

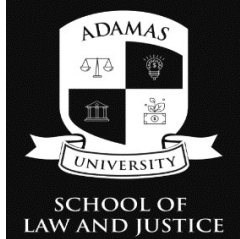
SCHOOL OF LAW AND JUSTICE

ADAMAS UNIVERSITY

**1ST ONLINE NATIONAL MOOT COURT COMPETITION TO BE
ORGANIZED BY THE SCHOOL OF LAW AND JUSTICE, ADAMAS
UNIVERSITY IN ASSOCIATION WITH SINHA AND CO.
ON 8TH AND 9TH AUGUST, 2020**

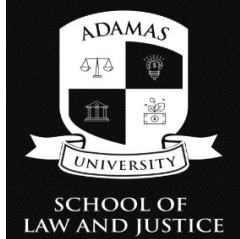
MOOT PROBLEM - 1

1. Ariloma is a rich country with a robust healthcare infrastructure. The country has a high GDP growth rate and a lot of investment is meted out towards revamping and consolidating its healthcare industry. In fact, people from other countries visit Ariloma for receiving advanced medical treatment. Most of its citizens are physically healthy and did not encounter the wrath of any communicable diseases for decades. Unfortunately, in early December, 2019, a viral infection started affecting thousands of people across various states of Ariloma so much so that all on a sudden the robust health set-up seemed crumbling. It was learnt that the infection was caused by a deadly virus called pokonavirus that unlike the regular flu virus could be transmitted in no time and that could severely affect the respiratory tract of infected

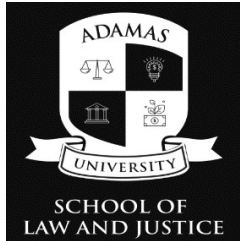


individuals. It was also learnt that people infected with pokonavirus would experience mild to moderate respiratory illness and only in extreme cases (one out of six, approximately) people would require radical medical intervention.

2. Since about 1/6th of the people infected with pokonavirus developed intense breathing difficulties, they required mechanical breathing support of ventilators, machines that aid and regulate the breathing processes when infected lungs fail to discharge their routine functions. Ventilators mechanically take over patients' breathing processes till the time they recuperate and their lungs start regular functioning.
3. Ariloma has about 5,000 ventilators. But ever since the outbreak of the deadly infection, more than 4,000 ventilators had been in use. Also, with a steep surge in the number of pokonavirus cases, the federal government of Ariloma decided to procure 1000 additional ventilators in anticipation of a worst-case scenario caused by the viral infection. The government thought that the additional ventilators would ease the pressure on the hospitals and would augment the healthcare system. The government, therefore, issued an e-tender on December 25, 2019 asking manufacturing companies/firms to respond within 10 days to supply 1000 ventilators within March 31, 2020 without fail. The tender conspicuously stated that the proposed ventilators must be of the best quality available.
4. After the bids were received and opened, it was observed that only five one-person companies expressed their interest to supply 1000 ventilators within March 31, 2020. None of the public and private companies especially catering to the healthcare sector responded to the e-tender invitation possibly because they felt that it was impossible to meet the delivery deadline. Interestingly, all the one-person companies were newcomers to the industry and Anil Kumar & Co., which finally won the tender, was not even a year old.

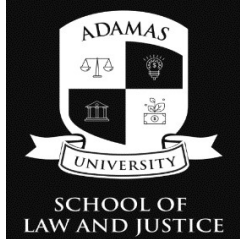


5. In view of the appalling health situation in the country, the government of Ariloma eventually agreed to a contract with Anil Kumar & Co. The agreement dated January 10, 2020, explicitly stated among other things that Anil Kumar & Co. would supply 1000 ventilators within March 31, 2020 and that the government would pay half the price (the price capped for each ventilator was Rupees ten lakhs) at the beginning of the contract (by January 15, 2020) and the rest half post the delivery of the ventilators. The contract also indicated that Anil Kumar & Co. would pay liquidated damages to the tune of Rupees one lakh per day for everyday that delivery of the ventilators were delayed. In addition to the above, the contract also empowered the federal government of Ariloma to procure ventilators from other manufacturers if Anil Kumar & Co. failed to comply with the provisions of the agreement. Both the parties mutually decided that the Courts at Batamma, the capital city of Ariloma, shall have exclusive jurisdiction in any suits arising out of the agreement.
6. Suddenly there was a three-fold increase in the prices of raw materials that were required in the manufacture and assembly of ventilators. By the end of January, 2020, the prices of the raw materials soared so high that it was virtually impossible to procure those products. Anticipating a breach of the delivery date, Anil Kumar & Co. requested the government of Ariloma through a letter dated February 1, 2020 to postpone delivery till May 31, 2020. It also requested the government to waive the clause on liquidated damages. The government disagreed with the waiver clause but was ok with receiving the delivery on May 31, 2020.
7. Prices of the raw materials soared even higher making Anil Kumar & Co. nearly impossible to perform its contractual obligations. As a last-ditch effort, it again requested through a letter dated February 29, 2020 to waive the liquidated damages clause and to postpone the date till December 31, 2020. It also suggested the use of lesser-version ventilators (whose price was



