



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
LINO FARRUGIA SACCO**

Seduta tad-9 ta' Ottubru, 2013

Citazzjoni Numru. 232/2013

Dr. Abigail Bugeja bhala mandatarju tas-socjeta` estera
National Metalcans, Kumpanija registrata fis-Sultan ta'
Oman (Nurmu ta' registrazzjoni 1/53805/5)

VS

Emirates Aerated Concrete and Reinforcement Steel
Industries Company Limited (C 56566)

Il-Qorti,

A. RIKORS:

Rat ir-rikors ta' Dr. Abigail Bugeja ghan-nom u in
rapprezentanza tas-socjeta` estera National Metalcans li
permezz tieghu esponiet:

1. Illi nhar l-ghoxrin (20) ta' Frar tas-sena elfejn u
tlettax (2013), gie pprezentat mandat ta' sekwestru
kawtelatorju kontra s-socjeta` konvenuta ghas-somma ta'

miljun, disa' mija, erba' u erbghin elf Dollaru Amerikan (USD 1,944,000) ekwivalenti ghal miljun, erba' mija u tlieta u hamsin elf u tlett mija u disa' u erbghin Ewro (EUR 1,453,349), rapprezentanti ammonti mhallsa taht zewg (2) *Letters of Credit* mahruga mis-socjeta` rikorrenti favur is-socjeta` konvenuta ghall-*merce* li s-socjeta` konvenuta intenzjonalment u frawdolentement qatt ma kkonsenjat lis-socjeta` rikorrenti;

2. Illi, kif qed jigi kkonfermat fl-affidavit anness mar-rikors u mmarkat bhala Dok. "B", f'Marzu tas-sena elfejn u tnax (2012), is-socjeta` rikorrenti kienet avvicinat lis-socjeta` bl-isem ta' *Emirates Aircrete Industries Corp.*, liema socjeta` kienet tipprovdi '*Autoclave Aerated Concrete Blocks*', sabiex tipprovdiha stima ghall-kwantitajiet li l-istess socjeta` rikorrenti kellha bzonn tordna. Fil-fatt, rapprezentant ta' *Emirates Aircrete Industries Corp.*, maghruf mis-socjeta` rikorrenti bhala Ahmed Sabah, kien wiegeb ghall-*emails* li kienu ntbaghtu mis-socjeta` rikorrenti fejn infurmahom li kien ser jipprovdihom l-istemi mitluba, liema stimi gew prodotti lis-socjeta` rikorrenti nhar it-tmintax (18) ta' Marzu, tas-sena elfejn u tnax (2012) (kopja tal-korrispondenza skambjata bejn is-socjeta` rikorrenti u r-rapprezentant ta' *Emirates Aerated Industries Corp.* kif ukoll kopja ta' l-istima provduta jinsabu f'pagni 4-5 tad-dokument 'CGK1' anness mal-affidavit fuq indikat);

3. Illi, l-istess Ahmed Sabah kien ghadda kopja tal-*business card* tieghu lir-rapprezentanti tas-socjeta` rikorrenti (kopja tal-*business card* tinsab f'pagna 14 tad-dokument 'CGK1' anness mal-affidavit fuq indikati), fuq liema *business card* hemm indikat illi Ahmed Sabah huwa *Regional Sales and Marketing Manager* tas-socjeta` konvenuta u cioe` ta' *Emirates Aerated Concrete and Reinforcement Steel Industries Company Limited*, kumpanija registrata f'Malta;

4. Illi, fil-granet successivi, kienu gew skambjati diversi korrispondenzi u sehhet sahansitra laqgħa ohra fejn gew diskussi l-prezzijiet għall-materjal rikjest mis-socjeta` rikorrenti, prodotti ohra li Ahmed Sabah seta'

jipprovdi lis-socjeta` rikorrenti fosthom provvista ta' hadid prodott fit-Turkija u anke xi informazzjoni teknika fuq il-koordinazzjoni tal-provvista tal-materjal mitlub sabiex jitwassal fuq is-sit indikat mis-socjeta` rikorrenti;

5. Illi, nhar l-erba' (4) ta' Gunju tas-sena elfejn u tnax (2012), is-socjeta` rikorrenti rceviet stima formali ghall-ordni ta' '*Autoclave Aerated Concrete Blocks*', stampata fuq *letterhead* ta' *Emirates Aircrete Industries Corp.*, liema stima kienet giet ukoll iffirmata minn Ahmed Sabah. Din l-istess ordni kienet giet ikkonfermata mis-socjeta` rikorrenti sussegwentement nhar it-tlettax (13) ta' Settembru tas-sena elfejn u tnax (2012) flimkien ma' ordnijiet ohra ghal prodotti ohra fil-granet sussegwenti (kopja ta' l-ordnijiet maghmula mis-socjeta` rikorrenti lis-socjeta` konvenuta jinsabu f'pagni 15-21 tad-dokument 'CGK1' anness mal-affidavit fuq indikat);

6. Illi, nhar il-hamsa u ghoxrin (25) ta' Lulju tas-sena elfejn u tnax (2012), Ahmed Sabah kien ukoll baghat stima tal-prezzijiet ghall-provvista ta' hadid li s-socjeta` rikorrenti xtaqet tordna, liema stima kienet tinkludi *shipment terms* ghall-hadid provdut mit-Turkija, (kopja tal-korrispondenza tinsab f'pagni 28-29 tad-dokument 'CGK1' anness mal-affidavit fuq indikat);

