

LEX OMNIA MOOT COURT COMPETITION, 2022

Organised jointly by

The Waves, BITS Pilani Campus, Goa
&
Maharashtra National Law University,
Mumbai



MOOT PROPOSITION

1. Mr. Ankit Shah is the Chief Executive Officer of M/S Shah Traders Private Limited (STPL), a company duly incorporated under the Companies Act, 1956 on 20.05.1992 with the purpose of manufacturing and trading of packaging materials. The registered office of the STPL is in Kanpur, Uttar Pradesh. The packaging materials manufactured by STPL are sold to companies PAN India and it is only because of STPL's packaging material that the other companies are able to pack their items and sell it further. Tobacco and Pan Masala manufacturers are one of the major client's of STPL as using their packaging film, the wrappers containing tobacco and Pan Masala are used for being sold to public.

2. Mr. Vikram Srivastava is the Chief Financial Officer of M/S Vikram Suppliers Private Limited (VSPL) duly incorporated under the Companies Act, 1956 on 27.09.1998 with the purpose of supplying raw materials used in manufacturing of packaging materials by different companies in India. The registered office of the VSPL is in Delhi. STPL entered into an Exclusive Supply Agreement with VSPL on 12.05.2010 for a period of 10 years wherein it was agreed that VSPL would supply polyester chips exclusively to STPL and for this agreement, STPL agreed to pay hefty consideration to VSPL. The Parties to this Agreement had also signed a non-disclosure agreement simultaneously in the interest of business as the product / item as well as terms of the aforesaid agreement was price sensitive.

3. M/S Shah Traders Distributors Private Limited (STDPL) is a special purpose vehicle duly incorporated under the Companies Act, 1956 on 30.10.1999 with 51% shareholding of STPL and 49% shareholding of Mr. Ankit Shah, having its registered office at Ghaziabad. It is engaged in the business of distributing the finished goods of STPL for sale in the market. STDPL provides logistical support to STPL in delivering its products to its client's.

4. STPL and VSPL had entered into a Exclusive Supply Agreement on 12.05.2010. It was agreed between the Parties that VSPL would provide raw materials to STPL on the basis of the purchase orders as maybe issued by STPL from time to time and that the time would be of an essence since by using the said raw materials STPL was to manufacture the goods and further provide them to STDPL for delivery and sale to the end clients. The terms of every purchase of raw material from VSPL from time to time were contained in the purchase orders which were issued by STPL and counter signed by VSPL. It was agreed between the Parties that VSPL would get atleast 10 days time to supply / deliver each consignment of the purchased raw material and in the event any such supply is to be made in a lesser period of time, then the Parties would enter into a separate written agreement in this regard for each such purchase order. The Exclusive Supply Agreement also contained an indemnity clause wherein it was mentioned in the event of any loss / damages / claims arising out of the agreement against STPL, VSPL would hold STPL good unless the same is for the reasons beyond its control or due to the act of God.

5. STPL issued a purchase order dated 10.08.2012 at 1800 hours IST for supply of 2 tons of Polyester Chips by 10 AM on 20.08.2012. VSPL agreed to the same and confirmed the said order by email at 1900 hours IST. Accordingly, VSPL arranged for the delivery of the same on 20.08.2012 in Kanpur, however, the truck containing the said consignment was stopped on the Delhi-UP border in NOIDA by the State Excise Officers for regular checking at 2200 hours on 19.08.2012. It was found that the said truck was also carrying 20 cartons of 100 cough syrups in each carton which had codeine phosphate, however, there was no sales invoice as is issued under Central Excise Rules in the possession of the truck driver and as such the truck was detained on the Kanpur border for five days. At 1130 hours on 20.08.2012, STPL wrote an email to VSPL expressing its displeasure for delay in the delivery and was unaware of the reasons for the said delay. In reply to the said email, VSPL at 1430 hours informed STPL that due to some unavoidable circumstances, the consignment was delayed and every effort is being made to deliver the goods by the end of the day.



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However, the truck was only released on 25.08.2012 at 2000 hours by the State Excise Officers and it reached at the factory of STPL in Kanpur on 26.08.2012 at 10:30 AM. On reaching there, the driver of the truck informed the officers of STPL about the actual reasons for the delay in delivery.

