JUDGMENT : The Hon. Mr Justice Langley : QBD Commercial Court. In the matter of the Arbitration Act 1996 and in the matter of an arbitration and in the matter of an application. 17th May 2006.

1. This is a wholly unmeritorious application. It is made under Section 67(1) of the Arbitration Act 1996.

2. The Applicant Charterers seek an order to set aside an Award of Mr Edward Mocatta, dated 24 January 2006, for want of substantive jurisdiction. Mr Mocatta found and held in the award that the claim in the arbitration by the Respondent Owners for US$ 130,000 demurrage succeeded and he awarded and adjudged "that the Charterers shall immediately pay the Owners $130,000". In addition he awarded interest on that sum from 28 March 2005 until payment, and interest on a sum of $10,892.57 from 28 March 2005 to 16 December 2005.

3. The only issue before Mr Mocatta, and now before the court, was whether or not there was "any dispute" between the parties sufficient to give jurisdiction to an arbitrator to decide it pursuant to the arbitration clause (clause 46) in the Charterparty. So far as material, clause 46 provided that:

   "This contract is governed by English law and there shall apply to arbitration proceedings under this clause the terms of the London Maritime Arbitrators' Association current at the time when the arbitration proceedings are commenced.

   Any dispute arising under this charter to be referred to arbitration in London…."

4. The essential facts are and were not in issue. Discharge was completed on 28 February 2005. On 7 March, the Owners sent the Charterers a debit note covering demurrage for US$ 140,892.57. On 8 August, action was threatened if payment was not made. On 9 August, Charterers responded that they admitted Owners were entitled to the sum claimed but adding that payment would be made "either in instalments or in lump sum in about 7/9 months commencing from 9 September 2005". On 14 September notice was given of the appointment by Owners of Mr Mocatta and of the rejection of the payment proposal, pointing out that it was worse than a previous proposal. On 15 December the Charterers paid $10,892.57 so reducing the outstanding sum to $130,000. No further sum has been paid. Clause 27 of the Charterparty provided that demurrage was to be "settled latest within 30 days completion of discharge".

5. The Charterers' submission is, and was, that there was no dispute because they had admitted their liability, and the amount of the claim, and the due date for payment and the fact that payment had not been made. All they had not done, of course, was pay.

6. The proper construction of references in arbitration clauses to expressions such as the present ("any dispute") has been a fruitful source of debate over the years: see ***Amec Civil Engineering Ltd v Secretary of State for Transport*** [2005] EWCA Civ 291. Since the enactment of the 1996 Arbitration Act, and the decision of the majority of the Court of Appeal in ***The Halki*** [1998] 1 Lloyd's Rep 465, the question is to be approached simply as one of construction of the relevant arbitration clause in its context and the context of the facts of the particular case. I derive no real assistance from cases cited to me in which the issue has been whether or not the claim has been admitted or matters have advanced to a stage sufficient to identify a dispute.

7. In this case, the question is whether or not the failure to make a payment admittedly due constitutes a dispute arising under the Charterparty. Leaving aside possible issues about interest, in its ultimate logic the question is whether or not, on the true construction of such an arbitration clause, it is permissible to seek from an arbitral tribunal an award on a claim for a specific sum which is admitted without qualification but yet unpaid.

8. Commercial considerations, which these parties must be taken to have had in mind, point to only one answer to these questions. If a valid award is not available in such circumstances, it must follow that a court judgment would be required to assist enforcement. But which court? In this case the parties differ as to whether the English or Indian courts would be the proper forum in which the Claimants could seek such a judgment. It must also follow that admitted but unsatisfied claims and defended claims arising under the same contract were intended to be dealt with by different tribunals. In cases in which there was doubt if a claim had been admitted, the only safe route for a Claimant would be to follow both routes. Limitation periods compound the risks. At what time would an admission deprive an arbitral tribunal of jurisdiction? After the reference? Before an Award? Would an admission be binding in court proceedings? If Charterers are right, they have indeed found a debtor's charter. I would add that I am told that the enforcement of awards in India (where the Charterers and Owners are incorporated) is easier than the enforcement of judgments. That may well have been a reason for the agreement to arbitrate itself.