7. Illi, nhar is-sitta (6) ta' Settembru tas-sena elfejn u tnax (2012), Ahmed Sabah kien ukoll provda fattura ghal tali ordni kif ukoll kampjun ta' *Letter of Credit* lis-socjeta` rikorrenti li kellha tigi ezegwita favur is-socjeta` konvenuta. Fuq l-istess kampjun, kien hemm ukoll imnizzel dettalji bankarji tas-socjeta` konvenuta liema kontijiet jidhru li huma mizmuma mal-Bank of Valletta plc. Fil-fatt, nhar il-hmistax (15) ta' Settembru tas-sena elfejn u tnax (2012), Ahmed Sabah rega' staqsa lis-socjeta` rikorrenti dwar il-hrug ta' l-istess *Letter of Credit* akkont tal-vireg tal-hadid;

8. Illi, nhar is-sitta u ghoxrin (26) ta' Settembru tas-sena elfejn u tnax (2012), is-socjeta` rikorrenti kienet giet infurmata mill-*Operations Manager* taghha illi l-ewwel konsenja ta' '*Autoclave Aerated Concrete Blocks*' ordnata

minn *Emirates Aircrete Industries Corp.*, kienet ghadha ma waslitx u sahasitra kienet ittardjat. Irrizulta wkoll illi dan l-istess dewmien tal-konsenja kien dovut ghall-fatt li l-*Letter of Credit* rikjesta minn Ahmed Sabah ghall-ordni tal-tlett elef (3,000) tunnellata metrika vireg tal-hadid, kienet ghadha ma gietx effetwata favur is-socjeta` konvenuta (Kopja tal-korrispondenza li tinsab f'pagni 36-39 tad-dokument 'CGK1' anness mal-affidavit fuq indikat);

9. Illi, minhabba li kien hemm insistenza u pressjoni li tali '*Autoclave Aerated Concrete Blocks*' jigu kkonsenjati fuq is-sit tal-progett fi zmien qasir, id-direttur tas-socjeta` rikorrenti u *cioe`* Chaitanya Gulabsi Khimji ddecieda li johrog *Letter of Credit* f'isem is-socjeta` rikorrenti favur is-socjeta` konvenuta nhar l-ewwel (1) ta' Ottubru tas-sena elfejn u tmax (2012). Appena din l-istess *Letter of Credit* inharget, il-materjal li kellu jigi kkonsenjat fuq is-sit tal-progett kien fil-fatt gie kkonsenjat. Dan l-istess materjal kien gie mhallas permezz ta' zewg pagamenti, wiehed fl-ammont ta' hamsa u erbghin elf, mitejn u tlieta u tmenin Dollaru Amerikan (USD 45,283) liema pagament kien gie effettwat nhar it-tmintax (18) ta' Dicembru tas-sena elfejn u tmax (2012), u pagament iehor fl-ammont ta' mija u erbat elef, erba' mija u disa' u erbghin Dollaru Amerikan (USD 104,449) b'total ta' mija u disa' u erbghin elf, seba' mija u tnejn u tletin Dollaru Amerikan (USD 149,732). Kull fattura li thallset mis-socjeta` rikorrenti kienu fuq *Letterhead* tas-socjeta` konvenuta, b'indirizz Malti u b'dettalji bankarji Maltin mizmuma mal-Bank of Valletta plc.;

10. Illi, sussegwentement, kien hemm diversi korrispondenza u laqghat dwar il-finalizzazzjoni ta' l-ordni ta' tlett elef (3,000) tunnellata metrika vireg tal-hadid u anke dwar il-hrug ulterjuri tal-*Letters of Credit*. Fil-fatt, Ahmed Sabah kien bat fattura u kampjun tal-*Letter of Credit* ohra lis-socjeta' rikorrenti nhar l-erba' (4) ta' Ottubru tas-sena elfejn u tmax (2012), liema socjeta` rikorrenti harget *Purchasing Order* nhar l-ghaxra (10) ta' Ottubru tas-sena elfejn u tmax (2012) ghall-ammont ta' vireg tal-hadid hawn fuq indikat. Kien sar ftehim ukoll illi l-ordni ta' tlett elef (3,000) tunnellata metrika vireg tal-hadid

tinqasam f'zewg ordnijiet, u *cioe`* f'elf (1,000) tunnellata metrika u f'elfejn (2,000) tunnellata metrika (Kopja ta' dawn id-dokumenti jinsabu f'pagni 45-64 tad-dokument 'CGK1' anness mal-affidavit fuq indikat);

11. Illi, nhar is-seba (7) ta' Novembru tas-sena elfejn u tnax (2012), ic-*Chief Accountant* tas-socjeta` rikorrenti bl-isem ta' Mohan Patel, kien informa lil Ahmed Sabah li zewg (2) *Letters of Credit* kienu nhargu minn zewg banek Omani favur is-socjeta` konvenuta (kopja tal-korrispondenza tinsab f'pagna 65 tad-dokument 'CGK1' anness mal-affidavit fuq indikat). L-ewwel *Letter of Credit* kienet akkont ta' l-ordni ta' elfejn (2,000) tunnellata metrika hadid mahruqa mill-bank nazzjonali ta' Oman ghall-valur ta' miljun, mitejn u tnejn u sebghin elf Dollaru Amerikan (USD 1,272,000), datata sitta (6) ta' Novembru tas-sena elfejn u tnax (2012) u numerata LCU/000992/12. It-tieni *Letter of Credit* kienet akkont tal-ordni ta' elf (1,000) tunnellata metrika hadid mahruqa mill-bank ta' Dhofar ghall-valur ta' sitt mija u tnejn u sebghin elf Dollaru Amerikan (USD 672,000), datata sitta (6) ta' Novembru tas-sena elfejn u tnax (2012) u numerata 20121106US02486. *Entrambi Letters of Credit* inhargu favur is-socjeta` konvenuta (Kopja taz-zewg *Letters of Credit* jinsabu f'pagni 68-88 tad-dokument 'CGK1' anness mal-affidavit fuq indikat);