7. STPL refused to accept the delivery of the goods by VSPL and sent an email at 1400 hours on 26.08.2012 to Mr. Vikram Srivastava stating that the delivery of goods was late and they were defrauded as they were not informed about the detainment of truck by State Excise Officers and due to this STPL suffered huge losses since the goods could not be manufactured in time. It was also stated that STPL had to manufacture the goods by 23.08.2012 and provide it further to STDPL who had further commercial obligations to sell it to the end clients by 25.08.2012. The said delay on the part of the VSPL had caused huge losses to VSPL as their purchase order was cancelled by STDPL. It was also stated that the said act of fraud played on STPL in keeping codeine phosphate syrups with their polyester chips without seeking their consent first was in material breach of the Exclusive Supply Agreement and also since delay was unreasonable, the VSPL would be held liable for claims which maybe brought by STPL after duly assessing the loss and damages.

8. STDPL had also suffered huge losses since it could not provide finished goods which were to be manufactured by STPL and as such its contracts worth several crores were also cancelled by its customers since the news of detainment of truck got published in daily newspapers and their clients were pressuring them to explain the reasons behind engaging with a company which does illegal business. STDPL also alleged that it had suffered loss of goodwill in the market. In this regard vide a legal notice dated 30.08.2012 STDPL asked STPL to pay a. sum of Rs. 5 crores towards loss of profits which it would have earned from the sale of goods if they were provided by STPL in time as was agreed between them and also towards loss of goodwill in the market.

9. As STPL was being sued by STDPL for no fault of its, STPL vide a legal notice dated 02.09.2012 terminated the Exclusive Supply Agreement with immediate effect. The Term, Termination and Dispute Resolution mechanism provided in the Supply Contract was as has been reproduced below:

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Clause 7: Term & Termination

7.1 This Agreement will terminate on the expiry of the period of 10 years from the date of its execution, unless it is renewed by the Parties by mutual consent and on mutually acceptable terms.

7.2 Any of the following events shall deemed to be the fundamental breaches of this Agreement and upon occurrence of the same, this Agreement may be terminated by either Party with 30 days prior written notice of remedy to the other:

7.2.1 failure of either Party to materially comply with the terms of this Agreement;

7.2.2 any assignment or other disposal of this Agreement by either Parties in violation of the terms of this Agreement;

7.2.3 if either Party engages in any conduct prejudicial to the Business;

7.3 On termination of this Agreement, the STPL shall immediately pay any and all amounts owing to VSPL in terms of this Agreement, unless validly disputed by the VSPL.

7.4 Any and all rights and obligations of the Parties under this Agreement shall immediately cease and terminate, without prejudice to any rights of either of the Parties under this Agreement which have already accrued.



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7.5 In the event of termination, both Parties agree to complete their responsibilities regarding any customer commitments and related financial transactions.

Clause 8: Dispute Resolution

9.1 In case of any dispute arising out of this Agreement, either of the Parties may by written notice inform the other Party of the existence of the dispute and within a period of 7 days thereafter both the Parties shall decide a mutually convenient place and time to meet and amicably settle the dispute.

9.2 In case the Parties are unable to settle the dispute within a period of 15 days in accordance with Clause 9.1, thereafter, the Chief Executive Officer of VSPL shall appoint a sole arbitrator to decide the dispute in accordance with the Arbitration & Conciliation Act, 1996 and inform the other Party about the same in writing.

9.3 The language of the proceedings and award will be in English and the decision will be final and binding upon the Parties.

9.4 Kanpur will be the seat of arbitration and the Courts in Uttar Pradesh will have exclusive jurisdiction in the matters arising out the Agreement.

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10. STPL filed a recovery suit in the Kanpur Court on 5.9.2012 where the notices were issued to VSPL, however, VSPL filed its objections under Section 8 of the Arbitration & Conciliation Act, 1996 which was allowed by the Kanpur Court.

11. On 10.11.2012, STPL served notice upon VSPL invoking arbitration thereby nominating Mr. Rohit Arora, Chief Executive Officer of STDPL as an arbitrator. However, vide a reply dated 30.12.2012, VSPL refused to agree to the appointment of the named arbitrator and instead nominated one Mr. Gaurang Sehdev, Retd. District Judge as an arbitrator.

