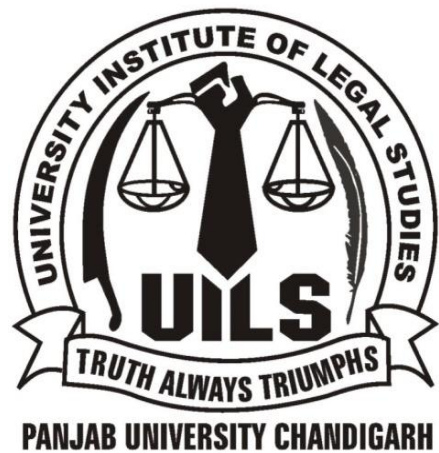


**1ST NATIONAL MEMORIAL WRITING AND
DRAFTING COMPETITION, 2020**

PROPOSITION

Moot Court Society





ACKNOWLEDGMENT - THE DRAFTING COMMITTEE

This Case Record has been authored by Ms. Kajal Arora (Student, UILS, PU), Ms. Komal Arora (Student, UILS, PU) and Ms. Dilpreet Kharbanda (Student, UILS, PU). The Committee would like to express its deepest appreciation to Ms. Ridhi Bansal (Alumni), Ms. Sidhi Bansal (Alumni), Mr. Karan Sekhon (Alumni) for their consistent support and valuable time and also Ms. Shruti Singla, Ms. Aastha Dhawan and Mr. Ritik Gupta.

Note: Teams are prohibited from contacting the aforementioned persons in relation to this Competition directly or indirectly. The Administrators reserve the right to take any appropriate action, including disqualification and/or blacklisting the participating institution and/or the members found engaging in such conduct.



PROPOSITION

PARTIES

Xander Pvt. Ltd.

27 VIP Road, Punjab

India

—CLAIMANT—

Frank & Nash Pvt. Ltd.

83 Azad Road, Maharashtra

India

—RESPONDENT—

PARTIES

1. Xander Pvt. Ltd. (henceforth referred as “Xander”) is a private company, incorporated in India in the year 2004. Mr. Ravi Shankar is the Head of the production department of the company. Mrs. Suchi Shankar is the wife of Mr. Ravi Shankar and a leading lawyer of the city handles all the legal matters of the company. It has its principal office at 27 VIP Road, Punjab, India. Their email address is xander2724@gmail.com.
2. It is one of the leading manufacturers of air conditioners within the country and also includes providing end to end services to suit the varying needs of the business. Due to its quality accessory supplies, strict quality control systems and professional technical team, it has become one of the outstanding air conditioner manufacturers in India.

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3. Frank & Nash Pvt. Ltd. (henceforth referred as “F&N”) is also a private company incorporated under laws of India. Established in 2017, having its office at 83 Azad Road, Maharashtra, India, F&N is an authorized distributor and supplier of air conditioners in India. Ms. Priya Patil is the Chief Executive Officer of F&N and believes in gradual expansion and is yet to grow out of their native state. Their email address is nashfrank@gmail.com.
4. It has faced a stiff competition in the market since its inception, but with its adamant nature to deliver the product timely and to honour its contractual obligations, it has got a good hold on the market in a brief span.

FACTS

5. F&N has been negotiating a contract with Mascot Pvt. Ltd. (henceforth referred as “Mascot”), a company based in Uttar Pradesh and a major player in the market with its business in various states to supply to Mascot 1,000 1.5 ton 5 star Inverter split air conditioners. Mascot is planning on buying the said product for resale to its consumers in the market.
6. In order to comply with the above contract, F&N decided to enter into a contract with a reputed and experienced manufacturer and thus contacted Xander relying upon its goodwill in the market. The contract between Xander and F&N was entered into on 5.03.2020 (henceforth referred as the Contract) to deliver the goods by 27.03.2020 and in pursuance of the same, earnest money of 10 % of total amount of the contract value was to paid by F&N to Xander by 8.03.2020. (Exhibit 1)