12. Illi, s-socjeta` rikorrenti tikkonferma li l-konsenja ta' tlett elef (3,000) tunnellata metrika qatt ma giet ikkonsenjata f'Oman u dan meta z-zewg *Letters of Credit* kienu gew imhallsa mis-socjeta` konvenuta gewwa l-Bank of Valletta plc., f'Malta. Minn korrispondenza skambjata bejn is-socjeta` rikorrenti u l-bank ta' Dhofar u l-bank nazzjonali ta' Oman, is-somma ta' miljun, disa' mija u erbgha u erbghin elf Dollaru Amerikan (USD 1,944,000) fil-fatt kienet giet trasferita fil-kontijiet bankarji tas-socjeta` konvenuta gewwa l-*Bank of Valletta plc.* (Kopja tal-korrispondenza tinsab f'pagni 89-91 tad-dokument 'CGK1' anness mal-affidavit fuq indikat);

13. Illi, s-socjeta` rikorrenti sahsitra kkonsultat mal-*ICC International Maritime Bureau*, sabiex tivverifika l-

veracita` tal-*bills of lading* li gew suppliti lilhom minn Ahmed Sahab. Mir-ricerki maghmula mill-*ICC International Maritime Bureau*, irrizulta li l-istess *bills of lading* kienu foloz u dan minhabba li l-fatt li kienu mahruga minn entita` inezistenti. Apparti dan, irrizulta wkoll illi l-isem tal-bastiment imnizzel fuq l-istess *bills of lading* u cioe` '*MV Armada*' ma kienx jikkorrispondi mal-*IMO number*, u dan ghaliex l-*IMO number* li hemm indikat fuq l-imsemmija *bills of lading* jikkorrispondi ma' bastiment iehor rikonoxxut bhala '*MV Charleston Express*'. Dan l-ahhar bastiment qatt ma bahhar lejn it-Turkija jew lejn Oman. *Di piu`*, l-agent li hemm imnizzel fil-port ta' Oman ikkonferma li ma kien qed jistenna l-ebda merkanzija li kellha titwassal minn bastiment bl-isem ta' '*MV Armada*';

14. Illi, l-*ICC International Maritime Bureau* kkonfermat ukoll illi hija kienet diga' investigat kaz ta' frodi simili u li kien jirrigwarda kunsinna ta' hadid provduta mill-istess *Emirates Aircrete Industries Corp.* li allegatament kellha titwassal mit-Turkija sal-Bahrain. Fl-istess kaz, l-*ICC International Maritime Bureau* kienet ikkonkludiet illi l-*bills of lading* provduti kienu wkoll foloz u li l-kunsinna kienet xejn hlief fittizja (kopja tar-rapport mahrug lis-socjeta' attrici mill-*ICC International Maritime Bureau* jinsab f'pagni 92-94 tad-dokument '*CGK1*' anness mal-affidavit fuq indikat);

15. Illi, l-*ICC International Maritime Bureau* kkonfermaw il-kontenut tar-rapport li gie provdut lis-socjeta` rikorrenti u dan permezz ta' affidavit li gie anness mar-rikors u mmarkat bhala Dok. 'C';

16. Illi, s-somma trasferita fil-kontijiet bankarji tas-socjeta` konvenuta u cioe` ta' miljun, disa' mija u erba' u erbghin elf Dollaru Amerikan (USD 1,944,000), huwa dejn cert, likwidu u dovut lir-rikorrenti *nomine* u dan *stante* li l-*merce* ordnata mis-socjeta` rikorrenti qatt ma giet ikkonsenjata lilha minhabba n-natura frawdolenti ta' din l-istess transazzjoni. *Di piu`*, ir-rikorrenti *nomine* taf li s-socjeta` konvenuta ma ghandha l-ebda eccezzjoni valida x'tissollewa;

Ir-rikorrenti *nomine* talbet lill-Qorti prevja kwalsiasi dikjarazzjoni necessarja u opportuna u dispensata mis-smigh tal-kawza a tenur ta' l-artikolu 167 tal-Kapitolu 12 tal-Ligijiet ta' Malta:

(i). Tiddikjara li t-transazzjoni kummercjali intrapreza mill-bidu nett mis-socjeta` konvenuta u *cioe`* l-bejgh ta' tlett elf (3,000) tunnellata metrika ta' hadid kienet frawdolenti. Illi, ghalhekk il-hlas tal-prezz tal-allegat konsenja (li qatt ma saret u qatt ma kienet intiza jew li tista' ssir *da parte* tas-socjeta` konvenuta) m'huwiex dovut. Illi, bi frodi, l-istess socjeta` konvenuta rceviet mis-socjeta` rikorrenti s-somma ta' miljun, disa' mija u erbgha u erbghin elf Dollaru Amerikan (USD1,944,000) ekwivalenti ghal miljun, erba' mija u tlieta u hamsin elf, tlett mija u disgha u erbghin Ewro (€1,453,349), bhala prezz ta' l-allegat konsenja, meta tali ammont qatt ma kien dovut;

