IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 107

Originating Claim No 529 of 2024
(Assessment of Damages No 3 of 2025)

Between

Shri Bajrang Power and Ispat Limited

… *Claimant*

And

Steel Corp Limited

… *Defendant*

JUDGMENT

[Damages — Compensation and damages]
[Damages — Measure of damages — Contract]
[Damages — Mitigation — Contract]

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Shri Bajrang Power and Ispat Ltd
v
Steel Corp Ltd

[2025] SGHC 107

General Division of the High Court — Originating Claim No 529 of 2024
(Assessment of Damages No 3 of 2025)
Choo Han Teck J
23 April, 20 May 2025

6 June 2025 Judgment reserved.

Choo Han Teck J:

1 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.

2 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.

According to Mr Ashutosh Goel, the claimant's Chief Executive Officer, the supply of steel making pig iron was intended for multiple uses, including resale in the Indian market, the claimant's own consumption, or a combination of both.

3 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".

4 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. Mr Goel claims that the claimant purchased 28,817 metric tons of steel scrap from the Indian market between September 2023 and August 2024.

5 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. This is my decision regarding the

assessment of damages payable by the defendant to the claimant under that judgment.

6 The claimant's position is that it is entitled to damages under s 51(3) of the Sale of Goods Act 1979 (2020 Rev Ed) ("SGA"), or in the alternative, s 51(2) of the SGA. This is because the Agreement falls within the definition of a "contract of sale of goods" under s 2(1) of the SGA. The relevant provisions are 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.

7 This case concerns an international sale of goods between parties from different overseas jurisdictions, with shipment from Turkey to India. The Agreement expressly provides for English law to govern any dispute arising out of or under the Agreement, and the Singapore courts to have exclusive jurisdiction. Strictly speaking, the SGA should not apply to an international contract that by its terms stipulated English law to be the applicable law. However, neither party made submissions on the applicability of foreign law and instead, they both assumed that the SGA provisions apply. In any event, regardless of whether the matter is governed by the SGA, the English Sale of Goods Act 1979, the United Nations Convention on Contracts for the International Sale of Goods or general common law principles, the outcome

would likely be the same. The contractual principles of compensation and mitigation are common to all these legal frameworks.

8 Indeed, the provisions under the SGA largely embody the common law position on damages for breach of contract. This is clear from *Bunge SA v Nidera BV (formerly Nidera Handelscompagnie BV)* [2015] Bus LR 987 ("*Bunge v Nidera*") at [16], in which Lord Sumption JSC explained, in reference to ss 51(2)–(3) of the English Sale of Goods Act 1979 (which is *in pari materia* with ss 51(2)–(3) of the SGA), that:

> … Section 51(2) states the compensatory principle in the context of a seller's non-delivery. Subsection (3) states the prima facie measure of damages where there is an available market, but it is not so much a rule as a technique which is prima facie to be treated as satisfying the general principle expressed in subsection (2).

9 The claimant relies on *Swiss Singapore Overseas Enterprises Pte Ltd v Exim Rajathi India Pvt Ltd* [2010] 1 SLR 573 ("*Swiss Singapore*"), which concerns the assessment of damages due to be paid to the seller as a result of the buyer's breach. *Swiss Singapore* sets out at [66] the interaction between ss 50(2) and 50(3) of the Sale of Goods Act (Cap 393, 1999 Rev Ed), which mirror ss 51(2) and 51(3) of the SGA. The claimant contends that these principles ought to apply in the context of assessing damages due to be paid to the buyer because of the seller's breach. Therefore, where there is an available market, s 51(3) applies; and where there is no available market, the general principle under s 51(2) applies.

10 An "available market" refers to the availability of buyers and sellers, and their ready capacity to supply or to absorb the relevant goods: see *Marco Polo Shipping Co Pte Ltd v Fairmacs Shipping & Transport Services Pte Ltd* [2015] 5 SLR 541 at [30(b)]. This is a factual inquiry and depends on the nature of the

product, the quantities involved, the available sources of supply, the timeframe involved and the prices and price movements: see *Panwah Steel Pte Ltd v Burwill Trading Pte Ltd* [2006] 4 SLR(R) 559 at [34].

11 The parties do not dispute that there was an "available market" and that the relevant period is 14 September 2023 to 25 September 2023. The defendant also agrees with the claimant's analysis of ss 51(2) and 51(3) of the SGA. Although I accept that there was an available market, I find that the principles of mitigation affect how damages should be calculated in this case, making s 51(3) of the SGA inappropriate as the measure of damages. Nevertheless, I shall address the parties' submissions on s 51(3) of the SGA.

12 The claimant's counsel submits that the Indian market constituted the relevant "available market". This is 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's counsel argues 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's counsel submits 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.

