

BACKGROUND INFORMATION

Air Petro Pvt. Ltd. (“**Seller**”) and **Easy Fly Ltd.** (“**Buyer**”) executed an Aviation Fuel Supply Agreement on 1 January 2018 (“**Agreement**”)¹ whereby the Seller agreed to sell and deliver or cause to be sold and delivered and Buyer agreed to purchase, receive and pay for the aviation fuel (“**fuel**”) for consumption in the Buyer’s aircrafts as detailed in the Agreement.

As per Article 8 of the Agreement, the Buyer had the obligation to send a demand order by the 7th day of each month and the Seller was obligated to supply the fuel as per the demand order by 30th day of the month. The price rate of the Fuel for the purpose of sale to the Buyer was to be determined as per the global fuel prices as on the 15th day of every month.

In order to ensure that the supply chain is not disrupted and delivery is made on time; the Seller had also executed a supply agreement with the fuel manufacturing company named “**Big Petro**” and also executed a charter agreement with a fuel transport company named “**Mavrick Transports**”.

The modalities of the sale were:

- a. The Buyer sends the demand order by the 7th day of the month to the Seller;
- b. The Seller raises a supply request to Big Petro by the 8th day. These supply requests are not limited to fuel for the Buyer but also includes other products such as diesel, LPG and petrol wax for other customers of the Seller.
- c. Big Petro confirms the order by the 9th day and the price rate for sale to the Seller is fixed as per the global prices on the 9th day of the month.
- d. The Seller then processes the fuel supplied by Big Petro and converts it into aviation fuel and the aviation fuel is then transported via Mavrick Transport by 30th day to all the collection points of the Buyer.
- e. The Buyer maintains a storage capacity reservoir of 2,50,000 litres which is split across 5 locations.

THE DISPUTE

On the 7 March 2020, the Buyer raised a demand order of 2,00,000 litres of aviation fuel from the Seller. The Seller subsequently raised an order of unprocessed fuel from Big Petro and the order was confirmed as per the prevailing prices of 9 March 2021. The unprocessed fuel was supplied to the Seller, who in turn processed and dispatched the fuel to the Buyer. However, due to the outbreak of Covid-19 pandemic, the Government of Taurad (“**GOT**”) in the evening of 22 March 2020 issued a nation-wide lockdown order (“**Lockdown**”). Accordingly, the flight operations of the Buyer as well as all the other airlines were completely suspended till further notice.

On 23 March 2020, the Buyer had sent the cancellation order to the Seller stating that on account of the suspension of flights it does not require any further fuel. The Seller reverted via email stating that order is already dispatched and in transit. The Seller suggested that since the Buyer maintains the reservoir of 2,50,000 litres, it can store the consignment and use it on a later date when the requirement comes. The Seller stated that this would not cause any prejudice to the Buyer and loss of both sides will be mitigated.

¹ Certain clauses of the Agreement have been reproduced in Annexure I

While the parties were negotiating the deadlock, on 25 March 2020, Mavrick informed the Seller that the Buyer has refused to take the delivery of consignment and therefore Mavrick is forced to park the oil takers outside the collection points. Mavrick stated that the Seller will be forced to bear the demurrage charges due to the delay.

The Seller immediately informed the Buyer regarding the same and stated that if the Buyer does not accept the consignment, the same would amount to breach of the Agreement and further, the demurrage charges if incurred would be recoverable from the Buyer in terms of the Agreement and law.

On 30 March 2020, Mavrick informed that almost all the consignments have reached the collection points and if the Buyer does not accept the consignment, Mavrick will be forced to return the consignment to Seller and Seller would be liable to reimburse Mavrick demurrage and cost of transportation back to supply depot. Seller informed Mavrick that fuel cannot be returned as there is not enough storage space. Seller urged Mavrick to wait for another (seven) 7 days so that the situation is resolved.

The situation between the parties is as follows:

- f. The Seller can store a maximum of 80,000 litres of the fuel because of the storage constraints.
- g. Buyer can store only 100,000 Litres of fuel now as there is no usage. Further, purchasing the fuel is not economically viable for the Buyer as it is incurring huge losses due to cancellations of flights. Buyer has to maintain cash reserves for giving refunds to cancelled flights and pay salaries to the staff and crew.
- h. Mavrick has an incurring cost of Rs. 20 Lakhs per day for keeping the oil takers on hold. However, due to lack of demand for oil tankers such loss can be mitigated.
- i. There are certain players which can store fuel on payment of daily rent. However, parties are currently not in agreement on sharing the rent.
- j. Market intelligence suggests that fuel prices will drop to around 30% for April and May as long as lockdown continues.
- k. Seller has requested Buyer to resolve the issues amicably otherwise it shall be constrained to encash the Bank Guarantees worth Rs. 1.15 Crore.

On 7 April 2020, the Seller and the Buyer have agreed to hold a negotiation meeting on 9 April 2020 at 10:00 AM to attempt to resolve the dispute amicably as per the dispute resolution clause and decide on the future course of action.

ANNEXURE I

Aviation Fuel Supply Agreement between Air Petro Pvt. Ltd. and Easy Fly Ltd.

[Omitted]

Article 20 - Dispute Resolution Clause:

In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If they do not reach settlement within a period of 30 (thirty) days, then, upon notice by any party to the other(s), any unresolved controversy or claim shall be settled by arbitration seated in Taurad by a sole arbitrator.

[Omitted]

Article 21 - Force Majeure Clause:

In addition to any waivers (arising out of the same or other causes) provided by operation of law, no failure or omission by either party to carry out or observe any of the provisions of the Agreement shall give rise to any claim against that party, or be deemed to be a breach of the Agreement, if the same shall arise out of Force Majeure event. A Force Majeure event for the purposes of this Agreement means any cause not reasonably within the control of the parties, including such causes as labour disputes, strikes, governmental intervention, or the party's response to the insistence of any governmental instrumentality or person purporting to act therefore, terrorism, wars, civil commotion, hijacking, fire, flood, accident, storm or any act of God.

[Omitted]