

MOOT COURT SOCIETY | SYMBIOSIS LAW SCHOOL, NOIDA
Symbiosis International (Deemed University), Pune

12th NASCENT Moot Court Competition, 2022

Moot Proposition

1. Renew Infrastructure Private Limited (“**RPIL**”) was incorporated under the local laws of Arasia in the year 2020 with an object of developing infrastructure facilities in Arasia that can produce renewable energy. However, RPIL has limited experience in engineering and construction of infrastructure projects.
2. In June 2021, RPIL commenced negotiations with Construction Projects Limited (“**CPL**”), which is a public sector undertaking controlled by Arasia. Pursuant to such negotiations, RPIL and CPL executed the Minutes of Meeting dated 25.06.2021 (“**MoM**”) wherein it was agreed as follows:
 - (i) RPIL and CPL shall jointly participate in a tender floated by Windfarm Projects Limited (“**WPL**”), a public sector undertaking controlled by Arasia, with respect to engineering, procurement, and construction of three windmills in Kanchan province of Arasia.
 - (ii) RPIL shall perform the work as a sub-contractor of CPL and any agreement executed between CPL and WPL pursuant to the bidding process shall apply *mutatis mutandis* between CPL and RPIL.
 - (iii) CPL shall supply the technical information such as loads of wind turbine which RPIL will require to construct the foundation of the windmill using its own machinery and equipment.
 - (iv) That the present MoM is subject to parties entering into a formal contract.
3. Pursuant to the MoM, CPL filed its bid on 01.07.2021 and was declared as the successful bidder by WPL on 04.07.2021. Thereafter, on 10.07.2021, CPL and WPL executed a Contract (“**Contract**”). Clause 3.2 of the Contract requires CPL to complete the work in 12 months, failing which CPL shall be liable to pay USD 1 million as liquidated damages to WPL. Further, Clause 3.3 of the Contract states that in the event of early termination of the Contract on account of breach by CPL, WPL shall be entitled to assign the work to a third party at the risk and cost of CPL.
4. CPL promptly informed RPIL of the fact that it had executed a contract with WPL and RPIL commenced the work, albeit with limited resources and workforce.

5. Upon commencing the work, RPIL has reminded CPL on multiple occasions of its limited financial resources and requested CPL to provide it with necessary equipment and machinery to lay foundations for the windmills, but to no avail.
6. On 01.08.2021, WPL issued a letter to CPL specifying the monthly milestone for performance of the work as follows:

Period	% of work to be completed	Period	% of work to be completed
July 2021	8	January 2022	7
August 2021	10	February 2022	7
September 2021	12	March 2022	6
October 2021	8	April 2022	6
November 2021	6	May 2022	11
December 2021	7	June 2022	12

7. Thereafter, RPIL and CPL have formally executed a Work Order on 01.10.2021 (“**Work Order**”) wherein the terms of the Contract, the MoM and the above Letter dated 01.08.2021 were made applicable to RPIL without any mention as to whether the terms of those documents apply prospectively or retrospectively.
8. On 01.11.2021, CPL decided to amend the Work Order by reducing the scope of work of RPIL to 50% and offer the remaining 50% of the work to one Energy Technology Private Limited (“**ETIL**”). Accordingly, on 01.11.2021, CPL executed a Work Order with ETIL for 50% of the work and specified that the milestones which ETIL must achieve for the month of November 2021, December 2021 and January 2022 are 3%, 3.5% and 3.5% respectively.
9. Thereafter, CPL amended the Work Order on 02.11.2021 wherein it was stated as follows:
 - (i) The scope of work of RPIL under the Work Order is being reduced to 50%.
 - (ii) Penalty/liquidated damages, if any, levied by WPL for the entire work shall be recoverable from RPIL except for the amount which can be recovered from the contractor to whom the remaining 50% of the work is offered.
 - (iii) The revised milestones of RPIL shall be mutually decided on a subsequent date.
 - (iv) CPL shall immediately disburse financial aid to RPIL to purchase necessary equipment required to perform the work.

10. On 01.01.2022, WPL terminated the Contract since only 20% of the work was performed until end of December 2022. WPL also directed CPL to pay (i) the full extent of liquidated damages, and (ii) the cost of USD 2 million incurred by CPL for assigning the work to a third party.
11. On 10.01.2022, CPL wrote to RPIL asking it to deposit 50% of the liquidated damages and costs which was demanded by WPL. RPIL responded on 12.01.2022 by stating that it is not liable to pay any amount for the following reasons:
 - (i) There exists no contract between RPIL and CPL until execution of the Work Order on 01.10.2021 and thus, RPIL was not required to perform the work as per the milestones provided in letter dated 01.08.2021.
 - (ii) RPIL has performed 20% of the work which is more than the specified milestone for the period between the date of the Work Order i.e., 01.10.2021 and the date of its amendment i.e., 02.11.2021.
 - (iii) Post amendment of Work Order, no revised milestones were specified to RPIL. Hence, RPIL was not required to perform the work as per any milestone.
 - (iv) ETIL has failed to even commence its part of the work and it was due to such delay of ETIL that the work was terminated.
 - (v) CPL failed to supply the information regarding the load of turbines till date although the same ought to have been calculated and supplied by CPL within 2.5 months from the date of the Contract. Hence, RPIL is not responsible if the design and construction for the foundation of the windmill has not completed.
12. In response, CPL informed RPIL on 15.01.2022 as follows:
 - (i) By virtue of the terms of the MoM and the conduct of RPIL pursuant to the MoM, the MoM must be considered as a binding contract and RPIL is liable to perform the work as per the milestones.
 - (ii) As per the Amendment to the Work Order dated 02.11.2021, RPIL has agreed to pay penalty/liquidated damages which may be levied by WPL and therefore, RPIL is liable to pay such amount without raising any dispute whatsoever.

- (iii) Post the amendment to Work Order, RPIL ought to have inferred that its revised milestones would be the difference between the milestones set by WPL to CPL and the milestones given by CPL to ETIL.
 - (iv) It was further alleged by CPL that RPIL has delayed the work due to its failure to mobilize machinery and ETIL's failure is inconsequential.
 - (v) As far as non-supply of turbine load information is concerned, CPL argued that such non-supply is inconsequential because till the date of termination of the Contract, RPIL was not able to complete the design and begin with construction of the foundation due to lack of equipment and machinery. In other words, even if CPL had given the load bearing information on stipulated time, RPIL could not have proceeded with the construction as it was not ready with requisite machinery.
13. Countering the above allegations, RPIL has stated that the work was delayed because CPL delayed in providing financial assistance to RPIL until 02.11.2021 and because CPL delayed in clearing the monthly bills of RPIL by 15 days every month due to which RPIL was finding it financially difficult to perform the work. Further, RPIL has argued that irrespective of its inability to construct the foundation due to lack of equipment and machinery, CPL ought to have supplied the load information on time and its failure to do so would absolve RPIL of any liability.
14. CPL filed a claim against RPIL before an arbitral tribunal constituted in terms of the arbitration clause in the Work Order and sought recovery of the demand made by it in its letter dated 10.01.2021. RPIL filed its statement of defence but filed no counter claim. The matter is now fixed for final hearing before the Arbitral Tribunal. Both parties were directed by the Arbitral Tribunal to file their respective written memorandums by framing appropriate factual and legal issues in compliance with the rules of the competition.

Note:

- (i) The laws of India are pari materia to the laws of Arasia.
- (ii) The names, characters, incidents are fictitious, and created for academic purposes only.
- (iii) The parties are at liberty to frame the issues, and to create sub-issues.
