R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

AP.IM. 8 OF 2026

BETWEEN:

COAF FZE
A COMPANY INCORPORATED UNDER
THE LAWS OF THE UNITED ARAB EMIRATES
REP. BY ITS AUTHORISED REPRESENTATIVE
P6-ELOB OFFICE NO. E2-128F-45
HAMRIYAH FREE ZONE SHARJAH,
UNITED ARAB EMIRATES

...PETITIONER

(BY SRI. DHYAN CHINNAPPA SENIOR COUNSEL A/W
SRI. MAHESH DUBE, ADVOCATE FOR
SRI. PRASHANTH K. ASHER, SRI. BULBUL SINGH
SRI. MAHESH VIJAY DUBE, SMT. RIDDHIMAN BOROOAH.,
ADVOCATES)

AND:

1 . AVANIKAILANI COMMODITIES LLC
A LIMITED LIABILITY COMPANY
INCORPORATED UNDER THE LAWS OF
THE UNITED ARAB EMIRATES
SHARJAH MEDIA CITY (SHAMS)
P.O BOX 839 SHARJAH,
UNITED ARAB EMIRATES.

2 . NEW MANGALORE PORT AUTHORITY
PANAMBUR, MANGALURU,
DAKSHINA KANNADA DISTRICT
KARNATAKA, INDIA - 575 010.

3. JSW MANGALORE CONTAINER TERMINAL
PRIVATE LIMITED.,
SITE OFFICE BUILDING,
BERTH NO.5A AND 6A
MORMUGAO HARBOUR, GOA - 403 803
Email. IDs: miraj.shah@jsw.in.,
Infra.secretarial@jsw.in

4. THE OFFICE OF THE
COMMISSIONER OF CUSTOMS
NEW CUSTOMS HOUSE, PANAMBUR
MANGALURU - 575 101
Email. IDs:commr-cusmnglr@nic.in,
Biju.thmas@nic.in, mr.c029201@gov.in,
Aravindar.g079401@gov.in

5. SINDHU CASHEW INDIA PRIVATE LIMITED
381/3, BUKKIGUDDE,
PERDOOR VILLAGE,
UDUPI TALUK AND DISTRICT-576 124.
REP BY ITS DIRECTOR
SHRADHA MALLYA
D/O V.YOGISH MALLYA
AGED ABOUT 26 YEARS
SHRI CHARAN,
MAIN ROAD KADTALA,
KARKALA TALUK,
UDUPI DISTRICT-574 108.

6. MR. DEEKSHITH ANANTA POOJARY
S/O ANANDA POOJARY,
DIRECTOR & OWNER OF
M/S SR AGRO AND LOGISTICS LTD. (GHANA)
AND AUTHORISED REPRESENTATIVE/
DIRECTOR OF RESPONDENT NO. 1,
RESIDING AT: #4-178,
KALLATHADAME HOUSE,
VTC: PUDU, P.O.
FARANGIPETE, BANTWAL TALUK,
DAKSHINA KANNADA DISTRICT,
KARNATAKA, INDIA-574 143.

7. MRS. LIKHITHA
W/O DEEKSHITH ANANDA POOJARY,
SHAREHOLDER / SECRETARY OF
M/S SR AGRO AND LOGISTICS LTD. (GHANA)
AND CO-OWNER/SHAREHOLDER OF
RESPONDENT NO. 1,
RESIDING AT: #4-178,
KALLATHADAME HOUSE,
VTC: PUDU, P.O. FARANGIPETE,
BANTWAL TALUK,
DAKSHINA KANNADA DISTRICT,
KARNATAKA, INDIA-574 143.

...RESPONDENTS

(BY SRI. C.K. NANDAKUMAR SENIOR COUNSEL A/W
SRI. ABRAHAM JOSEPH, ADVOCATE FOR R1;
SRI. RAYAPPA Y. HADAGALI., ADVOCATE FOR R2;
SRI. SANDESH J CHOUTA SENIOR COUNSEL FOR
SRI. PRASANNA SHETTY., ADVOCATE FOR R5;
SRI. VIVEK SUBBAREDDY, SENIOR COUNSEL FOR
SRI. SHIVA KUMAR GOWDA., ADVOCATE FOR R6 AND R7)

THIS AP.IM IS FILED UNDER SECTION 9 OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO (1) PENDING THE FINAL HEARING AND FINAL DISPOSAL OF THE ARBITRATION PROCEEDINGS, PASSING OF THE ARBITRAL AWARD AND FOR A PERIOD OF 90 DAYS THEREAFTER, RESTRAIN AND INJUNCT RESPONDENT NO.1 AND/OR ITS REPRESENTATIVES, AGENTS, EMPLOYEES, AND/OR ANY UNAUTHORIZED THIRD PERSON, IN ANY MANNER WHATSOEVER, DIRECTLY OR INDIRECTLY, FROM FURTHER TRANSPORTING THE UNDELIVERED CARGO OUT OF THE PORT OF MANGALORE, KARNATAKA OR SELLING, TRANSFERRING, FURTHER DIVERTING, DISPOSING-OFF, ALIENATING, ENCUMBERING OR CREATING ANY THIRD PARTY RIGHTS WITH RESPECT TO THE UNDELIVERED CARGO COMPRISING CONTAINER BEARING NOS. TRHU5067650, MSNU5601154, MSNU9590021, MSDU5675162, FFAU2353524, MSNU7956024, TLLU7659491, MSDU6005530, MEDU7406777, MSDU7035138, MEDU7984271, MSBU8768425, MEDU7010596, MSMU4840119 AND TRHU6220059, OR IN THE ALTERNATIVE, DIRECT RESPONDENT NO.1 TO DEPOSIT A SUM OF USD 566,282.57 (OR ITS EQUIVALENT IN INDIAN RUPEES) REPRESENTING THE

FULL COMMERCIAL VALUE OF THE DIVERTED 386 METRIC TONNE CARGO UNDER INVOICE NO.2026-RCN-004A, OR FURNISH AN UNCONDITIONAL BANK GUARANTEE FOR THE EQUIVALENT AMOUNT BEFORE THIS HON'BLE COURT.

THIS AP.IM PETITION HAVING BEEN HEARD AND RESERVED ON 19.08.2026 FOR ORDER COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

CAV ORDER

1. This arbitration petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996') seeking interim measures in respect of 386.541 metric tonnes of raw cashew nuts in shell (hereinafter referred to as 'undelivered cargo'), which is now stated to be under the custody of the respondent No.3-JSW Mangalore Container Terminal Pvt. Ltd., an outsourced agency of respondent No.2-New Mangalore Port Authority, Mangalore, Karnataka.

2. Originally the petition was only against the respondent Nos.1 and 2. Respondent Nos.3 and 4 have been impleaded at the instance of the petitioner. While Respondent Nos.5, 6 and 7 have got themselves impleaded as parties to the present proceedings.

3. Three claimants in respect of the undelivered cargo namely;

(i) Petitioner-COAF FZE,
(ii) Respondent No.5-Sindu Cashew India Pvt. Ltd., and
(iii)Respondent Nos.6 and 7- Mr. Deekshith Ananta Poojary and Mrs.Likhitha.

4. **<u>Case of the Petitioner</u>**:

Petitioner-COAF FZE, a company incorporated under the laws of United Arab Emirates has contended *inter-alia*;

4.1 That it had entered into contract No.2026-P0112 on 06.04.2026 as per Annexure-A, with respondent No.1, which is also a company incorporated under the laws of United Arab Emirates, for the purpose of purchase of 500 metric tonnes of raw cashew nuts in shell. That respondent No.1 had agreed to procure and supply raw cashew nuts at Tema, Ghana to be delivered to the petitioner in Ho Chi Minh City, Vietnam.

4.2 That the said agreement contains a binding arbitration clause providing for resolution of disputes arising out of or in connection with the terms of the contract as per the Nuts and Dry Fruit Trade Association (NDFTA) Rules for

Arbitration Dispute Settlement with the seat of arbitration being either at Dubai or Singapore.

4.3 That respondent No.1 had raised two commercial invoices upon the petitioner, namely;

(i) Invoice No.2026-RCN-004A dated 28.04.2026 for a quantity of 386.541 metric tonnes of raw cashew nuts;

(ii) Invoice No.2026-RCN-004B dated 04.05.2026 for a quantity of 112.072 metric tonnes of raw cashew nuts.

4.4 The *second* invoice was for an amount of USD 164,185.48 towards supply of 112.072 metric tonnes of raw cashew nuts. That, the entire value of the second invoice was completely paid. Consequently, physical cargo of 112.072 metric tonnes of raw cashew nuts was delivered to the petitioner in Vietnam. Transaction in respect of said invoice was thus fully executed and satisfied.

4.5 As regards the first invoice, namely Invoice No. 2026-RCN-004A dated 28.04.2026 for an amount of USD 266,282.57, is in respect of the supply of undelivered cargo, which was also fully paid by the petitioner by way of advance and balance payment contractual obligations, and payment of which has been duly acknowledged by the respondent No. 1, vide receipts dated 09.04.2026, 16.04.2026, 11.05.2026 and 26.05.2026.

