<u>Case commentary on the Singapore High Court decision of *Shri Bajrang Power and Ispat Ltd v Steel Corp Ltd* [2025] SGHC 107</u>

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<u>Introduction</u>

In ***Shri Bajrang Power and Ispat Ltd v Steel Corp Ltd* [2025] SGHC 107** (the "Judgment"), the Singapore High Court had the occasion to consider the application of Section 51(3) of the Sale of Goods Act 1979 (2020 Rev Ed) ("SGA") which deals with damages for non-delivery (the "Default Measure") as well as the relevance of the principles of mitigation in displacing the Default Measure.

For ease of reference Section 51 of SGA is reproduced as follows:

> *51.—(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.*
> *(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.*
> *(3) Where there is an available market for the goods in question, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered or (if no time was fixed) at the time of the refusal to deliver.*

<u>Underlying Facts</u>

The claimant is an Indian-incorporated company carrying on the business of manufacturing, producing, processing, importing and exporting metals, amongst other things. It specialises in producing a diverse range of steel products. The defendant is a company incorporated in the United Kingdom, operating as a wholesale trader of metals and metal ores.

On 17 July 2023, the parties entered into a sale and purchase agreement (the "Agreement"). Under the Agreement, the defendant was to sell and deliver to the claimant 30,000 metric tons of steel making pig iron at the unit price of US$381 per metric ton, with the total contract sum being US$11,430,000. They agreed on the chemistry and specifications of the composition in the steel making pig iron. The shipment date in the Agreement was stipulated as 15 August 2023, from the Black Sea Port in Turkey to the Vizag Port in India.

The defendant did not ship the steel making pig iron by 15 August 2023. Six days later, the claimant wrote to the defendant informing it that the agreed shipment date had passed and requested the defendant to expedite the nomination of the carrying vessel. The defendant responded a day later, explaining that the delays were "due to uncontrollable circumstances which unfolded in the black sea region" and assured the claimant that it was working to fulfil the order. On 14 September 2023, the defendant told the claimant that it was ready to supply the steel making pig iron but at a higher price of US$420 per metric ton. One week later, the defendant informed the claimant that a force majeure event had occurred, rendering its performance under the Agreement impossible. The claimant then issued a letter of demand to the defendant on 25 September 2023 ("LOD"), and the defendant responded on the same day to close the matter "without further recourse".

The parties accepted that the Agreement was terminated on 25 September 2023. Due to the defendant's non-delivery, the claimant turned to using steel scrap (ie, an alternative to pig iron in steel manufacturing) for its steel production.

The claimant brought this action on 12 July 2024 and entered default judgment against the defendant for failing to file a notice of intention to contest or not contest on 4 December 2024. The Judgment was the Court's decision regarding the assessment of damages payable by the defendant to the claimant.

Whilst the Agreement expressly provided for English law to govern any dispute arising out of or under the Agreement, the Court applied Singapore law because neither party made submissions on the applicability of foreign law and instead, they both assumed that the SGA provisions apply.

<u>The Decision</u>

The parties do not dispute that there was an "available market" for the purposes of Section 51(3) of SGA and that the relevant period is 14 September 2023 to 25 September 2023.

Although the Court also accepted that there was an available market, the Court found that the principles of mitigation affect how damages should be calculated in this case, making the Default Measure inappropriate as the measure of damages. Nevertheless, the Court first proceeded to consider the parties' submissions on the Default Measure before addressing how and why the principles of mitigation displaced the Default Measure on the facts of the case.

(a) Findings on the Default Measure

With regards to the Default Measure, the claimant had submitted that the Indian market constituted the relevant "available market". This was supported by the parties' joint expert, Mr James King's evidence that the quantity of pig iron available from Indian producers was sufficient to constitute a viable source of supply for the claimant.

Conversely, the defendant argued that the "available market" comprised foreign sources of pig iron (including South Africa and Russia) and excluded the Indian market. On this basis, the defendant submitted that the claimant is not entitled to any damages at all because the claimant "utterly failed" to mitigate its loss by making an unreasonable decision to purchase steel scrap from India instead of cheaper overseas sources of pig iron. The defendant's arguments were however rejected by the Court, which held that the Indian market was the more appropriate "available market".

The Court held at [16] that the determination of the "available market" for the purposes of Section 51(3) of the SGA must be considered from the buyer's perspective, taking into account not just the theoretical availability of goods, but also the commercial realities faced by the buyer. Although the defendant is correct to say that foreign sources of pig iron existed at lower prices, this does not mean, from the claimant's perspective, that they were therefore part of the relevant available market

The Court accepted the claimant's explanations that it was more than reasonable for it to have sought substitutes in the Indian market based on the following reasons:

(i) The claimant's furnaces ran perpetually to manufacture a diverse range of steel products, thus it was crucial that they received an uninterrupted supply of raw materials.
(ii) Furthermore, the claimant has always sourced its supply of pig iron from the Indian market and the Agreement was the first and only time it had tried to buy pig iron from abroad.
(iii) Mr King's expert report also states that India was a "very large producer of pig iron" and imports of pig iron into India in 2022 only accounted for 0.12% of the total consumption of pig iron in India. This suggests that India was largely self-sufficient and that domestic sourcing was the standard practice.

