



# Civil Resolution Tribunal

Date Issued: July 20, 2021

File: SC-2021-000897

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *India Enterprises Inc. v. A.S. Laddi Foods Corporation*, 2021 BCCRT 790

B E T W E E N :

INDIA ENTERPRISES INC.

**APPLICANT**

A N D :

A.S. LADDI FOODS CORPORATION

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. The applicant, India Enterprises Inc. (India Enterprises), imported food from India for the respondent, A.S. Laddi Foods Corporation (Laddi Foods). It is undisputed that Laddi Foods has only partially paid India Enterprises' invoices. India Enterprises initially claimed \$2,513.91 in unpaid invoices. However, since India

Enterprises started this Civil Resolution Tribunal (CRT) dispute, Laddi Foods has paid a further \$1,421.98. So, India Enterprises' remaining claim is \$1,091.93.

2. Laddi Foods says that India Enterprises overcharged it for freight and other charges. Laddi Foods also says that India Enterprises charged a commission that Laddi Foods did not agree to. Laddi Foods says that it has already paid a reasonable amount for the products it purchased. Laddi Foods asks me to dismiss India Enterprises' claims.
3. India Enterprises is represented by an employee. Laddi Foods is represented by its owner's son, who is not a lawyer.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

6. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is how much, if anything, Laddi Foods still owes India Enterprises.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, India Enterprises as the applicant must prove its claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. India Enterprises imported a variety of foods from India and delivered them to Laddi Foods in BC in April 2020. India Enterprises charged Laddi Foods a total of \$17,513.91 for the shipment in 3 invoices. Laddi Foods only disputes charges in 1 of the invoices (main invoice), dated April 21, 2020, for \$15,701.16. There is no written contract between the parties. Verbal contracts are enforceable like written contracts but can be harder to prove.
11. Laddi Foods paid \$15,000 towards the 3 invoices between June 4 and July 28, 2020. Laddi Foods refused to pay anything more unless India Enterprises provided documents to prove a \$1,240 freight charge, \$563.03 in duties, and \$877.42 in "local and miscellaneous charges" in the main invoice. These charges were for local shipping, bank charges, courier charges, customs broker commissions, pallets,

container hauling, unloading, shrink wrap, CFA charges, truck delivery, and empty pallets. The main invoice did not explain or break down these charges.

12. After receiving India Enterprises' evidence in this dispute, which includes several invoices for the disputed charges, as noted Laddi Foods paid a further \$1,421.98 towards the invoices. Laddi Foods makes 3 arguments about why it should not have to pay anything else.
13. Before turning to those arguments, I will address India Enterprises' general argument that Laddi Food implicitly agreed to pay the entire main invoice by making the partial payments. I disagree. I find that making a partial payment is not an implicit acknowledgement of liability for the entire claimed amount.
14. I turn then to Laddi Foods' arguments. First, Laddi Foods says that India Enterprises overcharged \$305.36 in local and miscellaneous charges. Second, Laddi Foods says that India Enterprises overcharged \$266.55 in freight charges from India. Third, Laddi Foods says that it never agreed to a commission.
15. I note that Laddi Foods does not explain why it paid the further \$1,421.98 towards the invoices. This payment left \$1,091.93 owing but in submissions Laddi Foods disputes \$1,246.85 of the charges on the main invoice. Laddi Foods did not counterclaim for a return of any alleged overpayment.
16. First, Laddi Foods argues that India Enterprises overcharged for certain local and miscellaneous charges, mostly charges related to shipping, handling, and storage in BC. It is undisputed that the container of food that India Enterprises imported included orders for 3 customers, including Laddi Foods. Based on an invoice from India Enterprises' local shipping company, 8 of the 22 pallets in the container were for Laddi Foods. The other 14 were for the other customers.
17. Laddi Foods says that it should only have to pay its proportionate share for any charges that were per pallet. Laddi Foods says this adds up to \$572.06, not the \$877.42 in the invoice. India Enterprises says that it charged Laddi Foods a pro-rated amount based on Laddi Foods' share of the shipment. However, India

Enterprises does not specifically challenge Laddi Foods' calculations or provide a justification for the local and miscellaneous charges.