4.6 Thus, the petitioner has performed its part of the obligation in terms of the contract in making full and final payment against both invoices. Respondent No.1, was thus required to supply the second part of the consignment, namely undelivered cargo, which rightfully belonged to the petitioner.

4.7 That the undelivered cargo was physically inspected, loaded, and stuffed into 15' X 40' high-cube container, gross weight of 391,440 Kgs, at the port of Tema, Ghana, in the physical presence of the petitioner's representative.

4.8 A draft Bill of Lading bearing No. MEDUTM439682 was issued by Mediterranean Shipping Company S.A, explicitly confirming cargo details and specifying the contractual destination as Vietnam.

4.9 However, the petitioner shockingly discovered that fraud had been perpetrated by the representative and Director of respondent No. 1, namely Mr.Deekshith Ananta

Poojary-respondent No.6 herein, who had subverted logistic pipelines by exercising control over an interconnected enterprise, SR Agro and Logistics Ltd. Ghana, which shared identical management and control with respondent No.1.

4.10 That respondent No.6 had altered the shipping documents and the vessel routing mid-transit. In that, instead of delivering the undelivered cargo to the petitioner at Vietnam, it was illegally diverted to the port of Mangalore, Karnataka, India.

4.11 That the wrongful routing and the current logistical status of the undelivered cargo were conclusively established by a tracking record issued by the shipping line. As per the MSE tracking records dated 26.07.2026 for the draft Bill of Lading No. MEDUTM439682.

4.12 That the 15 containers carrying undelivered cargo were shipped from the port of load at Tema, Ghana on 24.04.2026. The tracking record explicitly reflects unauthorized diversion, showing the port of discharge as New Mangalore Port, Karnataka, India, with transshipment stops at Vung Tau, Vietnam and Colombo, Sri Lanka.

4.13 Thus, physical containers of fully paid undelivered cargo belonging to the petitioner had been fraudulently diverted to Mangalore Port. That a criminal investigation, at the instance of certain Mr. Selvan Mahesh Logidas, General Manager and majority shareholder of respondent No. 1 has been set in motion against Mr. Deekshith Ananta Poojary-respondent No. 6 for having fraudulently diverted the undelivered cargo.

4.14 That the petitioner had been enquiring with the aforesaid representative of respondent No. 1 namely Mr. Deekshith Ananta Poojary-respondent No. 6 regarding the status of undelivered cargo, who falsely and deliberately kept on assuring the petitioner that the Mangalore routing was merely a system error resulting from the forwarder's omission and that the same was actively being rectified with the shipping line. These follow-up "Whats App" messages were between April, 2026 and June, 2026.

4.15 That the petitioner had issued explicit notice to the public at large with regard to the incoming undelivered cargo, which exclusively belonged to the petitioner being offloaded without lawful authority, in the Times of India Daily Newspaper, Mangalore edition, Vijaya Karnataka Daily Newspaper in the local language dated 02.07.2026 and in Samyuktha Karnataka on 28.07.2026.

4.16 Apprehending further diversion or alienation of the undelivered cargo by respondent No.1, its representatives, pending the constitution of an arbitral tribunal for the resolution of disputes in terms of the arbitration clause contained in the contract dated 06.04.2026, presents the petition seeking interim measures.

5. **Case of respondent No.1:**

Respondent No.1 in its statement of objections has admitted having received the entire payment in respect of the undelivered cargo claimed by the petitioner. It has also admitted that the undelivered cargo has been fraudulently diverted by Mr. Deekshith Ananta Poojary-respondent No.6.

5.1 That it has also admitted undelivered cargo has been sold in favour of the petitioner and has further sought for confirmation of the interim order granted by this Court on 28.07.2026 for its preservation.

5.2 Respondent No.1 has further submitted that if the undelivered cargo is delivered to the petitioner, no dispute would survive between the petitioner and respondent No.1. Hence, sought for dismissal of the petition.

6. **Case of respondent No.5:**

Respondent No. 5- Sindhu Cashew India Pvt. Ltd., has filed three applications in I.A.Nos. 6, 7 and 8 of 2026 seeking its impleadment, to vacate the interim order dated 28.07.2026 and questioning the maintainability of the main petition, respectively.

6.1 Though formal objections were filed to the impleading application in I.A.No. 6, the same is allowed impleading said Sindhu Cashew India Pvt. Ltd., as party respondent No. 5.

6.2 In the affidavits accompanying the aforesaid applications, respondent No. 5 has contended, inter alia, that it is a company with its place of business at Perdoor Village, Udupi Taluk, Udupi District, carrying on the business of purchase of raw cashew nuts in shell. It had earlier, on several occasions, purchased raw cashew nuts from Ghana through its seller, Wincom Trading FZC LLC, Ajman, UAE, and other sellers.

6.3 That on 19.03.2026, respondent No. 5 had entered into a sale contract with said Wincom Trading FZC LLC, UAE, for the purchase of 400 metric tonnes of raw cashew nuts in shell. That the respondent No. 5 has paid 30% of the invoice amount in advance, in a sum of USD 132,000/- on 21.03.2026 to its vendor Wincom Trading FZC LLC, UAE.

6.4 That the said vendor of respondent No. 5 shipped the cargo containing 400 metric tonnes of raw cashew nuts from Ghana in the name of respondent No. 5 as per the sale contract dated 19.03.2026. Respondent No. 5 is required to pay the balance amount after delivery of the cargo.

6.5 Things stood thus; respondent No. 5 received a call from Panambur Police Station, Mangalore, stating that certain Amar Singh, Manager of the petitioner's Company, had filed a complaint alleging that he had purchased 15 containers of cashew nuts from Ghana to Vietnam in terms of a draft Bill of Lading No. MEDUTM439682, that said cargo, which had left Ghana instead of going to Vietnam, has been diverted by one Mr. Deekshith Anant Poojary, respondent No. 6 and Mrs. Likhitha, respondent No.7 to New Mangalore port, Karnataka in the name of respondent No. 5.

6.6 In response to the said call, respondent No. 5 brought to the notice of the Jurisdictional Police the true and real facts by producing the original Bill of Lading. Being satisfied, the police closed the complaint. Consequently, the present petition has been filed under Section 9 of the Act by the petitioner, by suppressing the filing of the complaint and the petitioner's knowledge of respondent No. 5 having had the original Bill of Lading, and has obtained an interim order.

6.7 That respondent No. 5 has received the commercial invoice on 03.06.2026 from its vendor, Wincom Trading FZC LLC, UAE, through mail. It has also received the packing list from its vendor on 03.06.2026. Original Bill of

Lading shows the place of loading as Tema, Ghana, and the port of discharge as Mangalore, Karnataka.

6.8 That it also received a certificate of origin from the Ghana National Chamber of Commerce and Industry on 01.06.2026 and 'Phytosanitary certificate" dated 24.04.2026 from the Ministry of Food and Agriculture, Republic of Ghana.

6.9 That it has paid a sum of Rs.32,96,492/- on 28.07.2026 towards the customs duty. It has also paid Rs.5,39,734/- to its agent at Mangalore, namely Mediterranean Shipping Company S.A.

6.10 Thus, respondent No. 5 being in possession of the original Bill of Lading and all legal documents is entitled to receive the consignment containing 400 Metric Tonnes of raw cashew nuts. However, in view of the interim order passed by this Court, the entitlement of respondent No. 5 has been denied.

Hence, sought for rejection of the petition.

7. **<u>Statement of objections of petitioner to the interim applications in I.A.Nos. 6, 7 and 8 of 2026 filed by respondent No.5:</u>**

Petitioner in its statement of objections to the interim application Nos.6, 7 and 8 of 2026 filed by respondent No.5 has contended;

7.1 That admittedly the respondent No. 5 is not a party to the contract between the petitioner and respondent No. 1 as such respondent No. 5 is a complete stranger. Therefore, respondent No. 5 cannot seek relief in arbitral proceedings.

7.2 That respondent No. 5 is intending to convert the above proceedings for determination of title over the undelivered cargo, which is beyond the scope of Section 9 of the Arbitration Act.

7.3 That Mr. Deekshith Ananta Poojary-respondent No. 6 had fraudulently diverted the undelivered cargo to Mangalore by altering the shipping documents, scrutiny of which, exposes the falsity of the claim of respondent No.5.

7.4 The claim of the respondent No. 5 regarding payment of USD 13,200/- which refers to invoice No. WIC/CAS/010-26, purportedly made on 21.03.2026. However, the said invoice was raised only on 03.06.2026. As such, the payment that was made on 21.03.2026 was against a non-existent invoice.

7.5 That although respondent No. 5 claimed to have received a commercial invoice and a packing list from Wincom Trading FZC LLC, UAE, it has not produced any email or letter correspondence as proof of receipt of the said documents.

7.6 That the copy of the Bill of Lading produced at Annexure-R7 to the application refers to respondent No. 1 as notify party-02 and Multi-Trade Africa Ltd. as notify party-03, whose names are also mentioned even in the copy of the draft Bill of Lading produced by the petitioner. There is no explanation with regard to the mentioning of the said names in the copy of the Bill of Lading produced by respondent No. 5.

