



SYMBIOSIS LAW SCHOOL, NAGPUR

Symbiosis International (Deemed University), Pune
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SYMBIOSIS LAW SCHOOL, NAGPUR

NATIONAL MOOT COURT COMPETITION – 2022

IN THE MATTER OF AN ARBITRATION

BETWEEN

HYDEL MAESTRO CORP LIMITED

12 B.L. Sahana Road. Kishanganj, Maharashtra

Claimant

AND

DEL AGRO SOLUTIONS PRIVATE LIMITED

221 Elvis Road, Patparganj, Maharashtra

Respondent

Statement of Undisputed Facts

1. The Federated States of Mahanrashtra (“**Mahanrashtra**”) is a sovereign State part of the Indian sub-continent. The economy of Mahanrashtra is till date wholly dependent on agriculture and has been popularly known as the breadbasket of the sub-continent. Over 80% of the population is reliant on agriculture and agriculture adjacent secondary industries for their primary income.
2. The laws of Mahanrashtra are identical to the laws of India and the courts of Mahanrashtra place significant reliance on judgments of Indian courts.
3. Hydel Maestro Corp is a newly formed private player in the agrarian economy of Mahanrashtra. It intends to usher in a pivot to cash crops from the usual subsistence farming most citizens are used to. Desirous of rapid growth, the company has embraced radical methods and practices, which seem to be showing great success. Emboldened by their trailblazing track record in traditional cash crops such as cotton and jute, they have now decided to move decidedly upscale and try their hand at developing a sustainable winery. After significant research and development, Hydel Maestro Corp has been able to develop a variety of grape, resistant to the climatic extremes of Mahanrashtra for which they credit their Chief Engineer Xavier Sreenivasan.
4. A problem Hydel Maestro Corp have not been able to surmount however, is the amount of water required, for the nourishment of such grapes, which while resistant to extreme temperate swings, do not produce viable tannins for wine production without adequate water, which the seasonal monsoons of Mahanrashtra are unable to guarantee.
5. Del Agro Solutions is a Mahanrashtra based purveyor of quality irrigation solutions and has more recently been at the forefront of global innovation hydroponics i.e., the growing of plants without traditional soil. They have recently found great success in the arid climates of Jordan & Lebanon in developing massive olive groves for the extraction of olive oil at a commercially viable scale. Mr Kulik Karnavati, their Chief Operations Officer is credited for this success.
6. In November 2021 companies found themselves to be situated in adjacent exhibition booths in the Mahanrashtra wing of the 2020 Dubai Expo. The respective CEOs of the

companies felt that there was much to gain with mutual collaboration and decided to combine their efforts for exploiting the underdeveloped market of Maharashtra.

7. During the hustle and bustle of the convention, both parties discussed terms such as the entering of a partnership for the development of the 1st commercially viable vineyard in Maharashtra. Based on this supposed understanding Hydrel Maestro Corp would be responsible for the acquisition of arable land of at least 50 acres expandable 120 acres or more within five years and Del Agro Solutions would provide transfer of technology for its patented drip irrigation and temperate monitoring system for vines.
8. The fine tuning and details of this compact were transformed into a contract in February 2022 and work developing the vineyard commenced. The key provisions of the same are reproduced in **Annexure A**. This contract was however not executed at this point in time with an impression existing that the contract would be formalized and be signed by Del Agro Solutions and Hydrel Maestro Corp upon a site visit or similar undertaking.
9. The value of the EPC Contract was USD 700,000,000 (“**Contract Price**”) in exchange for which the Contractor was required to implement the Project in the following phases:
 - (i) **Design Phase:** Designing of vineyard to maximize growth area in acquired land for maximizing potential revenues within three months.
 - (ii) **Procurement Phase:** Supply of the requisite goods and materials as per the so-called “**Procurement Schedule**”, i.e., within six months.
10. A portion of the Contract Price was payable on completion of each of these two phases set out in the EPC Contract.
11. Things seemed to be proceeding smoothly, with the Design Phase being completed by the end of May 2022. This was made possible by the swift acquisition of fifty-seven acres of land by Hydrel Maestro Corp for a much above market price consideration of 500,000 USD in total.
12. On 10th August 2022, Mr. Xavier, the Chief Engineer for Hydrel Maestro Corp sent an e-mail to Mr. Kulik, the Chief Project Officer for Del Agro enquiring about the status of delivery of the drip irrigation materials.
13. Mr. Xavier did not receive a response nor acknowledgement of the same from Mr. Kulik. Thus, a follow-up e-mail was sent to Mr. Kulik on 20 August 2022, wherein he reminded

Mr. Kulik that the temperature sensing equipment already supplied could not be utilized used without the irrigation set up completed as well.

