties was clearly against arbitrating the issue of frustration.

13. Therefore, the respondent submits that as per \textit{Fiona Trust}, the intention of both parties was clearly against the arbitration of the frustration issue, and therefore, it would not arise under the charterparty.\textsuperscript{14}

\section*{C) The Questions of Frustration and Demurrage Can Be Determined Independently}

14. The respondent contends that the issues of frustration and demurrage can be determined independently of each other. In the instant case, while the issue of frustration is one that affects the \textit{presence} of a demurrage claim, it is not one that alters, in any measure, the \textit{merits} of the demurrage claim. The frustration of the contract has been alleged before any demurrage could have become due because the vessel had left the loading place, thereby bringing an end to the laytime period.\textsuperscript{15} Therefore, the issue of frustration does not directly affect the claim for demurrage, i.e. the claims of frustration and demurrage can effectively be adjudicated at two fora, the former at the civil courts of Poseidon, and the latter before the present tribunal, pending the outcome of the dispute at Poseidon.

15. The respondent therefore contends that while the arbitral tribunal has the jurisdiction to hear the issue of demurrage, it does not have the jurisdiction to admit the claim of frustration.

\textsuperscript{13} Moot Proposition, “Email from Hestia Industries to Zeus Shipping and Trading Company dated July 16, 2014”, 25.

\textsuperscript{14} \textit{Fiona Trust & Holding Corporation v. Yuri Privalov}, (2007) UKHL 40, ¶ 11

\textsuperscript{15} See Memorial on behalf of the Respondent, ¶ 2.A, 3.A \textit{et seq}.
2. THE RESPONDENT IS NOT LIABLE TO PAY DEMURRAGE TO THE CLAIMANT

16. The respondent is not liable to pay demurrage to the claimant because demurrage occurs only after expiry of laytime, provided for in the charterparty. Therefore it is submitted that the respondent is not liable to pay demurrage to the claimant because:

A) Athena had left the Loading Port
B) Laytime ended with the departure of Athena from the loading port
C) In the alternative, even if Athena had not left the loading port, claim for demurrage still does not arise.

A) ATHENA HAD LEFT THE LOADING PORT

17. The respondent submits that Athena left the port of Hades on October 7, 2014 as mentioned in point 12 of the ‘Statement of Facts in Respect of MV Athena at Hades’. The claimant has agreed that Athena was outside the territorial limits of Hades when it was intercepted by the coast guard, thus reinforcing the claim that Athena had left the loading port.

18. The claimant, being the owner of the ship, had access to the ‘Statement of Facts’. The ‘Statement of Facts’ is a document attached to a record of calculation of the laytime used and is a record of events that can affect the counting of laytime. It has long been accepted as the best evidence for the position of the vessel.

19. A reasonable man, experienced in chartering and shipping matters would immediately object to an invalid Statement of Facts. The claimant by not objecting to the

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17 Ibid.
19 The Fanis, SMA 2980 (1993) (Bulow, Siciliano, Cleveland).
‘Statement of Facts’ had committed an *estoppel by representation* and therefore cannot now claim that the vessel had not left the loading port.\(^{21}\)

**B) Laytime ended with the departure of Athena from the loading port**

20. The respondent contends that laytime ended with the departure of Athena from the loading place on October 7, 2014, pursuant to Clause 9(c)(i) of the charterparty. The clause provides that loading ends when the vessel leaves the loading place.\(^{22}\) As the vessel left the loading place on October 7, 2014,\(^{23}\) laytime ended on that same day.

21. Loading, as observed by Lord Justice Bucknill in *Argonaut Navigation Co Ltd v. Ministry of Food*,\(^{24}\) “*is not complete until the cargo is so placed in the ship that the ship can proceed on her voyage in safety.*”\(^{25}\) Furthermore, the operation of loading involves putting the cargo in a condition in which it can be conveyed by the vessel.\(^{26}\) Athena, by leaving the port had completed loading.