7.7 Comparison of the draft Bill of Lading of the petitioner and the Bill of Lading of respondent No. 5 indicates the manipulation and falsity of the claim made by respondent No. 5. There is also mention of certain Tirumala Cashew Industry in the middle column of the Bill of Lading annexed to the application filed by respondent No. 5. Address of which shown as post Kadtala, Karkala Taluk, Udupi District, being very locality and the postal code at which the deponent of respondent No. 5 in his affidavit stated to be residing.

7.8 The first draft of the Bill of Lading was shared with the petitioner for approval on 28.04.2026. Petitioner had raised a query as to the incorrect port of discharge, and a revision was shared on 23.05.2026. The revised draft was shared by the seller on 26.05.2026. Draft was confirmed by the petitioner's team on 28.05.2026. On 01.06.2026 the petitioner again raised a query regarding the incorrect port of discharge appearing in the online tracking. Once again, the petitioner asked respondent No. 1 about the issue on 03.06.2026 to which Mr. Deekshith Ananta Poojary, respondent No. 6 had provided an explanation that the error had occurred inadvertently. That on 03.06.2026 it appears that the original Bill of Lading were issued at M. S. C. Tema, naming an entirely different account party, an entirely different notify party, and an entirely different port of discharge, without the knowledge, consent and approval of the petitioner.

7.9 If the claim of respondent No. 5 that it had purchased the undelivered cargo from Wincom Trading FZC LLC, UAE under a contract dated 19.03.2026 and had paid an advance thereunder on 21.03.2026, there is no explanation as to why the draft Bill of Lading circulated by respondent No. 1 bearing the same number as that of the Bill of Lading produced by respondent No. 5 for the petitioner's approval in respect of the very same shipment.

7.10 Petitioner was still enquiring with respondent No. 1 as to the incorrect port of discharge as late as 01.06.2026. Just two days before the original Bill of Lading came to be issued at M.S.C Tema on 03.06.2026 showing the names of Wincom Trading FZC LLC, UAE and respondent No. 5. No explanation by respondent No.5 for the non-mentioning of its name or the name of Wincom in the draft Bill of Lading, whose name appeared in the document version only on and after 03.06.2026. The date on which the purported commercial invoice, the purported packing list, and the purported original Bill of Lading all came into existence simultaneously.

7.11 Petitioner has obtained four documents, namely, a Way Bridge BGM certificate issued by ACS Africa Coastal Service Ghana Ltd. at the port of Tema, Ghana, where the undelivered cargo was weighed and loaded in respect of each container comprising the undelivered cargo; a Weighbridge VGM certificate issued by ACS Africa Coastal Service Ghana Limited, recording the details of the customers and the party at whose instance the cargo was weighed and loaded, which clearly demonstrates that SR Agro was the party at whose instance the cargo was being loaded and not Wincom. The said name of SR Agro appears in the draft Bill of Lading. Thus, the claim of respondent No. 5 regarding the cargo being supplied by Wincom is false and misconceived.

7.12 The tracking report produced in the petition makes it clear that the shipment went from Ghana to Vietnam and thereafter to New Mangalore. If the consignment was supposed to be received at Mangalore, there was no reason whatsoever for the same to land in Vietnam. Thus, the respondent No. 5 was fully aware that it was deriving unjust and illegal benefit from a fraudulent act.

7.13 Though the respondent No. 5 claimed to have paid Rs. 5,39,734/- to the claiming agent in Mangalore, i.e. Mediterranean shipping company, the document annexed in this regard is an invoice dated 30.07.2026 raised by MSC Mediterranean shipping company upon Mediterranean freight forward Pvt. Ltd. The name of the impleading applicant does not appear in the said invoice.

7.14 Thus, the discrepancies in the documents produced by respondent No. 5 expose the falsity of the case and the claim of respondent No. 5. Hence, seeks for dismissal of the applications.

8. **Statement of objections of respondent No. 1 to the applications in IA Nos. 6, 7 and 8 of 2026 filed by respondent No. 5**

8.1 Respondent No. 1 apart from admitting the case of the petitioner and supplementing the averments made by the petitioner in its statement of objections to the above applications, has contended that respondent No. 5 is a beneficiary of fraudulent diversion of undelivered cargo by Mr. Deekshith Ananta Poojary-respondent No. 6. It is also contended that though the shipment left Ghana on 24.04.2026, the Bill of Lading produced by respondent

No. 5 has been signed only on 03.06.2026 which is highly unusual.

8.2 That as per the draft Bill of Lading produced by the petitioner, the port of discharge is shown as Vung Tau and the place of delivery is Ho Chi Minh City. That, as per the online tracking data produced by the petitioner, the shipment reached Vung Tau and on 03.06.2026 and delivered to Dong Nai Port which is a terminal in Ho Chi Minh City on 03.06.2026 which indicates that the shipment traveled as per the draft Bill of Lading issued to the petitioner and has thereafter been diverted by respondent No.6.

8.3 That the Bill of Lading is usually handed over to the party that is to collect the goods and is endorsed by each of the shippers on the basis of endorsement buyer collects the goods once they reach the destination. This is evidenced by Bill of Lading produced above in respect of the goods delivered by respondent No. 1 to the petitioner. However, the copy of the Bill of Lading produced by respondent No. 5 does not bear such endorsement, which indicate transaction is not genuine.

8.4 Respondent No. 5 being the beneficiary of the fraudulent diversion of undelivered cargo by respondent No. 6 is not entitled to any relief.

9. **Case of respondent Nos.6 and 7:**

Respondent Nos. 6 and 7 who were impleaded upon the application filed by them in I.A.No. 9/2026 have filed a common statement of objections to the main petition contending;

9.1 That, as per Contract No. 2026-P0112, 500 metric tonnes of quantity were to be delivered to the petitioner in two consignments. One for 112 metric tonnes and another for 388 metric tonnes. Where admittedly 112 metric tonnes of cashew nuts has been delivered to the petitioner, and the balance of 388 metric tonnes is the undelivered cargo.

9.2 The entire procurement of the undelivered cargo was made by SR Agro Logistics, a company in Ghana, entirely at its cost, of which respondent No.6 is the director. Respondent No. 1-Avanikailani has not spent any amount thereon.

9.3 That SR Agro was originally founded by respondent No. 6 on 02.03.2024. Seeing the enormous success of SR Agro, Mahesh Selvan had proposed to incorporate respondent No. 1-Avanikailani at Dubai to handle the financial transactions of SR Agro for the ease of international transactions. Accordingly, respondent No. 1 was incorporated on 02.02.2025. The shareholding pattern initially agreed was 50:50, however, it was settled at 70:30. Several transactions were made between SR Agro and respondent No. 1. That SR Agro had invested a substantial amount in the procurement of commodities. The export was done in the name of respondent No. 1 based in Dubai, for logistics and easier financial transactions. It is under these circumstances, respondent No. 1 was shown as the owner in the Bill of Lading, and all draft bills of lading were raised in its name. Even though SR Agro was the true owner, the importer used to transfer amounts to respondent No. 1 who in turn used to transfer the amounts to SR Agro.

9.4 The present transaction was one of the few transactions done by SR Agro in collaboration with respondent No. 1. Said Mahesh Selvan had committed fraud by receiving amounts in the name of respondent No. 1, which were to be transferred to SR Agro, the original procurer of the commodities. Instead of transferring the amounts to the accounts of said SR Agro, said Mahesh Selvan had diverted the same to Seychelles. Respondent No. 6 learnt about these fraudulent acts of Mahesh Selvan recently and has lodged a criminal complaint in this regard.

9.5 Though business collaboration with respondent No. 1 and SR Agro commenced from March 2026, respondent No. 1 instead of paying SR Agro, approximate amounts of USD 272,000 have been diverted and transferred to an unknown company called Multi-trade Africa Ltd., which is located in Seychelles. There is no relationship between respondent No. 1 and Multi-trade Africa Ltd. The said transaction was done through a beneficiary bank called Afri Asia Bank Ltd., located in Bowen Square, Fort Louis, Mauritius. These transactions indicate fraud practiced by said Mahesh Selvan. The huge amounts received from the petitioner have been diverted. The petitioner was required to pay a substantial amount for various casual contracts which were done under different contract numbers. In the very first few transactions itself, Mahesh

Selvan had shown his true colours by defrauding SR Agro. He initially diverted USD 2,50,000 to Seyachelles, thereafter, USD 2,30,000 on 14.05.2026. Also diverted the amount received from the petitioner. SR Agro has sustained huge financial loss on account of fraudulent diversion by Mahesh Selvan, who has misappropriated the funds belonging to SR Agro.

9.6 Requests of respondent No.6 to redress his grievance were never responded by Mahesh Selvan. Till date, Mahesh Selvan has not divulged the details of the account and the money paid by the petitioner by siphoning the money to different offshore accounts. Said Mahesh Selvan has cheated the respondent Nos.6 and 7. Whenever respondent No.6 enquired from Mahesh Selvan regarding the payment by the petitioner, he protracted by stating payments were yet to be received. That respondent Nos.6 and 7 were kept in the dark by respondent No.1 regarding the receipt of money that was due and payable to SR Agro. When the products were procured by SR Agro, the expenses were being routed in their names by respondent to importers like petitioner and respondent No.5.