14. On 11th September 2022, Mr. Kulik acknowledged the receipt of Mr Xavier's email, noting that due to non – fulfilment of the terms of contract by Hydel Maestro Corp, Del Agro was ceasing their investment in the project. Thus, no delivery of the drip irrigation system was to be expected.
15. Repeated emails from Mr Xavier dated 13th September 2022, 29th September 2022 and 3rd October 2022 seeking clarification regarding this turn of events received no response.
16. The e-mail correspondences thus exchanged are reproduced in **Annexure B**.
17. Frustrated by this turn of events, Hydel Maestro Corp invoked arbitration proceedings by sending a notice invoking arbitration via email on 7th October 2022. In response to this notice, a reply was received from Del Agro stating that there was no valid arbitration agreement between the two entities.
18. Subsequently a petition under Section 11 of the Arbitration & Conciliation Act was filed before the High Court of Kishanganj on 11th October 2022. In response to the said petition Del Agro raised an objection regarding the maintainability of the petition on the ground that there is no valid agreement to arbitrate. The Hon'ble single judge referred the parties to arbitration, appointing a sole Arbitrator, leaving it open to either party to raise objections regarding maintainability of the petition before the Ld. Arbitrator.
19. During these arbitration proceedings, the respondents, Del Agro filed a Section 16 application challenging the jurisdiction of Ld. Tribunal. The Tribunal took note of the same and passed an Order stating that Section 16 Application would be taken up during the final arguments stage.
20. Arbitral hearings over twenty-five in number took place to decide upon this dispute with both parties presenting several witnesses including their respective CEOs for cross examination.
21. Arguments were heard on three days and thereafter post hearing briefs were also filed by the parties. It However during the final arguments neither party argued the Section 16 Application. The Ld. Sole Arbitrator passed a detailed '**Final Award**' running into 130 pages wherein all arguments presented by the parties were dealt by the Tribunal in detail and reasoning for the same was provided. Evidence was also discussed at length and the

Tribunal observed that three out of four claims raised by Hydel Maestro seemed legitimate. However, at the end of the award the Ld. Sole Arbitrator took note of the Section 16 application and held that the Tribunal may not have jurisdiction in the instant matter.

22. The Respondent Del Agro thus, challenged the observations made against itself in the Final Award under Section 34 on the grounds that there was no contract subsisting between the parties, that the invocation of arbitration was premature and that the Section 16 petition ought to have been decided as a preliminary issue.
23. The Claimant in response to the same has noted that an Application under Section 34 is not maintainable as the matter of contention is merely an Order under Section 16, further that observations made against the Respondent are to be relied upon subsequently by the Claimant and cannot be disregarded.
24. The Claimant has separately filed an application under Section 37 of the Arbitration and Conciliation Act stating that since the Section 16 application was not pressed by either party, the Tribunal has erred in stating that it has no jurisdiction, praying that the order passed by the Ld. Arbitrator is vague and should either be modified or be relegated back to the same Arbitrator for adjudication.
25. The Respondent in its response objected to the maintainability of the petition on the grounds that an Award can be only challenged under Section 34 and not Section 37. Further, that the court under Section 37 does not have the power to modify the award passed by the Arbitrator and relegate it to the same Tribunal.
26. By the consent of the parties, both petitions have been listed for final arguments before a bench of the High Court of Kishanganj, Mahanrashtra.

Annex A – Excerpts of the Contract

Clause 2: Obligations and Milestones

2.1. The Time for Completion of the Project is 15 months. The milestones for implementation of the Project are below:

- (i) **Design Phase:** Designing of vineyard to maximize growth area in acquired land for maximizing potential revenues within three months. Land so acquired will be a minimum of 50 Acres with room for gradual expansion as a contiguous stretch of land of at least 120 Acres in the next five years.

- (ii) **Procurement Phase:** Supply of the requisite goods and materials as per the so-called “**Procurement Schedule**”, i.e., within six months.

2.2. If the supplier fails to achieve the milestones as per the Schedules provided in clause 2.1, they shall be liable to pay liquidated damages, computed at the rate of 0.003% of the outstanding Contract Price for each week of delay.