22. Laytime continues until loading has been completed, or until the pre-decided laytime expires, if loading operations do not reach completion before such expiry.\(^{27}\) As the loading completed on October 6, 2014, and Athena left the port on October 7, 2014,\(^{28}\) the departure was well within the laytime of 10 days provided in the charterparty,\(^{29}\) and therefore laytime had not been exceeded.

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\(^{22}\) Moot Proposition, “Clause 9(c)(i), Charterparty”, 34.

\(^{23}\) See Memorial on behalf of Respondent, ¶ 2.A *et seq*.

\(^{24}\) (1948) 82 Ll L Rep 223.

\(^{25}\) *Ibid* at 229.

\(^{26}\) *Svenssons Travaruaktiebolag v. Cliffe Steamship Co Ltd*, (1931) 41 Ll L Rep 262, 267.


\(^{28}\) Moot Proposition, “Statement of Facts in Respect of MV Athena at Hades”, 54.

\(^{29}\) Moot Proposition, “Clause 9(c)(i), Charterparty”, 34.
23. The claim of demurrage arises only if the charterer fails to load within the laytime period.\textsuperscript{30} Demurrage is the amount paid to the owner for breach of laytime\textsuperscript{31} and subsequent detention of the ship.\textsuperscript{32} Therefore demurrage can only arise if loading has not been completed within the agreed laytime. Since the respondent had finished loading within the agreed laytime,\textsuperscript{33} there can be no claim for demurrage.

C) IN THE ALTERNATIVE, EVEN IF ATHENA HAD NOT LEFT THE LOADING PORT, CLAIM FOR DEMURRAGE STILL DOES NOT ARISE

24. Laytime does not run during periods where the delay has been caused due to the ship owner’s fault.\textsuperscript{34} The owner’s default should be a breach of his obligation.\textsuperscript{35} The claimant, being the ship owner, had an obligation to carry the goods safely to the destination, pursuant to loading.\textsuperscript{36} As observed in The Fontevivo,\textsuperscript{37} any fault on part of the crew would suspend laytime.\textsuperscript{38} In the case of The Mobile Courage,\textsuperscript{39} fault of the master disentitled owners from claiming demurrage for the delay. Since the master of Athena returned to the port when he had no obligation to return to the port\textsuperscript{40} as the ship had already left the loading port,\textsuperscript{41} it is the fault of the master (ship owner) which caused the delay. Hence, due to such fault of the master, detention at the Port of

\textsuperscript{30} Bernard Eder et al., SCRUTTON ON CHARTERPARTIES AND BILLS OF LADING, “Performance of Contract: Loading”, ¶ 9-070 (Sweet and Maxwell, 22nd ed. 2011).
\textsuperscript{32} Ibid.
\textsuperscript{33} See Memorial on behalf of Respondent, ¶ 2.A et seq.
\textsuperscript{34} DGM Commodities Corp v. Sea Metropolitan S.A. (The Andra), (2012) EWHC 1984 (Comm); Compañía Crystal de Vapores v. Herman, (1958) 2 QB 196.
\textsuperscript{35} Houlder v. Weir, (1905) 10 CC 228, 236.
\textsuperscript{38} Leeds Shipping Co. v. Duncan Fox & Co., (1932) 37 Com. Cas. 213.
\textsuperscript{39} Mobil Shipping and Transporation v. Shell Eastern Petroleum (Pte) Ltd (The Mobile Courage), LMLN 202, 1 August 1987.
\textsuperscript{40} Moot Proposition, “Email from Athena to Shiops dated October8, 2014, 1800 HST”, 58.
\textsuperscript{41} See Memorial on behalf of Respondent, ¶ 2.A et seq.
Hades cannot be perceived to be included within laytime, thus defeating the claim for demurrage.