(ii). Tikkundanna lis-socjeta` konvenuta thallas is-somma ta' miljun, disa' mija u erbgha u erbghin elf Dollaru Amerikan (USD 1,944,000) ekwivalenti ghal miljun, erba' mija u tlieta u hamsin elf, tlett mija u disgha u erbghin Ewro (€1,453,349), *oltre* l-imghax legali;

(iii). Tawtorizza l-izbank tas-somma li kienet giet iddepozitata mal-Bank of Valletta plc. mis-socjeta` rikorrenti in *buona fede* liema somma tammonta ghal miljun, disa' mija u erbgha u erbghin elf Dollaru Amerikan (USD1,944,000) ekwivalenti ghal miljun, erba' mija u tlieta u hamsin elf, tlett mija u disgha u erbghin Ewro (€1,453,349), in segwitu ghall-mandat ta' sekwestru kawtelatorju fuq indikat, u li l-banek sekwestrarji joghghobhom jiddepozitaw il-Qorti favur is-socjeta` rikorrenti.

Bl-ispejjez komprizi dawk tal-mandat ta' sekwestru kawtelatorju 243/13JZM u bl-ingunzjoni tas-socjeta` intimata ghas-subizzjoni.

Rat il-lista ta' xhieda u d-dokument esebiti mir-rikorrenti *nomine*.

Kopja Informali ta' Sentenza

Rat l-atti kollha tal-kawza;

Semghet l-abili difensur tas-socjeta` rikorrenti;

Ikkunsidrat

B. PROVI:

Rat li gew prezentati affidavits ta' Chaitanya Gulabsi Khimji, sid u Direttur tas-socjeta` National Metalcans, u ta' Pottengal Mukundan, Direttur ta' ICC International Maritime Bureau mill-1 ta' Frar, 1996. Il-Qorti qiegheadha fit-tarf ta' din is-sentenza tannetti bhala appendici l-imsemmija affidavits.

Rat li s-socjeta` intimata giet debitament notifikata skond il-ligi bil-procedura tal-pubblikazzjoni u l-affissjoni kif jidher a fol 354 sa 363, u ma deher hadd ghalha.

Anke wara li l-Qorti halliet il-kawza ghall-provi kollha ta' l-intimata, xorta ma deher hadd u ma tressqu ebda provi.

C. KONKLUZJONIJIET:

Illi ghalhekk it-talbiet tar-rikorrenti *nomine* jidhru gustifikati, u l-Qorti filwaqt li qed tiddeciedi l-kawza bid-dispensa tas-smigh skond l-artikoli 167 *et seq* tal-Kap 12, tiddikjara li t-transazzjoni kummercjali intrapreza mill-bidu nett mis-socjeta` intimata u *cioe`* l-bejgh ta' tlett elef (3,000) tunnellata metrika ta' hadid kienet frawdolenti. Illi, ghalhekk il-hlas tal-prezz ta' l-allegat konsenja (li qatt ma saret u qatt ma kienet intiza jew li tista' ssir *da parte* tas-socjeta` konvenuta) m'huwiex dovut. Illi, bi frodi, l-istess socjeta` intimata rceviet mis-socjeta` rikorrenti s-somma ta' miljun, disa' mija u erbgħa u erbgħin elf Dollaru Amerikan (USD1,944,000) ekwivalenti għal miljun, erba' mija u tlieta u hamsin elf, tlett mija u disgħa u erbgħin Ewro (€1,453,349), bhala prezz ta' l-allegat konsenja, meta tali ammont qatt ma kien dovut;

Tikkundanna lis-socjeta` intimata thallas is-somma ta' miljun, disa' mija u erbgħa u erbgħin elf Dollaru Amerikan (USD 1,944,000) ekwivalenti għal miljun, erba' mija u

Kopja Informali ta' Sentenza

tlieta u hamsin elf, tlett mija u disgha u erbghin Ewro (€1,453,349), *oltre* l-imghax legali.

Tawtorizza l-izbank tas-somma li kienet giet iddepozitata mal-Bank of Valletta plc. mis-socjeta` rikorrenti in *buona fede* liema somma tammonta ghal miljun, disa' mija u erbgha u erbghin elf Dollaru Amerikan (USD1,944,000) ekwivalenti ghal miljun, erba' mija u tlieta u hamsin elf, tlett mija u disgha u erbghin Ewro (€1,453,349), in segwitu ghall-mandat ta' sekwestru kawtelatorju fuq indikat, u li l-banek sekwestrarji joghghobhom jiddepozitaw il-Qorti favur is-socjeta` rikorrenti.

Bl-ispejjez komprizi dawk tal-mandat ta' sekwestru kawtelatorju 243/13JZM kontra s-socjeta` intimata.

Appendici A:

Affidavit ta' Chaitanya Gulabsi Khimji:

Introduction

1. I am the present owner and director of the Plaintiff Company National Metalcans and make this affirmation in support of the Plaintiff Company's court application.
2. The facts deposed to herein are true to the best of my knowledge, information and belief save where otherwise stated.

3. I have been the owner of, and a director in, National Metalcans since 1996 when it first commenced operations. National Metalcans is in the business of manufacturing and supplying metal cans and tins ranging in size from 0.5 litres to 20 litres, for use as containers for diverse products from biscuits to paint, and enters into many contracts for the purchase of alloys in the course of its business.