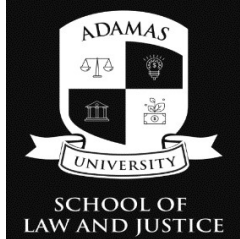
not even Rupees five lakhs) until then. Surprisingly, Anil Kumar & Co. had about 500 ventilators delivery-ready even before it had contracted the government of Ariloma.

8. Apprehending that the government of Ariloma would not give in to its demands, Anil Kumar & Co. again wrote a letter to the government on March 7, 2020 pleading impossibility of performance because of the soaring prices of the raw materials. In the letter it stated that the performance as agreed was made impracticable by the occurrence of an unforeseen event (the abrupt increase in the prices of raw materials) which was further triggered by the chaos and uncertainty created in the consumer market because of the sudden outbreak of pokonavirus. It further asserted that the non-occurrence of such event was a rudimentary assumption on which the contract was based. Finally, at the end of the letter, the company pleaded for mercy and stated that it would not be able to deliver the 1000 ventilators before May 31, 2021.
9. In the meantime, Mr. Anil Kumar, the sole Director of Anil Kumar & Co., wanted a loan of Rupees 50 lakhs in view of the rising prices of the raw materials and in anticipation of payment of liquidated damages should the government of Ariloma sue him. But since he had no records of IT file return, his friend, Mr. Pravin Kumar, whom he nominated as a Director through the Memorandum of Association in accordance with the relevant provisions of the Companies Act, 2013 proposed him to use his IT return for taking the loan amount from XYZ Bank. Besides using the IT return of Mr. Pravin Kumar, Mr. Anil Kumar also mortgaged his house property to the XYZ Bank. On March 10, 2020, the bank after various inspections and verifications sanctioned the loan amount of Rupees 50 lakhs (the sanctioned loan amount was directly credited to the account of Anil Kumar & Co.), where Mr. Anil Kumar was the principal debtor and Mr. Pravin Kumar was the guarantor. A contract of guarantee was also entered by the parties on the same day. Vide the stipulations of the



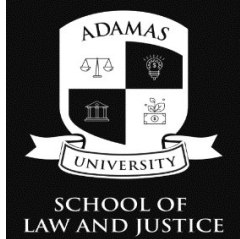
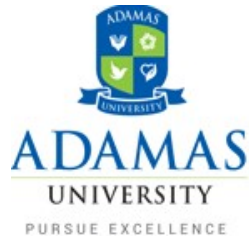
contract, the principal debtor was supposed to pay Equated Monthly Instalments (EMIs) of Rupees 48,000/-, which included both the principal and the interest amount, on the 10th day of every month. The contract further stated that in the event of non-payment of EMIs for more than a month, the bank shall have the prerogative of proceeding either against the principal debtor or the guarantor or both.

10. On the other side, in cognizance of the astounding surge in viral infections across the country, the government of Ariloma could not accept the postponement plea or the plea to use lesser-version ventilators or the plea of waiver of payment of liquidated damages. It immediately contacted the second bidder Chani & Co., who readily accepted the terms and conditions, and both the parties entered into another contract on April 1, 2020 on more or less similar terms and Chani & Co. was asked to deliver 1000 ventilators by May 1, 2020. The price capped for each ventilator was Rupees 10 lakhs two thousand.
11. After receiving the best-quality ventilators from Chani & Co. within the desired date, i.e., May 1, 2020, the government of Ariloma sued Anil Kumar & Co. and sought damages to the tune of Rupees 50 lakhs; Rupees thirty lakhs (@ Rupees one lakh per day) for the delay of 30 days starting April 1, 2020 to April 30, 2020, and Rupees 20 lakhs (Rupees two thousand multiplied by 1000) for the excess cost spent on the purchase of ventilators from Chani & Co. The case was filed before the Court of the Civil Judge, Senior Division, Batamma on May 7, 2020.
12. The federal government of Ariloma invoking its powers under Section 210 of the Companies Act, 2013 also made a reference to the National Company Law Tribunal to freeze the assets of Anil Kumar & Co. The Tribunal passed an order dated May 10, 2020 eventually freezing the assets of Anil Kumar & Co. invoking its powers under Section 221 of the Companies



