



Malad Kandivli Education Society's

## **M.K.E.S. College of Law**

Accredited by NAAC with 'B' Grade (CGPA- 2.44)

ISO 21001:2018 Certified

Bhavishya Bharat Campus, S.V. Road, Malad West, Mumbai – 400064

### **NOTE:**

The laws are pari materia to the laws of Republic of India.

### **DISCLAIMER:**

This is a fictional work. Names, characters, settings, and situations are either made up by the authors or utilised fictitiously. Any resemblance to actual events, locations, or living or deceased people is completely coincidental. Any resemblance to genuine corporations, institutions, organisations, or other entities is totally coincidental and used to enhance academic study by the authors. Nothing in the proposition is meant to malign anyone, alive or dead.

## **MOOT PROPOSITION**

### **Facts of the case:**

Vertex Infrastructure Pvt. Ltd. (“Vertex”) is a company incorporated under the Companies Act, 2013, Indica, having its registered office in Mumbai and is engaged in the execution of large-scale public infrastructure projects across various States in Indica.

Nova Equipment Ltd. (“Nova”) is a company incorporated under the laws of Singacore, having its principal place of business in Singacore. Nova is engaged in the manufacture and supply of specialised construction machinery for infrastructure projects across multiple jurisdictions.

Pursuant to commercial negotiations, Vertex and Nova entered into a Supply and Service Agreement dated 10 March 2021 (“the Agreement”). Under the Agreement, Nova agreed to supply ten advanced road-laying machines to Vertex along with on-site maintenance and technical support for a period of three years. The Agreement stipulated phased delivery timelines and corresponding payment obligations.

The Agreement expressly provided that it shall be governed by and construed in accordance with the laws of Indica.

The Agreement contained a force majeure clause which included disruptions in international supply chains, governmental restrictions, and logistical constraints, provided that timely notice was given to the other party.

The Agreement also contained a dispute resolution clause providing that any dispute arising out of or in connection with the Agreement shall be referred to arbitration under the Arbitration and Conciliation Act, 1996. The seat of arbitration was agreed to be Singacore, the language of arbitration was English, and no specific procedure for appointment of the arbitrator was prescribed except that the arbitrator shall be independent and impartial.

Subsequently, Vertex was awarded a highway development project by the Public Works Department of the State of India. During execution of the project, Nova supplied six machines within the agreed timelines. However, the supply of the remaining four machines was delayed.

Nova attributed the delay to overseas supply chain disruptions and logistical constraints beyond its reasonable control and claimed protection under the force majeure clause, asserting that Vertex had been duly informed. Vertex alleged that the delay caused substantial financial losses, exposed it to contractual penalties under its government contract, and amounted to a material breach of the Agreement.

Nova further alleged that Vertex had defaulted on scheduled payments, which adversely affected Nova's ability to perform its contractual obligations. Vertex denied these allegations and contended that any payment issues arose solely due to Nova's non-performance.

Multiple communications were exchanged between the parties. Attempts at negotiation and informal alternative dispute resolution mechanisms failed to resolve the dispute.

On 14 February 2023, Vertex issued a notice terminating the Agreement, alleging material breach on account of delay in supply. Nova disputed the termination, contending that it was arbitrary, unlawful, and contrary to the terms of the Agreement.

On 1 March 2023, Nova issued a notice invoking arbitration and proposed the appointment of a sole arbitrator. Vertex objected to the proposed appointment on grounds of lack of independence and impartiality, and the parties failed to reach a mutual consensus regarding the appointment of an arbitrator.

During this period, Vertex initiated steps to invoke and encash bank guarantees furnished by Nova pursuant to the Agreement. Nova approached the Commercial Division of the Mumbai High court under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection against such encashment. The court granted limited interim relief and directed the parties to adhere to the contractual dispute resolution mechanism.

In view of the continued deadlock regarding the appointment of the arbitrator, Vertex approached the Supreme Court of India under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a sole arbitrator. Nova opposed the application, raising objections relating to maintainability, applicable law, and the extent of judicial intervention permissible in an international commercial arbitration seated outside India.

The matter is presently pending adjudication before the Supreme Court of India.

### **ISSUES FOR CONSIDERATION**

1. Whether the termination of the Supply and Service Agreement dated 10 March 2021 by Vertex Infrastructure Pvt. Ltd. is valid and lawful in view of the alleged delay in supply and the counter-alleged payment defaults by Nova Equipment Ltd.?
2. Whether the delay in the supply of four machines by Nova Equipment Ltd., attributed to overseas supply chain disruptions and logistical constraints, constitutes a valid defence under the force majeure clause of the Agreement?
3. Whether the determination of the proper law of the contract, the law governing the arbitration agreement, and the law of the seat in an international commercial arbitration seated in Singapore gives rise to a conflict of laws, thereby affecting the jurisdiction and powers of the Supreme Court of India under Section 11 of the Arbitration and Conciliation Act, 1996?
4. Whether the invocation and proposed encashment of bank guarantees by Vertex Infrastructure Pvt. Ltd. during the pendency of arbitral proceedings is legally sustainable and equitable under the facts and circumstances of the case?