4. I am also a shareholder of, and a director in, Al Turki Enterprises LLC (a group company of National Metalcans, which employs over fifteen thousand (15,000) employees, and with its headquarters based in Muscat, Sultanate of Oman) (hereinafter referred to as "**ATE**").

5. I now set out herein the facts as known to me which led to the fraud being commissioned on National Metalcans and the subsequent transfer of the said moneys to the Bank of Valletta and other banks.

6. Supporting documents, sequentially numbered, referred to throughout this affirmation are appended hereto and marked as "**Exhibit CGK1**".

The professional relationship entered into with Emirates Aerated Concrete and Reinforcement Steel Industries Company Limited in relation to the sourcing of Autoclave Aerated Concrete Blocks

7. In January 2012, ATE was awarded a major housing project contract in the area of Muscat, Sultanate of Oman known as the Ras Al Hamra Construction Project (the "**Project**"). As part of the Project, ATE was required to procure and install specialised concrete wall blocks known as Autoclave Aerated Concrete Blocks (the "**AAC Wall Blocks**"). Given the specialist nature of such a requirement, which ATE had never been required to source before, its procurement team was tasked with ascertaining a supplier who would be able to satisfy such a requirement.

8. In or around March 2012, a number of enquiries were sent by ATE's procurement team, by way of e-mail, to a number of potential suppliers who had been identified from the internet and elsewhere as being able to supply AAC Wall Blocks. One of the potential suppliers, so identified through the internet searches undertaken, was a

company called Emirates Aircrete Industries Corp which, according to its website, was based in Dubai in the United Arab Emirates ("**EACICO Dubai**").

9. EACICO Dubai responded on or around 14 March 2012, by way of an e-mail to ATE, stating that a quotation to supply the required number of AAC Wall Blocks would be sent to ATE on 18 March 2012. The e-mail from EACICO Dubai was stated to be from a person calling himself "Ahmed S.A." ("**Mr Ahmed**"). The quote was received from Mr Ahmed on 18 March 2012 as promised. Copies of the e-mail correspondence between ATE's procurement team and Mr Ahmed throughout this period and up to 22 March 2012 are at pages 1 to 3 of Exhibit CGK1.

10. Throughout the course of events, Mr Ahmed communicated with staff of ATE using two different e-mail addresses, namely:

"info@eacico.com"; and

"ahmed@eacico.com".

The e-mail correspondence also copied in two further email addresses, namely:

"operations@eacico.com"; and

"junaid@eacico.com".

No communications were sent directly to, or received from, either of these other two e-mail addresses.

11. On 31 March 2012, Mr Sanjay Joshi, one of ATE's purchasing and procurement staff members ("**Mr Joshi**"), sent an e-mail to Mr Ahmed requesting a contact number for him in order to be able to discuss the quotation which was received on 18 March 2012. Mr. Piyush Jain (the head of ATE Procurement at that time) sent a follow up email to Mr Ahmed on 1 April 2012 (see pages 4 to 5 of Exhibit CGK1).

12. Mr. Ahmed replied on the evening of 1 April 2012 providing Mr. Piyush Jain of ATE with a mobile number in the UAE, 00 971 5091 10371, stating that they could speak the following day, 2 April 2012 (see page 4 of Exhibit CGK1).

13. I do not know whether a conversation took place on 2 April between Mr Ahmed and Mr Jain as the latter is no longer in the services of ATE. However, after further e-

mail correspondence between ATE representatives and Mr Ahmed concerning the possibility of a meeting with Mr Ahmed in order to conclude the supply of the required AAC Wall Blocks for the Project (see pages 6 to 13 of Exhibit CGK1), I and Mr Joshi finally met with Mr Ahmed at ATE's offices in Athaiba, Muscat on 7 May 2012.

14. At the meeting Mr Ahmed informed me and Mr Joshi that his name was Mr Ahmed Sabah A, that he was a Turkish National whose role with EACICO Dubai was that of Regional Sales and Marketing Manager. Although his business card (a copy of which is at page 14 of Exhibit CGK1) stated that he was the Regional Sales and Marketing Manager of a company known as Emirates Aerated Concrete and Reinforcement Steel Industries Company Limited, the Defendant Company, being the Maltese registered company, the contact number and email address were the same as those provided earlier and as confirmed on EACICO Dubai's website.

15. Mr Ahmed further informed me and Mr Joshi that the company, EACICO Dubai, was a Dubai based company and part of a large group of companies established in Kuwait with branches throughout the GCC (the Cooperation Council for the Arab States of the Gulf). Mr Ahmed stated that EACICO Dubai could provide a steady source of AAC Wall Blocks to ATE which would be sourced from the Emirates of Ajman and Sharjah in the UAE as well as from Kuwait.

16. A further meeting was arranged for 15 May 2012 at ATE's offices at which the same individuals who attended the meeting on 7 May 2012 were also present (myself, Mr Joshi and Mr Ahmed). The meeting was arranged in order to negotiate a price for the required supply of the AAC Wall Blocks. It was at this meeting that I enquired of Mr Ahmed as to what other products his company could supply. Mr Ahmed responded by saying that he also dealt in the supply of steel which was produced in Turkey.

17. Further negotiations continued between Mr Joshi and Mr Ahmed by telephone over the course of the next two weeks culminating in a final price for the supply of the AAC Wall Blocks being agreed on 27 May 2012. On 30 May 2012, Mr Ahmed met with ATE's Senior Project Manager, as well as various consultants for the Project, in

Muscat. Mr Ahmed subsequently liaised further with ATE's team working on the Project in order to provide technical and coordination information for the supply of the AAC Wall blocks to the Project's site.