13 In this regard, the defendant cites *The "Asia Star"* [2010] 2 SLR 1154 ("*Asia Star*") at [22]–[24] for the proposition that the innocent party has a duty to take all reasonable steps to mitigate the loss consequent on the defaulting party's breach, and cannot recover damages for any loss which it could have avoided but failed to avoid due to its own unreasonable action or inaction. The

defendant relies on Mr King's expert report which states that the market price of pig iron from India was US$468.51 per metric ton at the relevant period. This was significantly more expensive than pig iron from South Africa (US$371.77 per metric ton) and pig iron from Russia (US$397.03 per metric ton). The defendant emphasises that the pig iron from South Africa was in fact, even cheaper than the contract price of US$381 per metric ton under the Agreement. Accordingly, counsel submits that there was no reason for the claimant to buy from Indian suppliers.

14 The claimant says 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: see *Asia Star* at [47]. The claimant explains that its furnaces ran perpetually to manufacture a diverse range of steel products, thus it was crucial that they received an uninterrupted supply of raw materials. Furthermore, it 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. 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. Therefore, the claimant says that it was more than reasonable for it to have sought substitutes in the Indian market.

15 In response, the defendant says that the claimant's alleged need for timely raw material supply is unsubstantiated, and that there is no evidence of this urgency from the claimant's LOD. Additionally, that the delay in procuring steel scrap until nearly a month after termination of the contract undermines the

claimant's claim of urgency. The defendant also says that the claimant knowingly chose more expensive local suppliers for greater supply certainty and are now seeking to recover this self-imposed "premium" from the defendant.

16 The determination of the "available market" for the purposes of s 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.

17 In my view, the Indian market was the more appropriate "available market" for the reasons outlined above (see [14]). The evidence shows that the claimant acted promptly in attempting to resolve the situation, first by seeking expedition of delivery and subsequently searching for substitutes for the pig iron. The LOD served to notify the defendant of its breach and demand performance, as well as explicitly preserve the claimant's rights and remedies. The period between the defendant's final refusal to perform and the claimant's procurement of replacement goods was also reasonable given the claimant's need to assess its options and make alternative arrangements.

18 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. The defendant's characterisation of this as a self-imposed "premium" misses the point. The premium, if any, reflects the real commercial value of supply certainty and reliability. As was the case here, the claimant's decision to deal with a new overseas supplier came at a cost. It was therefore entirely reasonable for the claimant to source for local alternatives after the defendant's breach.

19 However, I am 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. 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. It is trite that an innocent party may not recover for losses that he had avoided through mitigation. Since the claimant purchased steel scrap at a lower price than the market price for pig iron in India, this mitigation should form the basis for calculating damages rather than the theoretical market difference.

20 This position is supported by *Bunge v Nidera* at [17] (which was cited by the claimant), where Lord Sumption JSC held that:

> … [W]here there is an available market for the goods, the market price is determined as at the contractual date of delivery, unless the buyer should have mitigated by going into the market and entering into a substitute contract at some earlier stage: *Garnac Grain Co Inc v HMF Faure & Fairclough Ltd* [1968] AC 1130, 1168 and *Tai Hing Cotton Mill Ltd v Kamsing Knitting Factory* [1979] AC 91, 102. 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.* If he chooses not to do so, damages will generally be assessed by reference to the

> market price at the time when he should have done: *Koch Marine Inc v d'Amica Societa di Navigazione (The Elena d'Amico)* [1980] 1 Lloyd's 75, 87, 89. *The result is that in practice where there is a renunciation and an available market, the relevant market price for the purposes of assessing damages will generally be determined not by the prima facie measure but by the principles of mitigation.* [emphasis added]

21 The claimant says that even if the measure of damages under s 51(3) of the SGA is not applicable, the estimated loss should nevertheless be calculated as the difference between the prevailing market price of pig iron in India and the contract price. This is to compensate the claimant for its loss of profits as it could not resell the steel making pig iron at the prevailing rate in India. The claimant asserts that it was entirely reasonable to resell the pig iron as the contract price between the claimant and the defendant was at a lower rate than the market price of pig iron in India. Although the defendant made no submissions on this point, I am not persuaded by this reasoning as the claimant is a steel producer and there is no evidence that it was in the business of reselling pig iron. The claimant's explanation appears to be an attempt to justify its claim for damages beyond its actual losses.

22 As such, I find 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. There shall therefore be judgment for the claimant for US$1,050,000 plus interests.

23 Parties are to submit on interests and costs within 14 days of this judgment.

- Sgd -
Choo Han Teck
Judge of the High Court

Renganathan Nandakumar and Lim Muhammad Syafiq (RHTLaw Asia LLP) for the claimant;
Patrick Fernandez, Mohamed Arshad bin Mohamed Tahir and Lee Yun En (Fernandez LLC) for the defendant.