3. **THE CHARTERPARTY WAS FRUSTRATED**

25. The respondent submits that:

   A) The charterparty got frustrated because of frustrating delay
   
   B) The charterparty got frustrated because of supervening illegality
   
   C) The charterparty got frustrated because of impossibility

**A) THE CHARTERPARTY GOT FRUSTRATED BECAUSE OF FRUSTRATING DELAY**

26. The respondent submits that the interception of Athena on October 8, 2014 by the coast guard of Hades frustrated the contract as the period of detention was not clear on the day of confiscation and because, with the passing of time, the charterparty became radically different from that which was contemplated at the time of entering into it.

27. A frustrating event must be some outside event or extraneous change of situation.\(^{42}\)

    The question of frustration is a question of law,\(^ {43}\) and is said to occur when conditions arise which are fundamentally different from those contemplated by the parties.\(^ {44}\) The question of frustration depends on circumstances and not abstract considerations.\(^ {45}\) Frustration does not occur if the frustrating event is provided for in the charterparty.\(^ {46}\)

    It is submitted that a provision for frustrating delay, due to confiscation by the coast guard, had not been provided for in the charterparty.\(^ {47}\)

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\(^{43}\) Hugh Beale et al., CHITTY ON CONTRACTS, “Discharge by Frustration”, ¶ 23-021 (Sweet and Maxwell, 31st ed. 2015).

\(^{44}\) Tsakirogglou and Co Ltd. v. Nobleel Thorl GmBH, (1962) AC 93, 116.


\(^{46}\) Julian Cooke et al., VOYAGE CHARTERS, “Frustration of the Charter” ¶ 22.7 (Routledge, 4th ed. 2014).

28. The question of frustration by delay is dependent on facts of each individual case, and often it is a question of degree of whether the effect of delay suffered, and likely to be suffered, will be such as to bring about frustration of a particular adventure. In a voyage charterparty, one needs to ask how long the voyage, as a whole, will take after the change in circumstances and compare it with the time that it would have taken, as a whole, had there been no change in circumstances, as a criterion to determine the nature of contract. The respondent submits that the voyage would have taken a month, if not for the supervening event. The duration of the voyage, after the supervening event, had become indefinite, a fact which can be assessed from subsequent events.

29. There is no need for the respondent to wait for the delay to be fructified to claim frustration, as the question of frustration by delay is not necessarily a case of wait and see. Commercial men need not wait till the end of a long delay to find out, from what in fact happens, whether or not they are bound by a contract. They are, instead, entitled to act on reasonable commercial probabilities at the time when they were called upon to make up their minds. It is the probability as to the length of the deprivation which is material in determining the case of frustration. Furthermore, the respondent submits that the event was of such a kind that a reasonable view of its probable effect on the contract could be taken as soon as it occurred.

52 Emiricos v. Sydney Reid and Co, (1914) 3 KB 45, 54.
30. Furthermore, if an event causes delay in performance of contractual obligations, it is possible to say, immediately, that the prospective delay is so great that the contract is frustrated. As the return of the ship depended on considerations beyond the ken or control of both the parties, the charterparty can be deemed to be frustrated on the day it was asked by the coast guard to return back to the Port of Hades. The respondent therefore submits that it was reasonable to assume that the charterparty was frustrated from the day it was detained. This was especially because the presidential decree did not provide for any way to retain control over the vessel.

31. A commercial frustration of an adventure happens due to an unforeseen, inordinate delay without the fault of either party. An inordinate delay occurs when the job undertaken is transmuted “into a job of a different kind, which the contract did not contemplate and to which it could not apply.” The job being undertaken was for a definite voyage between Hades and Poseidon, and it is implied that the job would be completed on time. Due to the act of the coast guard, Athena could not have arrived at the port of Poseidon in time for the contemplated voyage to be completed, leading to frustration.

32. Several cases indicate that in considering whether a delay is sufficient to frustrate the commercial purpose of the charter, the length of the delay in comparison with the entire length of the chartered service is one relevant factor. The length of delay, i.e. six times the length of the chartered service defeated the object of the parties entering

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60 Yvonne Baatz, MARITIME LAW, “Charterparties”, 142 (Routledge, 3rd ed. 2014).
into the contract of affreightment. The respondent submits that as the foundation of the contract was defeated, subsequent performance would, in fact, be giving effect to a different contract. Hence, the performance of the charterparty is to be regarded as frustrated.