18. On 4 June 2012, ATE received a formal quotation for the AAC Wall Blocks on EACICO Dubai's letterhead, as signed by Mr Ahmed. ATE subsequently placed an order for the AAC Wall Blocks from EACICO Dubai on 13 September 2012 and made further, subsequent orders with EACICO Dubai for associated products on 20 September and 26 November 2012. Copies of the orders are at page 15 to 21 of Exhibit CGK1.

19. On 15 July 2012, Mr Ahmed sent an e-mail to Mr Joshi requesting him to arrange hotel accommodation for two persons on the night of 17 July 2012 either at a hotel near the Project site or at the Golden Tulip Hotel in Seeb, Muscat at which, according to Mr Ahmed, he had stayed at before. Although Mr Ahmed had made a number of visits to Muscat to provide support to ATE's team working on the Project in relation to the supply of the AAC Wall blocks before, he had not previously requested ATE to arrange hotel accommodation. Mr Joshi duly complied and arranged accommodation at the Golden Tulip Hotel. When he requested Mr Ahmed to provide the names of the intended hotel guests, Mr Ahmed said that he would provide this information directly to the hotel (see page 25 of Exhibit CGK1).

20. Mr Ahmed and a colleague of his, stated as being Mr Ahmed's technical associate, met with ATE's project team working on site on 17 July 2012. Subsequently, it transpired that Mr Ahmed and his colleague had checked into the Golden Tulip Hotel under, what would seem to be, Mr Ahmed's real name, being Mr Cuneyt Zencirci with his colleague checking in as a Mr Yuansong Fang. At pages 26 and 27 of Exhibit CGK1 are copies of their passports provided by the hotel: Mr Cuneyt Zencirci holding a Turkish passport numbered U02387249; and Mr Yuansong Fang holding a Chinese passport numbered G40893426. I can confirm that the photograph in the passport in the name of Mr Cuneyt Zencirci is that of the same person who informed me that his name was Mr Ahmed.

The fraud perpetrated on National Metalcans in relation to the ordering of a supply of steel

21. Previously, on 28 May 2012, Mr Joshi, remembering that Mr Ahmed had mentioned at the meeting on 15 May 2012 that he could also source steel supplies, sent an e-mail to Mr Ahmed asking him to quote prices for the supply of steel. This request was in relation to other, separate, projects that ATE and National Metalcans were involved in. Mr Ahmed did not respond until 25 July 2012. In his response he provided prices and shipment terms for the steel which would be sourced from Turkey. Copies of this correspondence is at pages 28 and 29 of Exhibit CGK1.

22. On 2 September 2012, Mr Ahmed attended a meeting with myself and Mr Joshi at ATE's offices in Athaiba, Muscat at which we discussed the supply of 3000 tons of reinforced steel bars. Subsequently, on 6 September 2012, Mr Ahmed sent to Mr Joshi, by e-mail, a pro-forma invoice and the required format for a Letter of Credit in favour of the Defendant Company. The Company's bank details were provided in the e-mail which confirmed that it had a bank account with the Bank of Valletta plc, Valletta, Malta (see pages 30 to 33 of Exhibit CGK1). In addition to the e-mail addresses as referred to at paragraph 10, Mr Ahmed also copied his e-mail response to the e-mail address "ali@idc-steel.com".

23. Mr Ahmed wrote again to ATE on 13 September 2012 forwarding an e-mail that he stated he had received from a company known as IDC Steel which was requesting immediate payment from EACICO Dubai in order to be able to maintain the quoted prices for the 3,000 tons of reinforced steel bars required. Mr Ahmed requested in his e-mail for ATE to "...open your L/C by Sunday 16.09.12..." (see page 35 of Exhibit CGK1).

24. A follow up e-mail was received from Mr Ahmed on 15 September 2012 in which he requested ATE to "*Kindly feedback us about L/C opening for steel?*" (pages 34 to 35 of Exhibit CGK1).

25. On 26 September 2012, Mr Joshi received an e-mail from ATE's Operations Director involved in the Project, David Skinner ("**Mr Skinner**"). Mr Skinner informed Mr Joshi that the first delivery of the AAC Wall Blocks

ordered from EACICO Dubai for the Project had not arrived and were late and that, further, in his dealings with Mr Ahmed in relation to the said delay, it would seem to be the position that the delivery was somehow dependant upon the issuance of a Letter of Credit in relation to a separate order for 3000 metric tons of reinforced steel. Mr Skinner requested Mr Joshi to resolve the matter immediately in order for the AAC Wall Blocks to be delivered as otherwise the Project's client, ATE's employer, would soon realise that the non-delivery of the AAC Wall Blocks could be the reason for the delay to the Project. Mr Joshi immediately sent an e-mail to Mr Ahmed requesting the immediate delivery of the AAC Wall Blocks and that the separate issue of the Letter of Credit for the steel order would be dealt with shortly and that Mr Ahmed should "*...allow a few days for L/C...*". Mr Ahmed responded the same day stating that Mr Joshi should "*...consider this issue seriously and open your L/C immediately to proceed for AAC Block delivery as well.*" See copied e-mail correspondence at pages 36 to 39 of Exhibit CGK1.

26. Given the further pressure exerted by Mr Ahmed, by further e-mails (at pages 40 to 43 of Exhibit CGK1) and during telephone conversations with Mr Joshi, stating that the AAC Wall Blocks would not be delivered until the required Letter of Credit for the steel supplies had been issued, I took the decision that I would issue a Letter of Credit in the name of my company, National Metalcans. I requested Mr Joshi to inform Mr Ahmed that I would do so on the following Monday, being 1 October 2012.