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7. By its email dated 22.03.2020 (Exhibit 2) Xander requested F&N to delay the delivery of goods by a few days as it had decided for its workers to come to the production unit on alternative days. This step was crucial in relation to the fact that the COVID19 was taking the world under its grasp easily and quickly. Ahead of its time, Xander felt that this decision would be a dominant factor to protect its workers from the spreading virus.
8. F&N showed a very understanding approach to the issue and extended the delivery date till 30.03.2020 and also added an automatic termination clause in the contract (Exhibit 3).
9. On 26.03.2020 at 12 PM Xander mailed F&N to notify them that 85% of the production has been done with and as soon as the production process is over, the same will be delivered to them. Also, that they are trying to deliver the goods by 29.03.2020 (Exhibit 4).
10. In the meanwhile, the global pestilential pandemic had wreaked havoc on the world and led to several deaths. In consideration of the same, the government of India decided to take much needed step to slow down the spreading of virus in India at an early stage and resultantly, The Prime Minister of India on 26.03.2020 at 8 PM announced certain restrictions to be followed for a period of 45 days in the wake of outbreak of COVID 19 (Exhibit 5 & 6).
11. Since no delivery could be made F&N proceeded to terminate the contract and claimed damages receivable for non-performance of their contractual obligations in time via an email dated 1.04.2020 (Exhibit 7).
12. Xander replied to the email on 3.04.2020 citing that their non-performance was wholly attributable to the force majeure events and accordingly they were not liable to indemnify F&N for any amount (Exhibit 8).



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ARBITRATION

13. Xander sent a legal notice dated 5.04.2020 stating that it has no other option but to initiate arbitration proceedings against F&N as per the agreement and nominated Mr. Siddarth Chopra, Senior Advocate, Punjab & Haryana High Court as their arbitrator. F&N replied on 20.04.2020 and nominated Mr. Urvijay Arora, Advocate, Bombay High Court to be their arbitrator. Indian Institute of Arbitration appointed Ms. Gagan Kharbanda as the presiding arbitrator on 3.05.2020.
14. Ms. Gagan Kharbanda joined the Institute in 2012 and has surpassed others in her field to become a distinguished member of the Institute. She is also a friend of Mrs. Suchi Shankar Rao and completed their degree in law from the same university.
15. All the arbitrators submitted their statement of independence disclosing that they have no conflict of interest with any of the parties. However, on 9.05.2020 F&N moved an application challenging the appointment of the presiding arbitrator stating that as Ms. Gagan is connected to the matter and her appointment is invalid. Since an impartial and neutral arbitrator is *sine qua non* in arbitration, the appointment of the presiding arbitrator is being challenged.
16. Parties have agreed to conduct arbitration through written documents only.

STATEMENTS

Xander submitted its statement of Claim on 20.05.2020 stating that:

1. The appointment of Ms. Gagan is completely valid as the appointment has been made by the Indian Institute of Arbitration as per the contract.

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2. F&N had wrongly terminated the contract as there was no breach of the contract since the non-performance was attributable to force majeure event, which was beyond our control.
3. Accordingly Xander is neither liable to refund to F&N any earnest amount nor is liable to indemnify F&N for any losses.

F&N submitted its statement of Defence on 30.05.2020 stating that:

1. The appointment of the presiding arbitrator, Ms. Gagan Kharbanda is invalid as there are justifiable doubts as to her independence and impartiality and accordingly an application has been moved against her appointment.
2. Xander has breached the contract by not performing its contractual obligations in time and the non-performance cannot be excused by any force majeure events.
3. As per the terms of the contract accordingly Xander is liable to refund the earnest money paid by F&N to Xander.
4. Xander is further liable to indemnify F&N for damages suffered on account of their Non-performance of contractual obligations.

Proceedings are scheduled to be held on 25.06.2020 at Chandigarh, India.