Act, 2013. Hence, the money that was received by the company through loan could not be used either for paying the EMIs or for revamping its production infrastructure.

13. Mr. Anil Kumar paid his EMI for the month of April, 2020 but could not pay after that especially because all his company's assets were frozen. After one month's default in paying EMI, XYZ Bank took legal action and sent legal notice to Mr. Anil Kumar on June 11, 2020. Feeling helpless, he went to Mr. Pravin Kumar the same day and narrated the ordeal that he was going through. Mr. Pravin Kumar came up with a solution that if Mr. Anil Kumar sold his house property to him at Rupees 55 Lakhs, he would take the burden of the entire loan amount. Having no other option at hand, Mr. Anil Kumar agreed to dispose of his house property. A sale deed was executed on June 12, 2020 by Mr. Anil Kumar in favor of Mr. Pravin Kumar before the Additional District Sub-Registrar, Batamma in lieu of 10 post-dated cheques of Rupees 5.5 lakhs drawn by Mr. Pravin Kumar in favor of Mr. Anil Kumar. Mr. Pravin Kumar paid no consideration amount at that point of time.
14. The first post-dated cheque dated June 20, 2020 was dishonoured due to insufficient funds and was returned by the drawee bank. Mr. Anil Kumar without finding any alternatives served a demand notice under section 138 of the Negotiable Instrument (NI) Act, 1881 for the payment of the aforesaid sale of property but Mr. Pravin Kumar paid no heed to it and neither replied to the demand notice. Further, Mr. Anil Kumar decided to lodge a complaint under section 138 of the NI Act before the Additional Chief Judicial Magistrate, Batamma. The instant case is pending before the court at summons stage.
15. In the meantime, the Court of the Civil Judge, Senior Division, Batamma on June 21, 2020 passed an order awarding the government of Ariloma Rupees 30 lakhs for delay under the liquidated damages clause and Rupees 20 lakhs for the excess cost of buying ventilators from

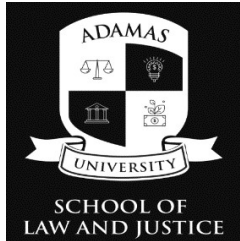


Chani & Co. In addition, the Court asked Anil Kumar & Co. to pay another five lakhs as additional compensation to the government of Ariloma. Altogether, Anil Kumar & Co. was asked to pay Rupees 55 lakhs in damages.

16. Disgruntled with the judgment of the Civil Judge, Senior Division, Batamma and the decision of the National Company Law Tribunal to freeze Anil Kumar & Co.'s assets, Mr. Anil Kumar preferred to file a special leave petition before the Supreme Court of Ariloma. In the petition, Mr. Anil Kumar stated that his defence of impracticability and impossibility of performance was not sufficiently noted by Court of the Civil Judge, Senior Division, Batamma. He further stated that the National Company Law Tribunal has erred in freezing his assets and has misinterpreted the expression 'reference made to it by the central government' leading to a travesty of justice.

Allowing the SLP, the Hon'ble Supreme Court of Ariloma drew up the following issues and has kept the date of first hearing on August 8, 2020.

- (1) Whether the Court of Civil Judge, Senior Division, Batamma has sufficiently taken into cognizance the plea of impartibility and impossibility of performance?
- (2) Whether the order of the National Company Law Tribunal to freeze Anil Kumar & Co.'s assets is valid in law and in fact?
- (3) Whether the National Company Law Tribunal has correctly interpreted the expression 'reference made to it by the central government' under section 221(1) of the Companies Act, 2013?



N.B:

1. Participants are free to add one more issue in addition to the ones stated above.
2. Participants need to prepare memorials for both the sides.
3. The laws of the state of are deemed to be in *pari materia* to the laws of India.