

## ➤ Moot Proposition

- “ABC Textiles Private Limited (‘ABC Textiles’) is a major manufacturer of bedsheets, hand towels and bath towels with its registered office in Mumbai. It boasts some of India's top hotels and resorts as its esteemed clients that purchase the same via yearly bulk orders. In January 2020, M/s DEF Hospitality (‘DEF’), one of the largest chains of hotels in the country, placed a yearly bulk order of bed sheets, hand towels and bath towels totalling INR 1 Crore.
- DEF shared its standard procurement contract with ABC Textiles and it signed the same. The contract did not have an aggregate liability cap. It also did not have a clause disclaiming liability of either party for indirect or consequential losses or damages, loss of profits, loss of reputation and loss of business.
- The order was required to be delivered in two lots – (i) first lot comprising 80% of the order value that was needed to be delivered in February 2020; and (ii) the second lot comprising the remaining 20% of the consignment value that was required to be delivered in June 2020. The contract had a penalty of 20% of the relevant consignment lot value if the quality was substandard and did not meet the specific quality requirements mentioned in the contract.
- The contract also had a penalty of INR 10,000/- for every week of delay in consignment delivery. The contract also had a force majeure clause i.e. neither party was liable for factors beyond its reasonable control like act of god, flood, earthquake etc. However ‘pandemic’ was not expressly mentioned in the force majeure clause. The contract had a termination clause that stated that a party may terminate the contract for cause if the other party commits a material breach of its obligations. The contract also mentioned that timely delivery of the consignment lots was the essence of the contract.
- ABC Textiles delivered the first lot on time and the timely delivery of the consignment was appreciated by DEF. As per the terms of the contract, DEF paid for the first lot in full within fifteen (15) days of receipt of the delivery. However, around mid-February 2020, some of the local news media and local newspapers in Mumbai reported that guests in DEF’s flagship hotel in Mumbai had reported about the poor quality of the hand towels and bath towels. Some of the customers had also uploaded pics and videos on social media platforms highlighting the poor quality of the hand towels and bath towels.
- Further, with the onset of COVID-19 and the resultant lockdown imposed in India around the last week of March 2020, ABC Textiles could not import cotton fabric of the requisite quality to meet the quality requirements under the contract and also started facing labor availability constraints. Realizing that it will not be able to meet the June 2020 deadline, ABC Textiles wrote a letter bringing the matter to the notice of DEF and requested for an extension of time during the lockdown period to meet the delivery commitment for the second consignment.
- However, DEF did not bother to reply to the said letter. ABC Textiles also send multiple emails to the said effect but there was no reply from M/s DEF Hospitality. In June 2020, DEF sent a letter to ABC Textiles stating the delay in delivering the second lot and highlighted the poor quality of the first consignment and canceled the contract with immediate effect.

- DEF filed a suit against ABC textiles claiming – (i) Rs. 16 lacs towards 30% penalty on account of poor quality of the first consignment lot; (ii) Rs. 25 lacs as damages on account of non-delivery of the second lot; & (iii) Rs. 10 lacs as damages for loss of business, loss of revenue and loss of goodwill due to the circulation of videos and posts of poor towel quality in the news and social media.
- ABC Textiles challenged the claim stating that – (i) it was not bound to pay either the 30% penalty or the claim of Rs.10 lacs as the first consignment was of good quality and had been accepted by DEF on delivery; (ii) the delay in delivery of the second consignment was due to COVID-19 and resultant lockdown by the Central Government and hence the same was a Force Majeure event; and (iii) the procurement price of cotton towels has fallen by at least 20% due to the severe economic impact of COVID-19 pandemic and hence DEF had not suffered any loss due to its inability to deliver the second consignment.

Prepare the list of issues and argue the matter depending on which side you represent before the court.

- **DISCLAIMER:** The Moot Court Problem is not intended to and does not attempt to resemble any incident, organisation or any person living or dead. All situations in the Moot Court Problem are fictitious and any resemblance to any incident, organisation or person, if any, is not intended, but merely coincidental.

**NOTE:** The Moot Proposition has been drafted by Mr. Subhraj Mukherjee, Senior Legal Counsel – Strategic Alliances (North America & Worldwide), Hewlett Packard Enterprise. Any attempt made to contact the above person for the purpose of moot proposition on or before the competition shall result in immediate disqualification from the competition.