PROCEDURAL ORDER

1. The parties have chosen not to let in oral evidence.
2. The matter is to be decided by the Tribunal on 25.06.2020.
3. The Arbitral Tribunal shall decide on the following issues:
 - i. Is challenge upon Presiding Arbitrator valid?



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- ii. Is time of essence in the contract between Xander and F&N?
- iii. Has Xander breached the contract and is the breach attributable to force majeure events?
- iv. Does F&N have the right to forfeit the earnest money paid to Xander?
- v. Is Xander liable to indemnify F&N for damages suffered thereof?



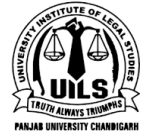


Exhibit 1

THE CONTRACT

IT IS THIS DAY MUTUALLY AGREED between Xander Pvt. Ltd and Frank & Nash Pvt. Ltd. to commit themselves to perform the contract and deliver 1,000 1.5 ton 5 star Inverter split air conditioners. Both the parties agree to perform the contract in a timely and efficient manner and to make rational compromises where and when required by the other party.

The parties have mutually agreed on the following conditions:

CLAUSE I: PERFORMANCE OF THE CONTRACT

The contract shall be performed by production of 1,000 1.5 ton 5 star Inverter split air conditioners of Rs. 30,000 /- and supply by Xander to F&N by 27.03.2020 by 7 P.M.

CLAUSE II: EARNEST MONEY

In reference to the contractual obligation, F&N shall submit earnest money of 10% of the total amount of the contract within three days of entering into the contract. The agreement shall stand terminated if the earnest money isn't paid within the time specified. In case of breach of contract, F & N shall have right to forfeit full amount paid as earnest money.

CLAUSE III: ARBITRATION

All disputes arising out of or in connection with this contract shall be finally resolved by a panel of three arbitrators appointed in accordance with Arbitration and Conciliation Act, 1996 or any amendment thereof. F&N will select one arbitrator, another arbitrator will be selected by the Xander, and the presiding arbitrator shall be appointed by the 'Indian Institute of Arbitration'.

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The seat of arbitration will be Chandigarh, India.

The language used in the arbitral proceedings will be English.

CLAUSE V: INDEMNIFICATION

Each party agrees to indemnify, defend and hold harmless the other party from and against any loss, cost or damage of any kind to the extent of arising out of the breach of this contract, and/or its negligence or wilful misconduct.

CLAUSE VII: LIMITATION OF LIABILITY

Neither party shall be liable to the other party for any special, incidental, punitive or indirect damages arising from or relating to any breach of this contract, regardless of any notice of the possibility of such damages.

CLAUSE X: FORCE MAJEURE

Neither party shall be liable for any failure to perform or delay in performing its contractual obligations, where the party is interrupted, delayed or prevented from performing its obligations due to force majeure events.

For the purpose of this contract, the term force majeure events means:

Events which are out of control of either party and unforeseeable like acts of god, accidents, fire, floods, adverse weather, strikes etc.



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To

Exhibit 2

Priya Patil

CEO, Frank & Nash Pvt. Ltd.

83 Azad Road, Maharashtra, India

March 22, 2020

Subject: Request to extend time

On 11.03.2020, the World Health Organisation declared COVID19 a pandemic. As the world is aware now, this virus is spreading like fire and unfortunately India is no exception to it.

Deeply concerned by the alarming levels of spread and severity we at Xander undertook the duty to make sure that our workers are not affected by this virus. As the virus is transmitted through droplets generated when an infected person sneezes, coughs or exhales, we find it fundamental to create a promising and caring atmosphere at our units. The only way to do that is by allowing services of our workers on alternative basis and sanitizing regularly. Thus, due to this mode of arrangement of our workers, we are requesting the delivery date to be extended by a few days.

Also, in times like these it is important to get each other's back, so we recommend the same to you in order to ensure that our families and businesses don't suffer amidst the virus.

Hope you will consider our requests.

Looking forward to your response.

Ravi Shankar

Head of the Production, Xander Pvt. Ltd.