On the mitigation point, the Court held that the duty to mitigate does not require a party to pursue the lowest possible price at the expense of commercial reasonableness, nor does it oblige the party to go hunting all over the globe for replacement goods. The duty to mitigate has its limits and the reasonableness inquiry is ultimately a factual one. In this case, sourcing replacements from the Indian market would have been commercially reasonable. The price difference between Indian and foreign sources must be viewed in light of the additional risks and uncertainties associated with overseas procurement. These included potential shipping delays, customs clearance issues and the uncertainty of dealing with unfamiliar suppliers.

(ii) Reasons why the Default Measure was displaced

The Court was however of the view that calculating the damages based on the difference in the market price of pig iron in India and the contract price under the Agreement would give the claimant more than its true loss.

As a starting point, it is trite that an innocent party may not recover for losses that he had avoided through mitigation.

Following the termination of the Agreement, the claimant had made a commercial decision to buy steel scrap as a substitute for pig iron. The steel scrap was more expensive than the contract price for pig iron under the Agreement but cheaper than the market price of pig iron from India. Since the claimant purchased steel scrap at a lower price than the market price for pig iron in India, the Court held that this mitigation should form the basis for calculating damages rather than the theoretical market difference.

As such, the Court found that the claimant ought to be compensated only for the losses it incurred from having to purchase steel scrap from India.

The usage of steel scrap involved the purchase of calcined petroleum coke and metallurgical coke to get carbon, which the claimant would otherwise have received from pig iron. Taking into account all the costs involved in using steel scrap as a substitute for pig iron, the cost of production was approximately US$35 more for each metric ton. This amounts to US$1,050,000 for the replacement of 30,000 metric tons of steel making pig iron.

The Court therefore gave judgment for the claimant for US$1,050,000 plus interests.

Comments

This author observes that in relation to the Court's finding that the Indian market was the more appropriate "available market" for the purposes of the Default Measure, this is in line with fairly settled legal propositions.

An available market has been said a market which either is or is deemed to be available to the buyer in the sense that he can reasonably be expected to have immediate recourse to it at the requisite time and place if the seller fails to tender the goods on the due delivery date and it must be available to the buyer in the sense of being within reasonable geographical access to him and capable of being reached immediately after the contractual time for delivery has elapsed. (see ***Goode on Commercial Law (5th Edition)*** at [14.52] and [14.53]).

In this case, the goods were to be delivered in India, and applying the aforesaid propositions, the place at which the claimant would be expected to have immediate recourse would be the market in India, assuming there was an available market in India for steel making pig iron, which there was.

The Court's reasoning in the Judgment merely reinforced the rationale underpinning the aforesaid propositions. The claimant is not obligated to go hunting around the globe even if the prices elsewhere may be cheaper.

Where the claimant has actually mitigated his losses by purchasing a replacement, the position would be different in that the value at which the claimant mitigated his losses will displace the "market value" in the Default Measure (the "Replacement Proposition"). This is uncontroversial. In the UK Supreme Court decision of ***Bunge SA v Nidera BV (formerly***

Nidera Handelscompagnie BV)* [2015] Bus LR 987** (which was cited and relied on by the Court in the Judgment), Lord Sumption JSC stated *inter alia* at [17] that "*Normally, however, the injured party will be required to mitigate his loss by going into the market for a substitute contract as soon as is reasonable after the original contract was terminated.* ***Damages will then be assessed by reference to the price which he obtained" (emphasis is mine).

This is a fair outcome in that damages for breach of contract are meant to be compensatory in nature and should not result in a windfall to the claimant (see the House of Lords decision in House of Lords in ***The Golden Victory*** **[2007] 2 AC 535**). That the claimant should not obtain a windfall is uncontroversial and also applies to tortious claims such as a claim in conversion (see the Singapore Court of Appeal's decision in ***Marco Polo Shipping Company Pte Ltd v Fairmacs Shipping & Transport Services Pte Ltd*** **[2015] SGCA 44**).

The fairness of the Replacement Proposition is further underscored in that it also cuts both ways and the claimant may be entitled to rely on a value higher than the market value if the value of the replacement goods is higher than the market value of the goods, subject to whether steps being taken in mitigation were reasonable (see the Singapore High Court decision in ***Apex Energy International Pte Ltd v Wanxiang Resources (Singapore) Pte Ltd*** **[2020] SGHC 138**)