27. The AAC Wall Blocks and associated products ordered through EACICO Dubai were eventually delivered to the Project site. Payment was made by ATE on two dates: USD 45,283 on 18 December 2012; and USD 104,449 paid on 22 January 2013, the total amount being USD 149,732. However, all of the invoices issued for the supplies of the AAC Wall Blocks were on the Defendant Company's letterhead showing a Maltese address and payment details to a bank account held in the name of the Defendant Company with Bank of Valletta, as opposed to EACICO Dubai with whom the original agreement for the

supply of the AAC Wall Blocks had been, or so it was thought, originally entered into.

28. Further correspondence followed in relation to the technical specifications of the order of steel and the subsequent issuance of the required Letter of Credit. Subsequent meetings were held in Muscat with Mr Ahmed (myself and Mr Joshi attending) in order to finalise the deal: the technical requirements of the steel, the price to be paid for it, and the payment terms. On 4 October 2012, Mr Ahmed sent a revised draft pro-forma invoice and format for a Letter of Credit in favour of the Defendant Company. National Metalcans, as authorised by me, issued a purchase order on 10 October 2012 to the Defendant Company for 3000 metric tons of Izmir Demir Turkish Steel. This order was subsequently split into two separate orders: one for 1000 metric tons; the other for 2000 metric tons. In addition, the payment terms were increased. Copies of these documents are located at pages 45 to 64 of Exhibit CGK1.

29. On 7 November 2012, the Chief Accountant for National Metalcans, Mr Mohan Patel, informed Mr Ahmed, by e-mail (see page 65 of Exhibit CGK1), that the required Letters of Credit had been issued through two Omani banks:

30.1 one for the subsequent payment of the order for 2000 metric tons of steel issued through the National Bank of Oman for the value of One

Million, Two Hundred and Seventy-Two Thousand American Dollars (USD 1,272,000), being One Million and Sixty Thousand

American Dollars (USD 1,060,000) plus twenty per cent (20%) tolerance, dated 6 November 2012 and numbered LCU/000992/12; and

30.2 the other for 1000 metric tons of steel issued through Bank Dhofar for the value of Six Hundred and Seventy-Two Thousand American

Dollars (USD 672,000), being Six Hundred Thousand American Dollars (USD 600,000) plus twelve per cent (12%) tolerance, dated 6

November 2012 and numbered 20121106US02486,

with both Letters of Credit being in favour of the Defendant Company. A copy of certified and authenticated copies of the two Letters of Credit issued by each of the named banks, and associated documents, are located at pages 68 to 88 of Exhibit CGK1.

30. Despite the steel never being delivered to Oman, both Letters of Credit were called in by the Defendant Company through Bank of Valletta in Malta. I understand from confirmations received from the National Bank of Oman and Bank Dhofar on 14 February 2013, see pages 89 to 91 of Exhibit CGK1, that the full amount of the funds, in the sum of One Million, Nine Hundred and Forty-Four Thousand United States Dollars (USD 1,944,000), were transferred to the Defendant Company's bank account held with Bank of Valetta, the details of which were as set out in the said Letters of Credit.

Confirmation of the fraud

31. Subsequently, and with the valuable assistance of the International Chamber of Commerce International Maritime Bureau (the "**IMB**"), it has been ascertained that the bills of lading issued in relation to the two purported supplies of steel, which were relied upon in order for the Defendant Company to call in the value of the two Letters of Credit, are considered to be false and, further, were issued by an entity which does not exist. In addition, the name of the merchant vessel listed in those bills of lading as being the vessel on which the steel was to be transported from Turkey to Oman, "*MV Armada*", does not match the IMO number provided; the number being confirmed by the IMB as being an entirely different ship, "*MV Charleston Express*", which has never sailed to Turkey or Oman. The agent listed as being the vessel's agent in the Oman port referred to (being Gulf Agency Company in the Port of Sohar) confirmed that it is not expecting, nor is it aware of, such a shipment. Finally, the IMB has confirmed that it has investigated a similar fraud previously in relation to similar purported shipments by EAICIO Dubai of steel coils from Izmir, Turkey to a customer in the Kingdom of Bahrain. The IMB concluded that, in said previous investigation, the bills of lading

issued were also false and that the shipment never took place. At pages 92 to 94 of Exhibit CGK1 is a copy of the preliminary report issued by the IMB dated 20 February 2013 and I would respectfully request that this Honourable Court consider the content thereof when determining this application.

32. I confirm that on 20 February 2013, I instructed National Metalcans's lawyers in Malta, Dr. Abigail Bugeja and Dr. John Bugeja of HV Law, 53 Old Theatre Street, Valletta, to obtain a garnishee order against the Defendant Company. The garnishee orders were also acceded to by this Honourable Court on 20 February 2013.

33. The assistance of this Honourable Court in this regard was sought on the basis that the Defendant Company had knowingly and consciously perpetrated fraud on National Metalcans, with the moneys obtained from the fraud being transferred to a bank account in the Defendant Company's name held with Bank of Valletta.