27 VIP Road, Punjab, India

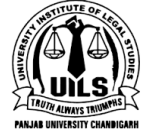


Xander Pvt. Ltd.



UNIVERSITY INSTITUTE OF LEGAL STUDIES

MOOT COURT SOCIETY



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To

Exhibit 3

Ravi Shankar

Head of the Production , Xander Pvt. Ltd.

27 VIP Road, Punjab, India

March 23, 2020

Subject: In re request for extension of time

We appreciate your legit concerns regarding the impact of COVID19. Also, to make sure that our workers and families are free from the hazards of the virus, we have opted regular sanitization and medical check-ups.

Understanding the nature of the issue at hand and admiring your way to combat the virus, as is our duty under the contract to make reasonable compromises we are ready to extend the date of delivery from 27.03.2020 to 30.03.2020.

But also we would like to state clearly that the delivery date has been extended till 30.03.2020 and delivery after this date would not be acceptable and we would be obliged to terminate the contract if not performed in time.

Hope to receive goods soon.

Yours sincerely,

Priya Patil

CEO, Frank & Nash Pvt. Ltd.

83 Azad Road, Maharashtra, India





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To

Exhibit 4

Priya Patil

CEO, Frank & Nash Pvt. Ltd.

83 Azad Road, Maharashtra, India

March 26, 2020

Subject: Progress in the production

We are happy to inform you that we have completed 85% of production of 1,000 1.5 ton 5 star Inverter split air conditioners as decide by the contract terms. Despite the fact that our workforce was reduced we have been able to comply with the terms of the contract. Also, appreciating the compromises you have made we would also try and get the goods delivered to you by 29.03.2020.

We ensure you that we are doing everything in our control to make the delivery in time.

Yours sincerely,

Ravi Shankar

Head of the production, Xander Pvt. Ltd.

27 VIP Road, Punjab, India



Xander Pvt. Ltd.



No. 43-2/2020-DM-I(A)

Exhibit 5*Government of India**Ministry of Home affairs*

New Delhi-110001

Dated: 26.03.2020

ORDER

Whereas, the National disaster Management Authority, is satisfied that the country is threatened with the spread of COVID 19 pandemic, which has already been declared as a pandemic by World Health Organization and has considered it necessary to take effective measures to prevent its spread across the country and that there is a need for consistency in the application and implementation of various measures across the country while ensuring maintenance of essential services and supplies including health infrastructure;

Whereas in the exercise of powers under section 6 (2) (i) of the Disaster Management Act 2005, National disaster Management Authority has issued an order directing the Ministries and department of Government of India, State and union territory government and authorities to take effective measures so as to prevent spread of COVID 19 in the country;

Whereas under the directions of the aforesaid order and in exercise of powers conferred under section 10(2) (1) of Disaster management Act, the Chairperson of National Executive Committee issues guidelines (Refer to next page) to Ministries and department of Government of India with their directions for strict implementation. This order shall remain in force in all parts of the country for a period of 45 days with effect from 27.03.2020.



ANNEXURE TO MINISTRY OF HOME AFFAIRS ORDER NO. 43-2/2020-D DATED
26.03.2020

Guidelines On The Measures To Be Taken By Department/ Ministries Of India, State/Union Territory Governments And State/Union Territorial Authorities For Containment Of COVID-19 In The Country.

1. Offices of Government of India, its autonomous/ subordinate offices and public corporations shall remain closed. Exceptions: central armed police force, public utilities, power generation and transmission units, post offices.
2. Offices of state/union territory governments, their autonomous bodies, corporations shall remain closed. Exceptions: police, home guards, prisons, electricity, water, sanitation, municipal bodies etc.
3. The above offices should work with minimum number of employees. All other offices may continue to work from home.
4. Hospitals, medical establishments, including manufacturing and distribution units will continue to remain functional.
5. Commercial and private establishments shall be closed down. Exceptions: ration shops, banks, insurance offices, print and electronic media, internet and telecommunication services, cable and broadcasting services, delivery of essential goods, petrol pumps.
6. All hospitality services to be suspended.
7. All educational, training, research, coaching institutions shall remain closed.
8. All places of worship shall be closed for public.
9. In case of funerals, congregation of not more than 20 people will be permitted.
10. Any person violating these measures will be liable under the provisions of disaster management act, 2005.