9.7 When the ship was loaded at Ghana on 23-24.04.2026, a draft Bill of Lading was originally booked for Purvi Cashew Mangalore and, since Purvi Cashew Mangalore did not promise sure payment, Mahesh Selvan prevailed upon respondent No.6 to shift the consignment to the petitioner claiming that he was sure that the money would be paid.

9.8 As the ship had moved on the high seas, for further procurement purposes, respondent No. 6 started demanding money that petitioner had paid to be brought back to SR Agro, so that SR Agro would have funds to procure the products for further business. Though Mahesh Selvan had promised on behalf of respondent No. 1 that the amount would be sent, he did not act upon it. He also did not reveal the true transaction between the petitioner and respondent No. 1. Said Mahesh Selvan continued to hold out that he had not received the money from the petitioner when the ship was about to dock at Ho Chi Minh City. That Mahesh Selvan had stated that he could not pay SR Agro since a substantial amount of USD 5,38,000 was kept pending by the petitioner. To achieve his fraud and selfish motive, he suppressed the two accounts of payment of USD 3,00,000 and USD 2,00,000. And since they had not paid, hence no original Bill of Lading was drawn in the name of the petitioner as consignee, and as of that date, Mahesh Selvan had told that the petitioner was due in a huge sum exceeding USD 5,00,000 and respondent No. 6 with such an immense balance could not direct offloading at the said port. That the said Mahesh Selvan had suppressed receipts of USD 3, 00,000 and USD 2,00,000 from the petitioner. However, it is still in doubt whether the said payments were made, as respondent No. 6 is not aware of the bank transactions.

9.9 Though 90% of the funds have been received by respondent No. 1 from the transaction made with the petitioner and respondent No. 5, no money has been transferred to the account of SR Agro. Out of the total amount received, 90% of the amount has been diverted by respondent No.1 and only 10% amount has been transferred to SR Agro for day to day maintenance.

9.10 The invoices produced by respondent No. 1 and the petitioner do not show the transaction IDs. They are not the proof of the transaction. In international banking terms, it is called a SWIFT account, and no such SWIFT ACCOUNT transfer has been produced by respondent No.1 or the petitioner. That the vouchers produced appear to be collusive.

9.11 That in order to deny payment to SR Agro, said Mahesh Selvan had stated that the petitioner had not paid the money and, since they did not pay the money, the draft Bill of Lading was changed to respondent No. 5 and the entire container was diverted to Mangalore on a different vessel. That for 10 days they had waited at Ho Chi Minh City for the balance payment and since the payment did not come, they had no option but to switch it to some other destination. The cashew nuts are perishable goods. Moving the commodity back to Vietnam will cause losses to the cash flow, as it already spent for 5 months. The same can be sold to an Indian Procurer on payment of a bank guarantee. Thus, respondent No. 5 furnishing a bank guarantee can be given cashew nuts on equitable grounds.

Contending as above, sought for dismissal of the petition.

10. **Rejoinder by the petitioner:**

10.1 Rejoinder has been filed by the petitioner to the statement of objections filed by the respondent Nos.6 and 7 contending;

10.2 that making a Bill of Lading in the name of the petitioner and later changing it into the name of respondent No. 5, has been admitted and proved.

10.3 The undelivered cargo which is destined to reach Vietnam at the instruction of the petitioner having been diverted to Mangalore is also admitted. Thus, fraudulent diversion of the undelivered cargo from Vietnam to Mangalore has been *prima facie* established, which shall enure to the benefit of the petitioner.

10.4 That there is no explanation as to how the name of Wincom Trading FZC LLC has appeared in the Bill of Lading, which is nothing but a sham and false appearance of a genuine transaction. The fraud perpetrated by respondent No. 5 has caused immense hardship and loss to the petitioner.

10.5 It is also clear that Wincom never had any title over the undelivered cargo. As such, there was no question of respondent No. 5 deriving any title. The dispute between respondent No. 5 and the director of respondent No. 1 Mahesh Selvan, has no bearing on the case of the petitioner.

10.6 Respondent No. 5 has no right to claim any relief as he is neither a signatory to the contract nor an affected person.

10.7 The allegation of collusion between the petitioner and respondent No. 1 is untenable, as the records have been produced to prove the payment made to the petitioner and respondent No. 1, with the vouchers and bank statements.

11. **Rejoinder by respondent No. 1**

Respondent No.1 in its rejoinder has contended;

11.1 That respondent No.6 has no authority to represent either the case of respondent No.1 or the SR Agro in the absence of any formal authorization. In the absence of any document, respondent No.6 cannot claim to be the owner of SR Agro.

11.2 Respondent No.6 has fraudulently altered the Bill of Lading, instructed the shipping line to change the destination of cargo from Vietnam to India, and has fraudulently withdrawn and transferred an amount of USD 7,18,000 from the bank account of SR Agro before absconding from Ghana along with his wife, respondent No. 7. A complaint in this regard has already been lodged by Mahesh Selvan before the Ghana Police. Respondent No. 1 has sought preservation of the Cargo, pending the outcome of the criminal investigation into the conduct of Respondent No.6.

11.3. Respondent Nos.6 and 7 have no *locus standi* to seek any relief.

12. **Submissions:**

Sri. Dhyan Chinnappa, learned Senior Counsel appearing for the petitioner, submitted;

12.1 That there is no dispute regarding the petitioner entering into a contract with respondent No.1 for procurement of

500 Metric tonnes of cashew nuts totally valuing at USD 732,500. That admittedly, the first consignment of 112.072 metric tonnes of the consignment has been supplied, and the payment in this regard has been fully made.

12.2 That, in the light of the contentions in the statement of objections filed by Respondent Nos. 6 and 7, it is now established beyond any doubt that the undelivered cargo which was destined to have reached Vietnam on account of the petitioner has been fraudulently diverted, admittedly at the instance of respondent No. 6 to Mangalore port.

12.3 He refers to the documents at Annexures R3 and R4 namely the Way Bills, as well as the Weighbridge VGM Certificates produced by respondent No. 1 and submits that the cargo undisputedly belonged to SR Agro, who had not only procured but had also completed the formalities for loading the consignment onto the ship at Ghana.

12.4 That respondent No. 6 has also admitted the fact of the preparation of the draft bill and the assurance made by him on behalf of respondent No. 1 regarding the final or original draft bill to be issued in the name of the petitioner only, to discover fraudulent diversion to the Port at Mangalore.

12.5 That the claim therefore made by respondent No. 5 in procuring the goods from Wincom stands exposed, as respondent No. 5 has not produced any document to justify procurement of cargo from Wincom.

12.6 He referred to the photocopies of the document produced by respondent No. 5 along with its application to implead, to point out the purported manipulation of the records.

12.7 He also pointed out the copy of the original Bill of Lading filed along with the memo dated 13.08.2026 to highlight that the purported seals found on the copy of the Bill of Lading were missing from the copy of the Bill of Lading originally filed along with the application.

12.8 He also pointed out the impracticality of obtaining the endorsements by way of affixture of seals by all the parties after generation of the Bill of Lading on 03.06.2026, in the absence of respondent No. 5, producing any corresponding document of generation and delivery of the same to respondent No. 5.

12.9 That since there is no dispute with regard to procurement of the goods in the name of SR Agro and petitioner having *prima facie* proved and established payment of USD 566,282.57 under five invoices dated 09.04.2026, 07.04.2026, 11.05.2026, 26.05.2026 and receipt of which has been admitted and acknowledged by respondent No. 1, the petitioner would be the rightful owner and claimant of the undelivered goods.

12.10 That the claim of the respondent No.5 to have entered into a contract with Wincom Trading FZC LLC for the purchase of 400 metric tonnes of raw cashew, and its claim of having paid 30% of the costs in USD 1,32,000 to Wincom on 21.03.2026, and original Bill of Lading was generated on 03.06.2026 in respect of the very same goods which were destined to reach Vietnam on account of the petitioner, cannot be accepted inasmuch as respondent No.5 has categorically taken a stand that it has nothing to do either with the petitioner or with respondent No.1. The said contention runs contrary to the Bill of Lading produced by respondent No.5 in which the name of respondent No.1 is shown as notify party No.2, which contradicts the entire case of respondent No.5.

12.11 Petitioner has already made the entire payments for the undelivered cargo whereas the respondent No.5 claimed to have paid only 30% of the invoice amount. The alleged payment of 30% was made at a time when the commercial invoice was not even in existence, and the undelivered cargo were also not loaded by Wincom.

12.12 No documents or any correspondence are produced by respondent No. 5 to *prima facie* show that the goods were purchased by Wincom and that it was Wincom which had shipped the goods on account of respondent No. 5.