33. The respondent further submits that the action of the coast guard destroyed the identity of the chartered service and made the charterparty, as a matter of business, a contract totally different from what had been contemplated. This was because of the stagnation in the performance of the charterparty for a period of time which was wholly indefinite.

34. The respondent submits that the claimant cannot take the defence of foreseeability. The degree of foreseeability required to exclude a frustrating event is high, and the burden is on the party claiming foreseeability to prove it. The respondent submits that the actions of the coast guard were not foreseeable at all. This can be observed by virtue of the fact that the coast guard allowed for loading even during the protests, and also granted permission to leave the loading port.

B) THE CHARTERPARTY GOT FRUSTRATED BECAUSE OF SUPERVENING ILLEGALITY

35. The charterparty is frustrated on account of the presidential decree which made the performance of the charterparty illegal. A charterparty is frustrated if a supervening act makes the performance of the charterparty illegal, and the presidential decree if

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64 Tatem Ltd. v. Gamboa, (1939) 1 KB 132, 139 & 144.
66 Ibid.
69 Ralli v. Compania Naviera Sota y Aznar (1920) 2 KB 287; Société Co-opérative Suisse v. La Plata (1947) 80 LILR 530.
valid would make the performance of the charterparty illegal, and it is submitted that the presidential decree is illegal.

B.1) THE PRESIDENTIAL DECREE IS LEGAL

36. It is submitted that the decree passed by the President was valid and binding. The wide ranging powers of the executive\(^{70}\) vest it with inherent powers to maintain peace in the state,\(^{71}\) enabling the President, the head of the executive\(^ {72}\) to take action for maintenance of peace.\(^ {73}\) Presidential interference in private interests is considered acceptable in order to maintain peace, especially when the legislature is unable to remedy the situation.\(^ {74}\) This higher degree of power vested in the President during emergencies is a phenomenon witnessed in many countries over the world.\(^ {75}\) The violence that gripped Hades along with the standstill in Parliament made it incumbent upon the President to act and pass the decree she did.

37. If a statutory power in existence at the time of making the contract is subsequently exercised to render illegal the performance of the contract, the contract is frustrated.\(^ {76}\) It is submitted that the power to confiscate the vessel existed with the government of Hades at the time of making the contract.\(^ {77}\) If a presidential decree, which is a form of prerogative power, affects the legal situation of the contracting parties, then the contract is deemed to be frustrated.\(^ {78}\)

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\(^{70}\) Rai Sahib Ram Jawaya Kapur v. The State Of Punjab, AIR 1955 SC 549.


\(^{73}\) Youngstown Sheet & Tube Co. v. Sawyer, (1952) 343 U.S. 579.

\(^{74}\) Ibid.

\(^{75}\) At 651.

\(^{76}\) Hugh Beale et al., CHITTY ON CONTRACTS, “Discharge by Frustration”, ¶ 23-025 (Sweet and Maxwell, 31st ed. 2015).


\(^{78}\) Hugh Beale et al., CHITTY ON CONTRACTS, “Discharge by Frustration”, ¶ 23-021 (Sweet and Maxwell, 31st ed. 2015).
38. It has been established that supervening illegality frustrates a contract,\textsuperscript{79} and it is submitted that the actions of the coast guard pursuant to the presidential decree led to an illegality leading to frustration of the contract.\textsuperscript{80}

\textbf{C) The Charterparty was frustrated because of Impossibility}

39. The doctrine of frustration by illegality follows that performance must be impossible\textsuperscript{81} and not merely difficult,\textsuperscript{82} or only possible in some other way than that envisaged by the parties when they entered into the contract.\textsuperscript{83} The performance of the charterparty became frustrated due to the Presidential decree as it made the performance of the charterparty legally impossible.