18. I note that Laddi Foods' calculation of the local and miscellaneous charges does not include any amount for some of the charges included on the main invoice, such as bank charges, courier charges, and CFA charges. However, India Enterprises did not provide any invoices to support these charges and did not explain them in its submissions. So, I find that these charges are unproven.
19. I have reviewed the invoices in evidence and Laddi Foods' calculations, and I agree with Laddi Foods' position with 1 exception. India Enterprises provided an \$87 invoice, which appears to be related to either unloading or storing the shipment at Vancouver's port. Laddi Foods did not account for this charge. I find that Laddi Foods must pay its proportionate share of this invoice, which is \$31.64. Therefore, I find that India Enterprises has proven that it is entitled to \$603.70 in local and miscellaneous charges.
20. Second, Laddi Foods says that India Enterprises overcharged for freight from India. India Enterprises charged \$1,240 for Laddi Foods' share of the \$2,677 freight charge. Laddi Foods says it should only pay its proportionate share based on using 8 out of 22 pallets, which is \$973.45.
21. India Enterprises does not reply to this argument. In the absence of an explanation from India Enterprises, I find that India Enterprises is only entitled to Laddi Foods' proportionate share of the freight charge based on its share of the pallets, which I agree is \$973.45.
22. Third, with respect to the commission, India Enterprises says that it charged the 5% commission based on a verbal agreement with Laddi Foods' director. Laddi Foods denies this.
23. I find that this issue comes down to whose evidence I find more credible. Part of assessing credibility is assessing whose account is more in harmony with what a practical and informed person would consider reasonably likely in the

circumstances. Put another way, whose evidence is more consistent with common human experience?

24. With that in mind, I find that the parties likely agreed to a 5% commission, as India Enterprises alleges. This is because without it, India Enterprises would only be paid its actual costs. I find it highly unlikely that India Enterprises would agree to import nearly \$15,000 of food from India for free. Rather, I find that the parties must have agreed that India Enterprises would be paid for its work. I therefore accept India Enterprises' evidence about the 5% commission. The claimed \$674.94 is 5% imported foods' cost and the freight charge from India. This means that India Enterprises did not charge a commission on the other charges on the invoice, which I find is reasonable. However, as discussed above, I find that India Enterprises is only entitled to a freight charge of \$973.75, which lowers the commission. I find that Laddi Foods must pay a \$661.61 commission.
25. Taken together, I find that India Enterprises has proven that it is entitled to \$16,960.31 of the \$17,513.91 it charged in the 3 invoices. As mentioned above, Laddi Foods has paid a total of \$16,421.98. This means that Laddi Foods must pay a further \$538.33.
26. The *Court Order Interest Act* (COIA) applies to the CRT. India Enterprises is entitled to pre-judgment interest on the \$538.33 from April 21, 2020, the date of the main invoice, to the date of this decision. This equals \$4.59.
27. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. India Enterprises was partially successful, so I find it is entitled to reimbursement of half of its \$125 in CRT fees, which is \$67.50. India Enterprises did not claim any dispute-related expenses. Laddi Foods did not claim any dispute-related expenses or pay any CRT fees.

## ORDERS

28. Within 30 days of the date of this order, I order Laddi Foods to pay India Enterprises a total of \$610.42, broken down as follows:
  - a. \$538.33 in debt,
  - b. \$4.59 in pre-judgment interest under the COIA, and
  - c. \$67.50 for CRT fees.
  
29. India Enterprises is entitled to post-judgment interest, as applicable.
  
30. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is in effect until 90 days after June 30, 2021, which is the day that the state of emergency declared on March 18, 2020 ended, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

31. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Eric Regehr, Tribunal Member