12.13 The shipment actually went to the port stated in the draft Bill of Lading of the petitioner, i.e. Vung Tau, Vietnam, and port handling charges were paid in Vietnamese Dongs. The tracking data produced by the petitioner of the subject Bill of Lading would show that the shipment actually went to Vietnam on 03.06.2026, which was thereafter diverted to New Mangalore via Colombo. If the goods were to be delivered at New Mangalore port, no explanation is offered as to why the shipment reached Vietnam. The time lapse between the loading of the goods at Ghana, the issuance of the draft bill, the revised draft bill, the queries raised by the petitioner, and the reassurance made by respondent No. 1 to the petitioner between 24.02.2026 and 03.06.2026 indicate unnatural and unusual means of transaction adopted by respondent Nos. 5 and 6.

Hence, seeks for allowing of the petition granting the reliefs as sought for.

13. Sri.C.K.Nanda Kumar, learned Senior Counsel appearing for the respondent No. 1 submitted that:

13.1 That the respondent No. 6, who had initially signed the vakalath for respondent No.1 was not authorized, and that it is Mahesh Selvan who is authorized to represent respondent No.1 as he holds the majority of the shares.

13.2 That the respondent No. 6 has admittedly diverted the goods to Mangalore without any authority, which were destined to reach Vietnam. Therefore, criminal prosecution has been launched against the respondent No. 6 before the jurisdictional Police at Ghana.

13.3 Referring to documents at Annexures-R3 and R4 filed along with the objections to the interim applications in I.A.Nos.6 to 8 filed by, respondent No. 5, he contended that the originally undelivered cargo was procured by and in the name of SR Agro, which is another associate company of the respondent No. 1. That it is SR Agro which had taken all steps to have the cargo cleared for the purpose of shipping at the loading port. Therefore, he submitted that the title of the goods is traceable to SR Agro.

13.4 That there is no collusion between petitioner and the respondent No. 1. The respondent No. 1 having received the cost of the undelivered cargo, is only taking steps to mitigate further losses that may have to be incurred by the respondent No. 1 in the nature of costs and damages if, in the event of the parties going into arbitration. That mere admission of receipt of amount by respondent No.1 from the petitioner would not amount to an act of collusion. It would only mean that respondent No.1 is placing the true facts before the Court without suppressing or hiding any fact.

13.5 That the present stalemate is due to the fraudulent act of respondent No. 6, who claims to have certain disputes regarding payments between respondent No.1 and SR Agro, which in any case does not justify his illegal act diverting the shipment from Vietnam to Mangalore.

13.6 That, respondent No. 1 avails services of Multi Trade Africa Ltd., for the purpose of trading. He also furnished a copy of the certificate of incorporation of the said company.

13.7 He submitted that the name of respondent No. 1 and the said Multi Trade Africa Ltd., being found in the Bill of Lading, a copy of which was produced by the respondent No. 5 indicate manipulation. If, according to the respondent No.5, respondent No. 1 had no connection with the entire transaction; no explanation is provided for the reflection of the names of respondent No.1 as well as of the said Multi Trade Africa Ltd. in the Bill of Lading.

13.8 He also pointed out an email correspondence issued by the said Multi Trade Africa Ltd. to the director of respondent No. 1, confirming that they have neither received nor endorsed nor stamped any document, namely the Bill of Lading, with respect to the issue involving the matter.

14. Sri. Sandesh J Chouta, learned Senior Counsel appearing for respondent No.5 submitted;

14.1 That the petitioner and respondent No.1 have colluded, now joined by respondent Nos. 6 and 7 to deny the legitimate entitlement of respondent No.5 over the undelivered cargo.

14.2 That it is a settled position of law that the person who is in possession of the original Bill of Lading is entitled to the release of goods.

14.3 He also drew the distinction between the Draft Bill of Lading and the Original Bill of Lading to emphasize that the original Bill of Lading is preferred to the draft Bill of Lading.

14.4 He also pointed out that the Section 9 application would be maintainable only if there is a dispute or a potential dispute requiring the matter for arbitration. That in the light of the admission by respondent No.1 that it received the entire amount from the petitioner and that respondent No.1 having supplied the goods to the petitioner, there remains no arbitrable dispute clearly exposing collusion between the petitioner and the respondent No.1. As such, the Section 9 application would not be maintainable.

14.5 That the petitioner is also guilty of suppression of material facts. In that even before approaching this Court, the representative of the petitioner had approached the local police and had filed a complaint on 02.07.2026. Along with the said complaint, the petitioner had enclosed a copy of the Bill of Lading issued in the name of respondent No. 5. It is mysterious as to how they obtained the copy of the Original Bill of Lading even as on 02.07.2026 and that they have not brought to the notice of this Court about the claim of respondent No. 5. Thereby, the conduct and the ulterior intent of the petitioner to mislead this Court in obtaining the interim order stands exposed. Thus, he insisted that the petitioner has not approached this Court with clean hands.

14.6 Since the Original Bill of Lading is in the possession and in the name of respondent No. 5, the petitioner has no *locus standi* to maintain the petition.

14.7 That since the petitioner is not able to justify its entitlement to the goods by producing the original Bill of Lading, the principles of *prima facie*, balance of convenience, and irreparable loss would squarely apply, and will have to be held against the petitioner in dismissing the application. The petitioner is only creating a smokescreen without having any right or interest in the undelivered cargo.

14.8 He also referred to the provisions of the Bill of Lading Act, 2025 and Section 23 of the Sale of Goods Act, 1930 to justify his contention that the Bill of Lading is the document evidencing the right, title and interest of respondent No. 5 over the cargo.

14.9 He relied upon the following judgments in support of his submissions;

"1. SUNDARAM FINANCE LTD. V. NEPC INDIA LTD.,- (1999) 2 SCC 479.

2. ATUL MALIK V. ROHINI SAWHNEY, OMP (I) (COMM) 430/2023- DELHI HIGH COURT.

3. BRITISH INDIA STEAM NAVIGATION CO. LTD. SHANMUGHAVILAS CASHEW INDUSTRIES- (1990) 3 SCC 481.

4. MSC AGENCY INDIA PVT. LTD. V. M/S. GLINTS GLOBAL PTE LTD., - 2014 SCC ONLINE MAD 306.

5. GLINTS GLOBAL PTE LTD & ANR. V. EISA TRADING INC., - 2014 SCC ONLINE MAD 381.

6. M. MUHAMMAD BASHEER V. UOL - 2015 SCC ONLINE KER 18929

7. VIGNESHWARA EXIMS V. ASST.COMMISSIONER -2020 SCC ONLINE MAD 17554.

8. MOHAMMAD ISHAQ BHAT V. TARIQ AHMAD SOFI & ANR, - 2010 SCC ONLINE J&K 41.

9. VIJAY MOHAN V. REAL BLUE INTERNAIONAL (P) LTD., - 2019 SCC ONLINE MAD 16813".

15. Sri. Vivek Subbareddy, learned Senior Counsel appearing for respondent Nos. 6 and 7, submitted:

15.1 That respondent No. 6 is the brain behind the successful trading in cashew nuts and other spices from the African countries, and for this purpose, originally respondent No. 6 incorporated SR Agro during February 2024.

15.2 Considering the success achieved by respondent No.6, Sri. Mahesh Selvan proposed the incorporation of respondent No. 1 for the purpose of ease of trade and other financial transactions. Accordingly Respondent No.1 was incorporated on 02.02.2025 at Dubai. Therefore, it is a collaboration of business between respondent No. 6 and Sri.Mahesh Selvan, the director of respondent No.1- to do the business together.

15.3 That actual dispute is in respect of non-payment of dues of SR Agro by respondent No. 1, headed by Sri Mahesh Selvan. That despite repeated requests by the respondent No.6 for payment of dues of SR Agro, Sri.Mahesh Selvan did not make the payment. Respondent No. 6 therefore had to take this inevitable step of diverting the shipment to Mangalore port, since the amount in respect of the undelivered cargo was not received by SR Agro.

15.4 That the undelivered cargo in fact belonged to respondent No.6 and his wife, respondent No.7.

15.5 That there is no proof of payment by petitioner complying with the international banking payment known as SWIFT

MODE. The petitioner is therefore not entitled to the undelivered cargo. Hence, seeks rejection of the application.

16 In reply to the aforesaid submissions, Sri Dhyan Chinnappa, learned Senior Counsel appearing for the petitioner submitted;

16.1 That in the light of the stand taken by respondent Nos. 6 and 7, the false case of respondent No. 5 stands exposed.

16.2 He also took this Court through the copies of the documents furnished by respondent No. 5 to point out the manipulation of records, more particularly, the impressions of the seals which are found on the Bill of Lading and other documents enclosed along with the applications filed by respondent No. 5.

16.3 That even after completion of pleading, respondent No.5 has not placed anything on record with regard to how Wincom has acquired title to the property and passed the same on to respondent No. 5.

16.4 That since the payment of the amount by the petitioner to respondent No. 1 is evidenced not only by the acknowledgment made by respondent No. 1, by issuance of documents at Annexures-C to J but also by the bank transactions details submitted along with the memo dated 14.08.2026 justify the payment being made by the petitioner. Therefore, the title of the undelivered cargo vested with the petitioner.

17. Heard. Perused the records.

18. **Points** that arise for consideration are;

(i) Whether the petitioner has made out a prima facie case for grant of interim reliefs as sought for?