40. Furthermore, detaining the ship \textit{strikes at the root of the agreement}\textsuperscript{84} as transporting goods by Athena is at the root of the charterparty.\textsuperscript{85} Thus it is argued that the performance of the voyage charterparty became impossible as there was no way in which the charterparty could be fulfilled.

41. In the alternative, if the claimant argues that there was an express provision in the charterparty, the respondent submits that an express provision in the contract cannot exclude frustration by supervening illegality when it is against public policy.\textsuperscript{86} In cases involving frustration of a charterparty through illegality, the adjudicatory body looks at the public interest to adjudicate.\textsuperscript{87} The presidential decree which led to the

\textsuperscript{79} Davis Contractors v. Fareham UDC, (1956) AC 696, 728-729.
\textsuperscript{81} Fibrosa Spolka Akcyjna v. Fairbairn, Lawson, (1943) AC 32, 40.
\textsuperscript{83} \textit{Ibid.}
\textsuperscript{84} J. Beatson et. al., \textit{Anson’s Law of Contract}, “Performance and Discharge”, 483 (Oxford University Press, 29th ed. 2010).
\textsuperscript{86} Erter Bieber & Co. v. Rio Tinto Co Ltd. (1918) A.C. 260.
frustrating event was based on *special considerations of public policy*,\(^88\) i.e. public considerations of environmental damage.\(^89\) Therefore the respondent submits that the charterparty was frustrated.

42. The respondent concludes the argument of frustration and submits performance had been rendered either impossible or so radically different from what had been initially intended that it would be unjust to hold the parties bound to the terms of the charterparty.\(^90\) The change if undertaken would, if performed, be a different thing from that contracted for.\(^91\)

4. THE SERVICES PROVIDED BY HESTUG TO ATHENA PURSUANT TO THE FAILURE OF ATHENA’S PROPELLER SHAFTS WERE SALVAGE SERVICES

43. The services provided by Hestug to Athena, pursuant to the failure of its propeller shafts, were salvage services because:

A) Athena was in a state of maritime peril from which it needed to be rescued

B) Salvage services provided by Hestug do not fall under the exception of self-interest

C) Awarding salvage reward encourages vessels to rescue maritime property in peril and hence it should be awarded to the respondent for such rescue

A) ATHENA WAS IN A STATE OF MARITIME PERIL FROM WHICH IT NEEDED TO BE RESCUED

44. Salvage services are considered to be rendered by a volunteer whenever maritime property is saved from danger.\(^92\) A volunteer is considered to have provided salvage

\(^88\) *Ibid* at 882.
\(^90\) Ocean Tramp Tankers Corporation v. V/O Sovfracht (The Eugenia), (1963) 2 Lloyd’s Rep 381, 390.
\(^91\) Davis Contractors v. Fareham UDC, (1956) AC 696, 729.
\(^92\) Salvage Convention, 1989, Article 1.
services to a vessel only when it does not have a duty, contractual\textsuperscript{93} or otherwise,\textsuperscript{94} to protect the ship.

45. In order to gauge whether services rendered were, in fact, salvage services or not, the judicially evolved ‘prudent master test’ can be used.\textsuperscript{95} Under this test, it is seen whether a prudent master, in prevailing facts and circumstances, would have perceived danger towards maritime property to be such that s/he would have accepted salvage services\textsuperscript{96}. The danger perceived to the maritime property need not be immediate, it can be anticipatory, too.\textsuperscript{97} Moreover, the proof sought for is not absolute danger, but a ‘state of difficulty and reasonable apprehension’.\textsuperscript{98}

46. In the case of Athena, after the release of towlines both of its propeller shafts broke,\textsuperscript{99} leaving it in physical danger in open waters. The failure of propeller shafts rendered the vessel immobile. It was unable to move without assistance and would have, thus, remained, stranded. Such immobilisation clearly created a state of difficulty for Athena. In fact, immobility of a vessel in open waters, has, authoritatively, been held to constitute as danger that would require rendition of salvage services.\textsuperscript{100} Without any mode of propulsion, the vessel was stranded as a floating hulk\textsuperscript{101} in open waters. Such immobility of a vessel, rendering it stranded in open waters made it a fit case for Athena to be provided with salvage services. The only manner in which it could have continued its journey was by way of the rescue effort provided by Hestug.