9. Mr Mocatta was referred to ***The Halki.*** He recorded that the Owners' argument before him, as before me, was simply put : *"[Owners] are entitled to an amount under the terms of the Charterparty. Charterers had admitted that. [Owners] have demanded payment in full. Charterers have refused to pay that amount, notwithstanding that it is admitted, immediately and in full as [Owners] are entitled to receive it …. [Owners] have a claim. Charterers have not and are not paying it despite their admission. I simply fail to see how that cannot be regarded as a 'dispute' under the terms of the Charterparty…."*

10. I agree. So did Mr Mocatta: see in particular, paragraph 22 of the Award. If one party says you must pay now and the other refuses to do so they are in dispute. I do not think what is a short question of construction required any deeper analysis. There is, however, quite sufficient authority, if it were needed, to support this conclusion.

11. In ***The Halki,*** at first instance, [1998] 1 Lloyd's Rep 49, Clarke J, referring to it making no commercial sense to conclude that arbitrators only had jurisdiction over those parts of a claim which were defendable, decided that it made more sense to hold that the arbitration clause there (materially the same as the present clause) was

intended to give the arbitrators jurisdiction over all claims which either party had refused to pay. Henry LJ, in the Court of Appeal (at page 478) quoted that passage with approval. So too did Swinton Thomas LJ (at page 484). Mr Mocatta relied upon it. ***The Halki*** was a case of refusal to admit and refusal to pay. Mr Aswani, on behalf of Charterers, sought to distinguish the case on that basis. But I see no good reason why the one should not be characterised as a dispute as much as the other. It would be remarkable if parties had chosen to address the issue of jurisdiction by reference to whether non-payment was due to a failure to admit a valid claim rather than a failure to pay it. Mr Aswani placed much reliance on the decision of the Court of Appeal in ***Wealands v CLC Contractors*** [1999] 2 Lloyd's Rep 739. It is true that, in the course of his judgment, Mance LJ, at page 745, said, in referring to ***The Halki,*** that *"the question in each case is whether the claim made, whatever its nature, has been admitted"*. But that was quite sufficient to decide the issue in that case (payment or non-payment was not in issue) and I see no reason to suppose that Mance LJ was intending to address the circumstances of the present claim. Moreover, I think the judgment of Clarke LJ in ***Glencore v Agros*** [1999] 2 Lloyd's Rep 410, in particular in paragraphs 33 to 39, also supports the conclusion I have reached, albeit the relevant payment clause at issue there expressly provided that in the event of non-payment "a dispute shall be deemed to have arisen".

12. In my judgment, as I stated at the conclusion of submissions, this application fails and must be dismissed.

COSTS

13. Mr Whitehead, for the Owners, submitted the application should not only be dismissed with costs (which Mr Aswani agreed must follow) but with those costs to be assessed on the indemnity basis. He submitted the application was unreasonable and intended to achieve (and had achieved) the objective of the delay in payment which had been offered by the Charterers and rejected. Mr Whitehead also and rightly pointed to the warning shot fired at the Charterers by Gross J when he granted a 2 day extension of time for the application to be made. The comments of Gross J are recorded in the Order he made on 17 March 2006. I agree. Charterers have acted in their own perceived commercial interests and without merit and should pay the commercial price of doing so. I have also been asked to assess the costs. The fees incurred by Owners are wholly reasonable. Mr Aswani submits some small reduction should be made for the costs of resisting the application for an extension of time. I do not agree. Opposition was appropriate and led to Gross J issuing the warning he did which went unheeded. I therefore assess the costs to be paid by Charterers to Owners in the sum claimed of £6200.

Mr R. Aswani (instructed by DLA Piper Rudnick Gray Cary) for the Applicant
Mr T. Whitehead (instructed by Rayfield Mills) for the Respondent