34. Finally, at page 95 of Exhibit CGK1, is a copy of the last e-mail received from Mr Ahmed on 23 February 2013 when, so it would seem, he either became aware that this Honourable Court had issued a garnishee order against the Defendant Company's Maltese bank accounts or, when attempting to discharge the Letters of Credit, Bank of Valetta declined his request (I do not know which, or whether it was either). In any event, he made one further, unsuccessful, attempt for the moneys in the account to be paid away to him/the Defendant Company by sending this e-mail. No further communication has been received from Mr Ahmed or, as would seem to be his real name, Mr Cuneyt Zencirci since.

Conclusion

In light of the content of this affirmation and the supporting evidence exhibited hereto, I would respectfully request this Honourable Court do accede to the requests put forth in the court application by National Metalcans.

Appendici B:

Affidavit ta' Pottengal Mukundan:

“1. I am the Director of the ICC International Maritime Bureau (hereinafter “IMB”), a position I have held since 01 February 1996. The IMB was asked to investigate the validity of two shipments of steel bars shipped from Izmir to Sohar on 31/12/2012. They were reported to be shipped under bills of lading numbered 006203 & 006204 both dated 31/12/2012, **[1] of Exhibit PM1**, on the vessel MV Armada. I was in-charge of this investigation which was conducted by myself and my colleagues David Cuckney, Alberto Almaraz and Ian Rigby who worked under my close supervision.

2. The IMB has been unable to find any record of a vessel called MV Armada loading in any Turkish port on 31/12/2012. A vessel's movement is recorded by port authorities and appear on certain shipping databases such as Lloyds Maritime Intelligence Unit (hereinafter “LMIU”) and Sea Web. There is no reference in any of these databases of a vessel called MV Armada calling at a Turkish port on or around this date.

3. There are two vessels named Armada listed in the LMIU database. They are

(i) Armada, Singapore flag, IMO no. 9417775, tanker, **[2] of Exhibit PM1**. This vessel is a tanker, incapable of carrying a cargo of deformed steel bars

(ii) Armada, Sierra Leone flag, IMO no. 7723986, general cargo **[3] of Exhibit PM1**. This vessel has been detained by the authorities at Abu Kir, Egypt, for around six months to 21 February 2013. Attached in **[4] of Exhibit PM1** is the email correspondence with Wilhelmsen Ships Service in Alexandria, Egypt.

None of these vessels could have loaded the above shipments from Izmir on 31 December 2012.

4. One of the documents presented under the letters of credit is a certificate issued by Global Cargo Int'l Services Ltd., **[5] of Exhibit PM1** which refers to the vessel Armada holding a valid International Safety Management Certificate (ISM Code). The letter of credit issued by Bank Dhofar number 20121106US02486 dated 06.11.12 calls for the ISM Certificate to be presented. This certificate, **[6] of Exhibit PM1**, states that the MV Armada is a US flag vessel, registered at the Port of Charleston, SC, and has the IMO no. 9243162.

The IMO number is a unique number allotted to every vessel and remains its unique identifier from the time it is launched until it is scrapped.

5. In fact, the IMO no. 9243162 has been allocated to MV Charleston Express, **[7] of Exhibit PM1**. This vessel is a fully cellular container ship, which by its design and construction is incapable of carrying a non-containerised cargo of Deformed Steel Bars. Furthermore this vessel is on regular liner service between USA and Europe and does not call at any port in Turkey.

6. The issue of the bills of lading are Global Cargo International Services Ltd. (hereinafter "Global Cargo"). We could find no official listing of such a company. There are no contract details for Global Cargo on the bills of lading which is unusual.

7. Among the documents presented under the letters of credit are Pre-shipment Inspection Certificates of Quality and Quantity of the cargoes purportedly issued by

SGS Inspection Services (hereinafter "SGS"), a leading worldwide inspection agency **[8] of Exhibit PM1**. We asked SGS to verify if these documents had been issued by them. They have confirmed that the documents are an "unauthorised reproduction of an SGS document." In their covering email they state "these certificates are fake." **[9] of Exhibit PM1**.

8. On the bills of lading Gulf Agency Company (hereinafter "GAC"), Oman are stated to be the vessel's agents in Sohar, the discharge port. We spoke to GAC on 19 February 2013 to enquire if the MV Armada was expected in Sohar. They advised us that they have not received any notification that such a vessel was expected to call at Sohar and are not expecting any such vessel. On 06 March 2013 GAC emailed us to say that they were not the agents of MV Armada in Sohar **[10] of Exhibit PM1**.

9. The sellers and beneficiaries under the letters of credit are Emirates Aerated Concrete and Reinforcement Steel Industries Co Limited (hereinafter "EACRSICO") of Valletta, Malta, Their associates in Dubai are Emirates Aircrete Industries Co Corporation (hereinafter "EACICO"). EACICO corresponded with representatives of National Metal Cans, the buyers, in respect of the terms of the letters of credit and the shipment and arrival of the vessel at Sohar through emails dated 17/11/12, 25/11/12, 27/11/12, 29/11/12, 2/12/12, 23/12/12, 23/01/13, 07/02/13, and 19/02/13, **[11] of Exhibit PM1**.

EACICO have been referred to the IMB twice in January 2012 during an investigation into a shipment of steel coils from Izmir, Turkey to Bahrain. EACICO were the shippers of the cargo. Our investigations concluded that the shipment had never taken place as per the bill of lading. The bill of lading issuer in that case was also Global Cargo.

10. In the light of the above, the shipments described in the bills of lading in paragraph 1 above could not have taken place. No vessel called the Armada could

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have loaded this cargo at Izmir on 31/12/12. The ISM certificate which describes the MV Armada as having IMO number 9243162 is false. The SGS Inspection certificates of quality and quantity are false.”

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