\textsuperscript{93} The Vrede, (1861) 167 E.R. 143, 144.
\textsuperscript{94} Simon Rainey, THE LAW OF TUG AND TOW AND OFFSHORE CONTRACTS, “Towage and Salvage”, 408 (Routledge, 3\textsuperscript{rd} ed. 2013).
\textsuperscript{95} The Annapolis & The Golden Light & The H.M. Hayes, (1861) 167 E.R. 150, 161.
\textsuperscript{96} Ibid at 156.
\textsuperscript{97} Owners of Cargo Lately Laden on Board the Troilus v. Owners, Masters and Crew of the Glenogle (The Troilus and the Glenogle), (1951) A.C. 820, 823.
\textsuperscript{98} The Phantom v. Hurrell (The Phantom), (1865-67) LR 1 A&E 58, 60.
\textsuperscript{100} Owners of Cargo Lately Laden on Board the Troilus v. Owners, Masters and Crew of the Glenogle (The Troilus and the Glenogle), (1951) A.C. 820.
\textsuperscript{101} Owners of Cargo Lately Laden on Board the Troilus v. Owners, Masters and Crew of the Glenogle (The Troilus and the Glenogle), (1951) A.C. 820, 827.
47. In addition to this, no contractual duty was owed by Hestug towards Athena at the time it rescued the vessel. The towage services being provided by Hestug to Athena ended with the release of towlines.\textsuperscript{102} It is established that unless there is express stipulation in the towage contract, it ends with the release of towlines.\textsuperscript{103} Subsequent services rendered by Hestug were purely voluntary in nature and were not arising from any contractual duty owed with respect to Athena.

48. It is true that separation of the tug and tow does not necessarily imply an end of the towage contract between the two.\textsuperscript{104} However, such separation is considered to be within the towage contract only if it happens due to some accident or some other circumstance,\textsuperscript{105} which does not substantially change the nature of contract that was entered into, initially.\textsuperscript{106} However, that was not the case with Athena, where towlines were released because of completion of tug services by Hestug. The towage contract ended upon delivery of Athena to open waters. The subsequent services that were, thus, provided Hestug’s tug to Athena were purely voluntary in nature.

49. Hence, Hestug, by providing voluntary services to the vessel in maritime peril, consequently saving ‘millions of dollars’ worth of cargo and vessel’, provided salvage services and entitled itself to salvage reward.

\textbf{B) SALVAGE SERVICES PROVIDED BY HESTUG DO NOT FALL UNDER THE EXCEPTION OF SELF-INTEREST}

50. One of the situations where a claimant is disentitled from claiming salvage rewards for services rendered is when they are performed out of pure self-interest.\textsuperscript{107} This is

\textsuperscript{103} The Clan Colquhoun, (1936) 54 L1 L Rep 221.
\textsuperscript{104} The North Goodwin No.16, (1980) 1 Lloyd's Rep. 71, 74.
\textsuperscript{105} The Liverpool, (1893) P. 154, 157.
\textsuperscript{106} The I. C. Potter, (1869-72) L.R. 3 A. & E. 292.
\textsuperscript{107} Simon Baughen, SHIPPING LAW, “Salvage” 282, 290 (Routledge, 6th ed. 2015)
because there is no reason for awarding a party for services rendered to save itself. However, in performance of such services, if the claimant adopts a method which saves maritime property also, then it would be perceived as rendition of salvage services. Hestug, by rendering salvage services to the Athena, did not only save the cargo on board, it also saved the vessel worth millions of dollars. By virtue of the fact that it saved maritime property, the respondent is entitled to salvage reward.