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Clause 3: Contract Price and Employer’s Obligations

3.1. The total sums payable by the Employer to the Contractor is USD 700,000,000. The Contract Price shall be paid in tranches on completion of the milestones in clause 2.1. The payment schedule is below:

Milestones	Percentage of Contract Price
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Design Phase	30%
Procurement Phase	70%

3.2. Payment shall be released as per the payment schedule provided in clause 3.1 within 30 days from the date of invoice in this regard.

Clause 25: Dispute Resolution

25.1 In the event of any dispute arising out of or in connection with the present contract, the parties may first refer the dispute to conciliation (also referred to as Mediation) to IAMC. If the dispute is not settled amicably through IAMC then the dispute shall be referred for Arbitration.

Annexure B – E-mail Correspondences

From: Xavier S <Xavier@hydermaestro.com >

Sent: 10 August 2022, 17:22:31 PM

To: Kulik K< Kulik@delagro.co>

Subject: Seeking Delivery Info Drip Irrigation System

Dear Kulik,

In furtherance of the procurement phase, our team awaits the delivery of your state-of-the-art drop irrigation system. The 57 Acres of land we have acquired are ready as per the design phase and we would be wise to not miss planting season to ensure an optimum yield for our 1st crop.

Best,

Xavier

Xavier S,

Chief Engineer, Hydel Maestro Corp

From: Xavier S <Xavier@hydermaestro.com >

Sent: 20 August 2022, 11:11:11 AM

To: Kulik K< Kulik@delagro.co>

Subject: Seeking Delivery Info Drip Irrigation System

Dear Kulik,

Please consider this to be a gentle reminder regarding my earlier email. A status update would be greatly appreciated. Time is short and things will become difficult for us to proceed with soon.

Best,

Xavier

Xavier S,

Chief Engineer, Hydel Maestro Corp

From: Kulik K. <Kulik@delagro.co>

Sent: 11 September 2022, 12:25:56 PM

To: Xavier S <Xavier@hydermaestro.com >

Subject: RE: Seeking Delivery Info Drip Irrigation System

Dear Xavier,

I acknowledge your emails regarding the delivery of the drip irrigation system.

I regret to inform you that due to a breach in terms of contract at your end, our investment in this project has come to an end.

Of the 57 Acres of land acquired by yourselves and prepared as per the design phase, an independent soil evaluation indicates only 30 Acres are suited for cultivation of grapes. This does not meet our expectations regarding economies of scale.

There will be no more shipments of materials of any sort forthcoming.

Best,

Kulik

Kulik,

Chief Projects Officer, Del Agro Corp.

From: Xavier S <Xavier@hydermaestro.com >

Sent: 13 September 2022, 15:12:03 AM

To: Kulik K <Kulik@delagro.co>

Subject: Seeking Clarifications Project on Hold?

Dear Kulik,

Thank you for your email.

I confess I am at a bit of a loss with what you are saying.

The contract entered mentions nothing specific about soil suitability. Your irrigation technology is essential to making it so. Please do clarify.

Best,

Xavier

Xavier S,

Chief Engineer, Hydrel Maestro Corp

From: Xavier S <Xavier@hydermaestro.com >

Sent: 29 September 2022, 18:34:12 PM

To: Kulik K <Kulik@delagro.co>

Subject: Seeking Clarifications Project on Hold?

Dear Kulik,

I hope you have had some time to reconsider your position.

I apologize if there has been some form of miscommunication or misunderstanding. We would be happy to clarify and reach a renewed understanding.

In the meanwhile, I urge you to at the very least dispatch the drip irrigation system. We have already planted the grapes before the change of seasons. Let us jointly ensure this harvest does not go to waste.

I eagerly await hearing from you again.

In anticipation.

Best,

Xavier

Xavier S,

Chief Engineer, Hydel Maestro Corp

From: Xavier S <Xavier@hydermaestro.com >

Sent: 03 October 2022, 10:04:12 AM

To: Kulik K <Kulik@delagro.co>

Subject: Seeking Clarifications Project on Hold?

Dear Kulik,

We are truly running out of patience here.

Please communicate your concerns to us, we will clarify as best we can. The rest of our investment stands at risk of being completely frustrated at this point.

I urge you to write back to us. I am sure there is something that we may work out.

Regards,

Xavier

Xavier S,

Chief Engineer, Hydel Maestro Corp