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These measures will remain in force, in all parts of the country for a period of 45 days with effect from 27.03.2020.

UNION HOME SECRETARY





THE REPUBLIC NEWS

IS CORONA THE END OF THE WORLD?

By: Deepanshu Singla, 27.03.2020

On 12 January 2020, the World Health Organization (WHO) confirmed that a novel coronavirus was the cause of a respiratory illness in a cluster of people in Wuhan City, Hubei Province, China, which was reported to the WHO on 31 December 2019. Since that confirmation, the world has been ripped apart by this killer virus. No country or state is free from the risks of getting killed.

In India the situation looked normal in the start, with a case here and there, and no big fuss was made about it as in comparison to other countries the situation in ours looked much safer. But as it turns out that sense of hope and security didn't last long. The first case of COVID-19 in India, which originated from China, was reported on 30 January 2020. This transmission escalated during March, after several cases were reported all over the country, most of which were linked to people with a travel history to affected countries. India currently has the largest number of confirmed cases in Asia.

Dr V Ravi, Head of Neurovirology, National Institute of Mental Health and Neurosciences, said that up to 50 percent people in India would be infected by COVID-19 by the year-end. Michael Ryan, chief executive director of the World Health Organisation's health emergencies programme, said that India had "tremendous capacity" to deal with the coronavirus outbreak and, as the second most populous country, will have enormous impact on the world's ability to deal with it.

Thus, India announced a lockdown yesterday at 8p.m. to be in effect from today. While some commentators are worried about the economic devastation caused by the lockdown, which

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has huge effects on informal workers, micro and small enterprises, farmers and the self-employed, who are left with no livelihood in the absence of transportation and access to markets, this lockdown is also a pertinent step in order to win this battle against corona.



Exhibit 7

To

Ravi Shankar

Head of the production , Xander Pvt. Ltd.

27 VIP Road, Punjab, India

April 1, 2020

Subject: Termination of the contract

This is in reference to the contract entered into on 5.03.2020. As per the latest terms of the contract we were to be supplied 1000 1.5 ton 5 star Inverter split air conditioners by 30.03.2020, however unfortunately there has been no such performance on your part and we are obligated to terminate the contract and as per the contract terms, we have the right to forfeit the entire amount paid by us as earnest money.

Much to our dismay you were not able to perform the contract even after we made the required compromises to get timely supply. We need not remind that we hired your services relying on your experience and dedication towards your business which made you stand out in the market, but we are deeply disappointed by the results of this contract.

Therefore, we are claiming refund of earnest money and also damages for non-performance of the contract on your part that has resulted into huge losses for us.

Yours sincerely,

Priya Patil

CEO, Frank & Nash Pvt. Ltd.

83 Azad Road, Maharashtra, India





1ST NATIONAL MEMORIAL WRITING AND DRAFTING COMPETITION, 2020

To

Exhibit 8

Priya Patil

CEO, Frank & Nash Pvt. Ltd.

83 Azad Road, Maharashtra, India

April 3, 2020

Subject: Non-performance attributable to Force Majeure

This is in reference to your mail of termination of the contract. We would like to inform you that our non-performance was due to force majeure event. We did everything in our control to give effect to the contract but were prevented by COVID 19 and its collateral consequences. In times of these inconceivable turmoil, we'd expected much more understanding and compassion from a fellow Company. We are dispirited at such conduct and find that the only way out of this conflict is through arbitration. The legal notice invoking the arbitration clause will reach you soon.

Sincere regards,

Ravi Shankar

Head of the production, Xander Pvt. Ltd.

27 VIP Road, Punjab, India.



Xander Pvt. Ltd.