51. The self-interest defense is also inapplicable if it is perceived that, irrespective of the motive of the claimant, services provided went beyond what was expected of such ‘interested’ claimant. It has been held that crew members or cargo owners can provide salvage services to the vessel if in providing such services they went beyond the ambit of their duties. As charterers and mere cargo owners, there was no duty upon the respondent to actively provide services to protect Athena when it was in danger. Such rendition of services was beyond what was expected of it as a charterer and cargo owner. The duty of the charterer, was in no way, envisaged to include a rescue effort of the vessel from peril.

52. It has been held that owners of a vessel rendering salvage services, being also charterers of the vessel receiving salvage services, are not debarred from claiming salvage services till the time the charterparty concerned is not a demise charterparty. Only when the charterparty divests ship owners of the possession and control of the vessel, in favour of the charterers, for the duration of the charterparty,

108 The Lomonosoff, (1921) P. 97, 103.
112 The Collier, (1865-67) L.R. 1 A. & E. 83.
would an argument of self-interest disentitle claimants from being awarded salvage rewards.\textsuperscript{113}

53. One of the other reasons for the self-interest exception is that the classes of service providers which have a close enough connection with the vessel so that they may be able to create danger for the vessel in order to, solely, gain a salvage reward are to be prevented from carrying out any such designs.\textsuperscript{114} This is ensured by disabling them from claiming rendition of salvage services. No such designs were evident, with respect to the respondent that should disentitle it from claiming salvage reward.

54. To further entrench the concept of salvage and encourage parties to salvage vessels that need rescuing, it has been established that the onus of claiming exemptions like self-interest would lie on the salved vessel.\textsuperscript{115} Thus, if claimant seeks to claim that the respondent should not be awarded salvage reward because it acted in self-interest, the onus of proving self-interest and claiming exemption by virtue of such self-interest would lie upon the claimant itself.

C) AWARDING SALVAGE REWARD ENCOURAGES VESSELS TO RESCUE MARITIME PROPERTY IN PERIL

55. The public policy sought to be encouraged by reward of salvage is preservation of maritime property in peril.\textsuperscript{116} Judicial authorities have conclusively held that ‘salutary exertions’ of those saving lives and property at sea should be commensurately rewarded.\textsuperscript{117} Awarding salvage reward is one of the mechanisms that ensure that vessels aren’t deterred from providing salvage services that need rescuing. If such monetary incentives aren’t provided to salving vessels, no vessel will have any

\textsuperscript{113} Ibid.
\textsuperscript{114} Yvonne Baatz, \textit{MARITIME LAW}, “The Liabilities of the Vessel”, 223, 237 (Routledge, 3\textsuperscript{rd} ed. 2014).
\textsuperscript{115} The Sappho, (1930) 37 Ll. L. Rep. 122, 147.
\textsuperscript{116} Simon Baughen, \textit{SHIPPING LAW}, “Salvage” 282, 286 (Routledge, 6\textsuperscript{th} ed. 2015).
\textsuperscript{117} The Sappho, (1930) 37 Ll. L. Rep. 122, 147.
incentive to deviate from its intended course and save vessels in need. Keeping such policy in mind, Hestug should be rewarded for its efforts and services rendered to Athena that saved millions of dollars’ worth cargo and vessel.

**PRAYER**

In the light of the issues raised, arguments advanced and authorities cited, it is humbly requested that this Hon’ble Tribunal may be pleased to adjudge and declare:

1. That the arbitral tribunal does not have the requisite jurisdiction to adjudicate upon the frustration claim
2. That the respondent is not liable to pay demurrage to the claimant;
3. That the charterparty between the claimant and respondent got frustrated due to issuance of the Presidential Decree;
4. That the services provided by Hestug to Athena pursuant to the failure of Athena’s propeller shafts were salvage services

ALL OF WHICH IS RESPECTFULLY SUBMITTED

COUNSELS FOR THE RESPONDENT