12. On 15.10.2014 VSPL received a notice from the Execution Court, Kanpur that an arbitral award dated 10.10.2013 passed by Mr. Rohit Arora was decreed against VSPL and the same was made a rule of the Court.

13. On 30.10.2014, VSPL filed objection under Section 47 of the Code of Civil Procedure stating that the arbitral award dated 10.10.2013 is a nullity in the eyes of law as the same has been passed behind their back and they had no knowledge of the said proceedings. It was also pleaded that the said proceedings were illegal and in violation of the Arbitration & Conciliation Act. It was further pleaded that the arbitrator had no jurisdiction and his appointment was in itself illegal. VSPL also stated that they had appointed one Mr. Gaurang Sehdev, Retd. District Judge as an arbitrator as per the Arbitration & Conciliation Act and they never agreed to the appointment of Mr. Rohit Arora as an arbitrator. They said the very appointment of the arbitrator frustrated the purpose of the arbitration and they had no confidence in the independence of the arbitrator. VSPL also contended that the purchase order was in itself in violation of the contractual obligation since it did not provide 10 days time for delivery and for the shorter period of time no fresh agreement was executed between VSPL and STPL. It was also contended by VSPL that delay of merely five days is not a material breach of the Agreement between VSPL and STPL and the same could not be terminated for this reason alone. Furthermore, it was contended that the termination of the said Agreement was illegal and not in accordance with the termination clause and as such no arbitral award could have been passed.



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14. STPL on the other hand pleaded that several notices were sent on the address mentioned in the Agreement of VSPL, however, VSPL voluntarily did not participate in the arbitration proceedings and now they cannot challenge the arbitral award at this belated stage. It was stated that notices were also issued to VSPL by the Executing Court yet they failed to appear before the said Court and now when the decree is being executed, VSPL has malafidely filed objections under Section 47 of the Code of Civil Procedure. VSPL had stated that it never agreed to the appointment of arbitrator nominated by STPL as it had no confidence in his independence and that is why VSPL had nominated its proposed arbitrator who was impartial, however, since no reply was ever received by VSPL from STPL it was assumed that STPL had abandoned its claim. It was also assumed that VSPL was not interested in arbitration and since the Agreement was already terminated nothing remained to be adjudicated as VSPL did not wish to get the Agreement restored. Moreover, it was stated that the appointment of arbitrator by STPL was illegal, whereas STPL said that the appointment of arbitrator by them was in accordance with the terms of the Agreement and now VSPL could not have reneged from the contractual obligation.

15. It transpires that the Supreme Court vide an order dated 6.8.2014 had issued notice to the Chief Justice of the Allahabad High Court asking for constitution of a committee for laying of a roadmap for expeditious disposal of the arbitration matters in the State of Uttar Pradesh. It was observed that arbitration matters were pending all over State of Uttar Pradesh in various forums since several years which were defeating the very purpose with which the Arbitration & Conciliation Act was enacted. Following this order, an order was passed directing the Executing Courts to expeditiously decide the arbitration matters pending since several years as expeditiously as possible and file monthly report before the High Court.

16. Vide an order dated 01.10.2015 the objection under Section 47 of the Code of Civil Procedure were rejected and the properties of VSPL were attached for recovery of the sum awarded by the arbitrator.

17. The order dated 01.10.2015 was challenged by VSPL before the High Court in Civil Revision Petition and the Hon'ble Court issued notice to STPL for filing its reply and fixed 20.10.2015 as the date of final hearing. The Civil Revision is at the final hearing stage and the Hon'ble High Court has formulated the following issues:

17.1 Whether the Civil Revision filed by VSPL is maintainable before the Hon'ble High Court?

17.2 Whether the appointment of Mr. Rohit Arora as an arbitrator was lawful?

17.3 Whether the Arbitral Award passed by the Sole Arbitrator was without jurisdiction and can consequently be set aside by the High Court in the Civil Revision jurisdiction?

17.4 Whether the objections filed by VSPL under Section 47 of the Civil Procedure Code, 1908 were wrongly rejected by the Execution Court and it proceeded on a tangent misinterpreting the order of the Hon'ble Apex Court?