(ii) Whether the respondent Nos.5, 6 and 7 have made out a case for rejection of the present petition filed by the petitioner?

(iii) What order?

<u>BILL OF LADING AND POSITION OF LAW:</u>

19. Before adverting to rival contentions, since the entire dispute revolves around undelivered cargo, which is the subject matter of the Bill of Lading, appropriate to encapsulate the law governing the Bill of Lading, rights and obligations arising thereunder.

20. Indian Bill of Lading Act, 1856 has now been repealed with the promulgation of the Bill of Lading Act, 2025 (Act, 2025), which consists of six sections. The preamble of the Act, 2025 reads as follows;

> *"An Act to make provisions for the transfer of rights of suit and all liabilities to the consignee named in a bill of lading and every endorsee of a bill of lading, to whom the property in the goods mentioned in the bill of lading shall pass, upon or by reason of a consignment or an endorsement, and for matters connected therewith or related thereto.*
>
> *WHEREAS by the custom of merchants, a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner;*
>
> *AND WHEREAS it is expedient that such rights should pass with the property;*
>
> *AND WHEREAS it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board;*
>
> *AND WHEREAS it is proper that such bills of lading in the hands of a bonafide holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid".*

21. Sections 2, 3 and 4 of the Act, 2025 read as follows:

> ***2. Rights under bills of lading to vest in consignee or endorsee.-*** *(1) Every consignee of goods named in a bill of lading and every endorsee of a bill of lading, to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with such consignee or endorsee.*

3. Right of stoppage in transit or claims for freight not to be affected.- *Nothing contained in this Act shall prejudice or affect-*

(a) any right of stoppage in transit; or

(b) any right to claim freight against the original shipper or owner; or

(c) any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

4. Bill of lading in hands of consignee, etc., conclusive evidence of shipment as against master, etc. *-(1) Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as, against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped:*

Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

2. Nothing in sub-Section(1) shall apply whether holder of the bill of lading shall have had actual notice at the time of receiving such bill of lading that the goods had not been laden on board."

22. Section 4 of the Act, 2025 as noted above, indicate that every Bill of Lading in hands of the consignee or the endorsee, for the valuable consideration, represents goods to have been shipped on board and is conclusive evidence of such shipment as against the master or other persons signing the same.

23. SCRUTTON on “Charterparties and Bills of Lading” - Eighteenth Edition, in its Section I, Article 2 has explained “Bill of Lading” as under:

> *"When the ship is put up for particular voyage to carry the goods of any persons who may be willing to ship goods on her for that voyage, she is said to be "put on the berth" or employed as a general ship. After the goods are shipped, a document called a bill of lading is issued, which serves as a receipt by the shipowner, acknowledging that the goods have been delivered to him for carriage.*
>
> *Besides acting as a receipt for the goods, the bill of lading serves also as:-*
>
> *(1) Evidence of the contract of affreightment between the shipper and the carrier*
>
> *(2) A document of Title, by the indorsement of which the property in goods for which it is a receipt, may be transferred, or the goods pledged or mortgaged as security for an advance.*
>
> *By the statute, rights and liabilities of shipper under the contract of affreightment, as set out in the bill of lading may be transferred with the full property in goods to the consignee of the goods or the indorsee of the bill of lading."*

24. In the same book at Section X, meaning of the terms "Indorsement of the Bill of Lading" is given as under;

> *"Goods shipped under a bill of lading may be deliverable to a named person, or to a named left blank, or "to bearer", and in the first two cases may or may not be made deliverable to "order or assigns".*
>
> *Bills of lading making goods deliverable "to order" or "to order or assigns", or by mercantile customs negotiable instruments, the indorsement and delivery of which may affect the property in the goods shipped.*
>
> *Indorsement is affected either by the shipper or consignee writing his name on the back of the bill of lading, which is called an "Indorsement in blank" or by*

his writing "Delivered to I[or order], F," which is called an "Indorsement in full".

So long as the goods are deliverable to a name left blank, or to bearer, or the indorsement is in blank, the bill of lading may pass from hand to hand by mere delivery, or may be redelivered without any indorsement to the original holder, so as to affect the property in goods.

But the holder of the bill may at any time fill in the blank either in the bill or indorsement, or restrict the indorsement the delivery to bearer, such power being given to him by the delivery to him of such a bill of lading."

25. The Apex Court in the case of ***British India Steam Navigation Co. Ltd. Vs Shanmughavilas, Cashew Industries and another***[1] dealing with the meaning, scope and entitlement under a Bill of Lading, at paragraphs 11, 12, 13 and 14 has held as under:

> ***11.*** *It is a settled principle of Private International Law governing bills of lading that the consignee or an endorsee thereof derives the same rights and title in respect of the goods covered by the bill of lading as the shipper thereof had. For the purpose of jurisdiction, the action of respondent 1 is an action in personam in Private International Law. An action in personam is an action brought against a person to compel him to do a particular thing. If clause 3 of the bills of lading is held to be binding on respondent 1 the choice of law by the parties would also be binding. English courts would perhaps use their own Private International Law to decide the dispute. In the event of the English court alone having the jurisdiction, the application of Indian statutes and the jurisdiction of the Indian courts would be, to that extent, inapplicable.*
>
> ***12.*** *Until the Bills of Lading Act, 1855 was passed in England the endorsement of a bill of lading would not affect the contract evidenced in it, and the endorsee*

[1] ***(1990) 3 SCC 481***

could not sue or be sued on such contract, though he was the person really interested in goods, the subject of the contract. By Section 1 of the Bills of Lading Act, 1855, in England "every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property of goods shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bills of lading had been made with himself." In Sewell v. Burdick [(1884) 10 AC 74, 85, 104 : 1 TLR 128] it is held that Section 1 is to be given effect in any proceeding in the English court regardless of the proper law governing the transfer of the bill of lading. The property passes by reason of consignment or endorsement and the right to sue passes with it. The consignee or endorsee may lose his right or liability under the Act by such further endorsement of the bill of lading as divests him of the property. Such a vesting of rights and liabilities on endorsement of a bill of lading does not in any way affect the shipowners' rights against the original shippers or owners of the goods for the freight or the shipper's rights under the bill of lading or the liability of the consignee or indorsee by reason of his being such consignee or indorsee, or of his receiving the goods in consequence of such consignment or indorsement, or any right of stoppage in transitu.

13. *The Indian Bills of Lading Act, 1856 was based on the English Bills of Lading Act, 1855 (18 and 19 Vict. C. 111) (Act 9 of 1856). Under Section 1 of the Indian Bills of Lading Act, 1856 also every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.*

14. *The bill of lading is the symbol of the goods, and the right to possess those passes to the transferee of the bill of lading. In other words, its transfer is symbolic of the transfer of the goods themselves and until the goods have been delivered, the delivery of the duly endorsed bill of lading operates as between the transferor or transferee, and all who claim through them, as a physical delivery of the goods would do. The bill of lading is a negotiable instrument in the sense of carrying with it the right to demand and have possession of the goods described in it. It also carries with it the rights and liabilities under the contract, where the property in the*

> *goods also is transferred. However, a bill of lading is not a negotiable instrument in the strict sense of the transferee deriving better title than the transferor. The transferee of a bill of lading gets no better title than the transferor himself had. Mere possession of the bill of lading does not enable the holder to sue a person at a place where the transferor himself could not have done. Where the negotiation of a bill of lading is by the person who had a right to sue on it, mere possession of it does not enable the holder to sue any person who was not liable under it and not to sue another who was liable under it to make good the claim. He cannot also sue at a place not intended by the parties when intention has been expressed.*

26. Summary of the above provisions of law, commentary, and law enunciated by the Apex Court indicate that a Bill of Lading is a document evidencing;

(a) the contract between the shipper and the carrier;

(b) the vesting of the right in respect of the property in goods in favour of the consignee or endorsee;

(c) the liability of the consignee or endorsee by reason of, or in consequence of his being such consignee or endorsee,

(d) the conclusive proof of shipment of goods on board of a vessel against the master or other persons signing the same.

DISCUSSION AND ANALYSIS OF THE DISPUTE AT HAND:

27. Since in the instant case the petitioner, the respondent No.5 and the respondents Nos. 6 and 7 are claiming to be the rightful owners of the undelivered cargo, the issue

for the purpose of the present proceedings has to be considered in the light of the aforesaid provisions of law.

28. There is, however, a consensus among the petitioner, respondent No. 1 and respondent No.6 on the following aspects;

(a) that the petitioner had initially booked for the supply of 500 metric tonnes of cashew nut shells, in terms of the contract dated 04.06.2026 produced at Annexure-A.

(b) that the first consignment consisting of 112 metric tonnes has been supplied by respondent No.1 to the petitioner and that payment in that regard has been made by the petitioner;

(c) that at the relevant time Respondent No.6 was representing and acting on behalf of respondent No.1;

(d) that the undelivered cargo was procured through SR Agro, an associate entity of respondent No.1 of which Mahesh Selvan, respondent Nos.6 and 7 and others are the directors;

(e) that a draft bill of lading as per Annexure-K was prepared and shared with the petitioner by respondent No.1 through respondent No.6;

(f) that undelivered cargo was laden on the ship at Tema, Ghana, to be delivered to the petitioner at Ho Chi Minh City, Vietnam;

In addition to the above, there is a categoric admission by respondent No.6:

(g) that respondent No.6 had diverted undelivered cargo during the transit to be delivered at the port at Mangalore instead of being delivered at Ho Chi Minh City, Vietnam.

29. The aforesaid consensus and the admission indicate existence of *prima facie* transaction between the Petitioner and Respondent No.1 in respect of undelivered cargo as well as diversion of the same during its transit.

30. Although respondent No.1 has admitted that the petitioner has made the payments to respondent No.1 as per the invoices raised, respondents Nos.6 and 7 in their statement of objections have disputed such payments. They have further alleged non-payment of the cost of

procurement of goods by Respondent No.1 to SR Agro. Thus, the controversy now between petitioner, respondent No.1 and respondent Nos.6 and 7 seems to be regarding non-payment of cost of undelivered cargo to SR Agro.

31. Petitioner, in support of its claim for having paid the amount filed a memo dated 14.08.2026 along with copies of the invoices and bank statements, which *prima facie* evidence payment of the amounts mentioned in the invoices to the account of respondent No.1. However, the same is also disputed by respondent Nos.6 and 7 on the premise that such payment do not meet the standards of international monetary transaction.

32. Allegation of unauthorised diversion of undelivered cargo remained uncertain until Respondent Nos.5 to 7 filed their applications and statement of objections staking their independent claims as noted above.

33. Respondent No.5 has claimed its independent right, title, and interest in the undelivered cargo purportedly procured by it from certain Wincom Trading FZC LLC.

34. Respondent Nos.6 and 7 have justified their action of diverting the shipment during transit on account of non-payment of the cost of undelivered cargo by respondent No.1 to SR Agro through whom it was procured.

35. It is the contention of respondent No.6 that, he was forced to divert the shipment from Vietnam to Mangalore as his repeated requests for payment to SR Agro were not considered by Mahesh Selvan, one of the Directors of respondent No.1. This categorical statement made by respondent No.6 in the statement of objections indicate *interse* dispute between respondent No.1 and respondent Nos.6 and 7. Thus, dispute if any would only be with regard to conclusive proof of payment by petitioner against the invoices raised by respondent No.1 towards undelivered cargo and further payments to SR Agro.

36. Situation perhaps would not have got murkier if respondent No.5 had not filed the interim applications in I.A.Nos.6, 7 and 8 claiming its independent right over the undelivered cargo. As noted above, it is the case of respondent No.5 that it is the owner of the undelivered cargo, having procured the same from an entity called

Wincom Trading FZC LLC. Respondent No.5 has categorically denied any connection or contract either with respondent No.1 or with respondent No.6 with respect to the undelivered cargo. In support of its independent claim for having procured the undelivered cargo from Wincom Trading FZC LLC, respondent No.5 has heavily relied upon the copy of the Bill of Lading, claiming it to be the original produced at Annexure-R4A, which fact is stoutly denied by the petitioner, respondent No.1 as well as respondent No. 6.

37. It is the vehement submission of learned Senior counsel appearing for respondent No. 5 that it is trite law that one who possesses an original Bill of Lading shall *prima facie* be held to be entitled to the property in the goods, subject matter of such Bill of Lading. And that in the instant case, respondent No.5 holds the original Bill of Lading; as such, the undelivered cargo belongs to respondent No.5. In support of his submission, he relies upon the judgment of the Apex Court in the case of ***British India Steam Navigation*** (supra), the judgment of the High Court of Madras in the case of ***MSC Agency***

India Pvt. Ltd., Vs M/s.Glints Global PTE Ltd.,[2] (supra), the judgment of the Division Bench of the Madras High Court in the case of ***Glints Global Pte. Ltd and Anr Vs Eisa Trading Inc.***[3]

38. There can be no dispute as to the proposition of law enunciated in the aforesaid Judgments to the effect that, between a draft Bill of Lading and an original Bill of Lading, it is the original Bill of Lading which is a better proof of evidence regarding the right, title, and interest over the property in goods, subject matter of such original Bill of Lading.

39. But when a serious dispute is raised with regard to the genuineness of the "Original Bill of Lading" coupled with questionable payment of value, it becomes imperative to scrutinize such a claim even for *prima facie* purposes.

40. Petitioner in the instant case admittedly holds a draft Bill of Lading. Respondent No.5 on the other hand, claims to be in possession of the original Bill of Lading. Petitioner

[2] **2014 SCC ONLINE MAD 306**
[3] **2014 SCC ONLINE MAD 381**

has alleged manipulation of documents by respondent No.5 in collusion with respondent No.6. Respondent No.6 on oath has admitted diversion of undelivered cargo. It is therefore necessary to examine the veracity of these facts to come to a *prima facie* conclusion as to who justifies the claim over the undelivered cargo. This is also in light of the unanimous stand taken by the petitioner, respondent No.1 and respondent No.6 on the one hand, that the undelivered cargo, being the subject matter of a contract dated 06.04.2026 that was entered into between the petitioner and respondent No.1, and the denial of this fact by respondent No.5 who claims to have procured the undelivered cargo from certain Wincom Trading FZC LLC, in terms of the contract dated 19.03.2026.

41. There is no dispute as to the fact that the copies of both the draft Bill of Lading relied upon by the petitioner and the original Bill of Lading relied upon by respondent No.5 have certain striking similarities. Appropriate therefore, to extract contents of said documents in a tabulation form which is as under;

Sl. No.	Particulars	Petitioner-COAF FZE (copy draft Bill of lading)	Respondent No.5- Sindhu Cashew Pvt. Ltd., (copy of Original Bill of Lading)
1.	Contract Date and Number	06.04.2026 2026-P0112	19.03.2026 WINCOM/CASHEW/010-26
2.	Quantity contracted for	500 MTS (+/- 10%)	400 MTS
3.	Description	Raw Cashew Nuts in Shell, Ghana Origin	Raw Cashew Nuts in Shell, Ghana Origin
4.	Payment of advance	09.04.2026	26.03.2026
5.	Seller's name	Avani Kylani Commodities LLC	Wincom Trading FZCLLC
6.	Bill of lading number	MEDUTM439682	MEDUTM439682
7.	Quantity shipped as per Bill of Lading	391440 Kgs	391440 Kgs
8.	Shipper in Bill of Lading	Triton International Limited P.O.Box No.TT 242, Tema-Ghana on A/C Of COAF FZE	Triton International Ltd. P.O.Box No.TT 242, Tema-Ghana on ac of Wincom Trading FZC LLC
9.	Notify parties	Long Gia Trang Company Ltd., Dong Nai province, Vietnam	(i) Sindhu Cashews Pvt. Ltd., (ii) Avanikailani Commodities LLC (iii) Multi-Trade Africa Ltd., (iv) SR Agro Trading at ink page 25 of the application
10.	Port of loading	Tema	Tema
11.	Port of discharge	Vung Tau	New Mangalore
12.	Port of discharge agent	MSC Vietnam Company Ltd., Ho Chi Minh City	MSC Agency (India) Pvt., Ltd., New Mangalore
13.	Place and date of issue	MSC Tema (DATE NOT MENTIONED)	MSC Tema 03.06.2026
14.	Shipped on Board date	(DATE NOT MENTIONED)	24.04.2026

42. Juxtaposition of the aforesaid details, as rightly pointed out by the learned counsel for the petitioner and respondent No.1 indicate the similarity of the name of shipper, specification of the goods, the port of loading,

the place of issue, the number of the Bill of Lading; notifying persons. Except for the alteration wherein, at the address below the term "shipper" instead of on account of COAF FZE, it is shown as Wincom Trading FZC LLC.

43. Further, the copy of the purported original Bill of Lading furnished by the respondent No.5 at Annexure-R4A of its applications in I.A. Nos.6, 7 and 8 of 2026 does not indicate any impressions of there being any seal affixed to the said documents. However, copies of the very same Bill of Lading furnished by the learned Senior counsel for respondent No.5 along with a memo dated 13.08.2026, which was filed subsequent to the filing of the statement of objections to the said applications by the petitioner and respondent No.1, indicates impressions of six different seals being found on the said document. The said six different seals apparently pertained to and were affixed by;

(a) Sindhu Cashew India Ltd.,
(b) Avanikailani Commodities LLC,
(c) Triton International Limited
(d) Wincom Trading FZC LLC
(e) Multi Trade Africa Limited

(f) Meridian Freight Forward Ltd.,

44. Though it is contended by learned Senior counsel for respondent No.5 that the aforesaid seals are in fact the endorsements affixed by the notifying party Nos.2 and 3 found in the copy of the original Bill of Lading, no explanation is forthcoming, despite repeated queries by this Court regarding the date, time, place, and the circumstances under which the said endorsements were obtained. If, according to respondent No. 5 it had nothing to do with respondent No. 1 or anyone associated with respondent No. 1, showing respondent No. 1 and its trading associate, Multi-trade Africa Ltd., and SR Agro as the notifying Parties and purportedly obtaining their endorsements by way of affixation of seal, as noted above, raise many questions which remained unanswered.

45. There is yet another anomaly found in the copy of Bill of Lading produced at Annexure-R4A of the application filed by the respondent No.5. When the said document is compared with the copy of Bill of Lading which is produced along with memo dated 13.08.2026 containing

purported seals as noted above, it is seen that documents at Annexure-R4A consists of 12 pages (ink page 19 to 30 of the application). While document produced along with a memo consists of only 3 rider pages with terms of contract printed overleaf, in the copy produced at Annexure-R4A, the said document seems to be containing 12 rider pages with uncertainty of said rider pages on the document. At ink page Nos.24 and 25, with mention of rider pages as 2, there is reference to certain Thirumala Cashew Industries. There is also reference to SR Agro being second notify party. This anomaly has also remained unexplained.

46. Similar is the situation with regard to the seal found on the commercial invoice and packing list produced at Annexures R5 and R6 by respondent No.5 along with its applications. The said documents bear a miniature-condensed seal of Wincom Trading of different shapes than what is found on the copy of the Bill of Lading produced along with the memo dated 13.08.2026. However, the contents of the rest of the documents in Annexures- R5 and R6 are in their normal font size. No explanation for this apparent anomaly either.

47. However, it is emphatically submitted by the learned Senior counsel for the respondent No. 5 that in a case under Section 9 of the Arbitration and Conciliation Act, 1996 it is the petitioner who seeks an interim measure that must prove and establish its *prima facie* case, instead of pointing out the weaknesses in the case of the respondent No.5. In support of this submission, he heavily relied upon the judgment of the Madras High Court in the case of ***VIJAY MOHAN VS REAL BLUE INTERNATIONAL PRIVATE LIMITED BY ITS DIRECTOR MANOJ SOMAN AND OTHERS***[4]. Reading the said judgment in *extenso* learned Senior Counsel submitted that the facts involved in the said case are strikingly similar and identical to the facts involved in the present case, and that the Madras High Court in the said case had ruled that the party holding the original Bill of Lading, who would be entitled to the goods, subject matter of the said document, should not only be impleaded in a Section 9 proceeding, where a holder of a draft bill of lading is claiming title over the same subject matter, but that after such impleadment Section 9

[4] **2019 SCC Online Madras 16813**

proceeding should be dismissed. Hence, insisted that the goods in the instant case should be released in favour of the respondent No.5 and the present petition under Section 9 be dismissed. This Court is not persuaded by the said submission inasmuch as the facts and circumstances involved in said case and the present case are completely distinguishable. In the case at hand petitioner has raised serious question with regard to genuineness of the original Bill of Lading being produced by the respondent No.5.

48. Another aspect of the matter to be seen is that Respondent No.5 claims to have paid 30% of the cost of the undelivered cargo. As pointed out by learned Senior Counsel for the petitioner, the records furnished by respondent No.5 indicate that 30% of the amount of the undelivered cargo, i.e., USD 1,32,000 were purportedly paid on 23.03.2026 against advance import payment invoice No. WIC/CAS/010-26 as seen at Annexure-R2. Whereas, the commercial invoice bearing No.WIC/CAS/010-26 produced at Annexure-R5 is dated 03.06.2026. Thus, the said payment appears to have been made even before the commercial invoice at

Annexure-R5 came into existence. Further, as already noted above, the seal found at the bottom of the document at Annexure-R5 is of a miniature-condensed form. These instances give rise to serious doubts as to how respondent No.5 could have made the payment against an invoice with its specific number during the month of March itself, which has admittedly come into existence three months thereafter, i.e., in the month of June.

49. In view of these apparent anomalies and the discrepancy in the documents produced by the respondent No.5 justifying its claim of possessing the original Bill of Lading entitling it to claim the property in the undelivered cargo, this Court does not find it appropriate at this juncture to rely upon the said documents, as they failed to evince *prima facie* credibility.

50. The matter has been heard at length over two weeks. Nothing prevented the respondent No.5 from producing either the originals or from clarifying the pertinent questions raised about the authenticity of the documents during the hearing. Merely because the respondent No.5

claims to be holding the original Bill of Lading and, in the light of the aforesaid serious discrepancies, this Court does not find it appropriate to consider the request of the respondent No.5 to release the undelivered cargo against the bank guarantee. Reliance placed by the learned Senior Counsel for the respondent No.5 and the judgments referred to above therefore cannot be applied to the instant case.

51. The petitioner, on the other hand, relied upon the draft Bill of Lading produced at Annexure-K. Draft Bill of Lading is not conclusive evidence of the transaction, as compared to the original Bill of Lading, which admittedly has not been issued in favour of the petitioner. Though respondent No.1 has admitted receipt of payment of cost of the undelivered cargo, in the light of the dispute regarding payment raised by respondent Nos.6 and 7, at this juncture this Court does not find it appropriate to direct the release of the undelivered cargo in favour of the petitioner.

52. The alternate relief of directing respondent No.1 to furnish a bank guarantee representing the commercial value of undelivered cargo as sought for by the petitioner would also not be viable, as respondent No.5 has staked its claim, distancing itself from respondent No.1.

53. This Court had even directed the parties to explore the possibility of an amicable resolution of the dispute in the light of the stand taken by respondent No.6 of he admittedly diverting the undelivered cargo on account of a purported dispute regarding non-payment of the cost of the undelivered cargo by respondent No.1 to SR Agro, which has not yielded any result.

54. Respondent No.5 is not a party to the arbitration agreement. It has got itself impleaded in this proceeding. Question whether a stranger to an arbitration agreement can be made a party to Section 9 proceedings has been dealt with and addressed by the Apex Court in the case of ***COX & KINGS LIMITED Vs SAP INDIA PRIVATE LIMITED AND ANOTHER***[5]***.*** Persons claiming through and under can only assert in a derivative capacity. It has

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[5] **(2024) 4 SCC 1**

been further held the definition of parties would include both signatory as well as non-signatory party. However, it is for the Arbitral Tribunal to decide the said question.

55. It is equally a settled law that an interim order for the protection and preservation of the subject matter of the arbitration can be passed even against a stranger to arbitration agreement.

56. A stranger who voluntarily gets himself impleaded, staking independent right, title, and interest over the subject matter of the arbitration, and fails to *prima facie* establish and justify his claims over the subject matter of the arbitration cannot seek to wriggle out of the binding nature of preventive orders that may be granted to preserve the subject matter of the arbitration either. Respondent No.5 therefore is required to be prevented by an interim order from dealing with undelivered cargo.

57. Admittedly respondent No.6 initially held 30% of the share in respondent No.1 company, which is now altered and instead his wife-respondent No.7 is holding said 30% of shares, while Mahesh Selvan is holding 70% of shares. SR Agro is admittedly an associate entity of Respondent

No.1. Thus Respondent Nos. 6 and 7 are claiming their right as the shareholders of Respondent No.1, therefore, they are also required to be prevented, in any way, dealing with the undelivered cargo.

58. The undelivered cargo has admittedly been shipped on 24.04.2026. It is submitted that the shelf-life of the undelivered cargo is about nine months. The undelivered cargo is admittedly in the custody of respondent No.3 - JSW Mangalore Container Terminal Pvt. Ltd., as per the memo dated 19.08.2026 filed by Respondent No.2 along with the copy of E-mail sent by respondent No.3. Respondent No.3 is therefore required to preserve the undelivered cargo in a manner that prevents any deterioration of the quality of the undelivered cargo. The costs, expenses, and charges payable in this regard shall be borne by the party who will eventually be entitled to the undelivered cargo after resolution of dispute in accordance with law.

59. Points raised above are answered accordingly.

60. For the aforesaid reasons, the following:

ORDER

(i) The arbitration petition seeking interim measures under Section 9 of the Arbitration and Conciliation Act, 1996 is ***partly allowed***.

(ii) Respondent Nos.1, 5, 6 and 7 their representatives, agents, employees, and/or any third party claiming through or under them, are restrained from further alienating, transferring, diverting, or disposing of the cargo comprised in the containers bearing Nos. TRHU5067650, MSNU5601154, MSNU9590021, MSDU5675162, FFAU2353524, MSNU7956024, TLLU7659491, MSDU6005530, MEDU7406777, MSDU7035138, MEDU7984271, MSBU8768425, MEDU7010596, MSMU4840119 and TRHU6220059.

(iii) Respondent No.3 is directed to ensure that the said containers are not further transferred, shifted, moved, diverted, or disposed of, and it shall also ensure that the aforesaid undelivered cargo is preserved, preventing deterioration.

(iv) All costs, expenses, and charges payable to Respondent No.3 or to any other authority shall be borne by the party who will eventually be entitled to the undelivered cargo after resolution of dispute in accordance with law.

(v) This interim order/measure shall be in force for a period as contemplated under sub-rule (4) of Rule 9 of Arbitration(Proceedings before the Courts) Rules, 2001.

Sd/-
(M.G.S. KAMAL)
JUDGE

RL/RU/SBN