

MOOT PROBLEM

1. ZELCOVA is common law country having cultural, social, geographical, economic, political systems and legal regimes similar to that of India. MALAYLAKA is a country having cultural, social, geographical, economic, political systems and legal regimes similar to that of USA. Forslyeth is considered as the financial capital of Zelcova.

2. Thermopowergen Private Limited (“TPL”) and Coatland Coal Corporation Zelcova Private Limited (“CCZPL”) are registered with the Registrar of Companies under the Zelcova Companies Act, 2013 and their Registered Office located at Forslyeth, Zelcova. TPL is a Subsidiary Company of ZelcovaPowergen Limited (“ZPL”) situated at Zelcova and CCZPL is a Subsidiary Company of MalaylakaPowersolutions Private Limited (“MPPL”) situated at Malaylaka.

3. In 2014 TPL won a contract from the Zelcova government to produce and supply electricity to the tune of 19,400 MW to the State run power distribution companies. It was reality that Zelcova had coal scarcity whereby TPL has to enter into a Coal Supply Agreement (“Agreement”) for a period of three (3) years with CCZPL starting from 1st May, 2014.

4. As per the Agreement, after receipt of few shipments of coal from by CCZPL TPL delayed payments to CCPL beyond hundred (100) working days and in this respect CCZPL had sent few electronic mail communications as follow up for the receipt of due payments and further requested TPL to make advance payments in respect of future coal supplies.

5. TPL responded to CCZPL electronic mail communications immediately by stating that, *“... as per the Payment clause (Clause 18.1) under the Agreement, payments were subject to receipt of shipment at Forsleyth port and only after clearance of quality tests as set forth in*

the Agreement and that two (2) earlier shipments have failed the quality tests due to which the payments were withheld.”, to which CCZPL responded stating that “... as per the requirements of Clause 18.1 of the Agreement, TPL had not intimated the coal quality test status for the relevant shipments & its shortcomings & its rejection within seven (7) working days after the fifteenth (15th) day of shipment delivery at Forsleyth port on TPL noticing them.”, CCZPL further stated to TPL that “... the two (2) shipments referred by you (TPL) are part of our 8th and 9th shipments and the payments due were for the previous four (4) shipments long due and for which the payments must be released immediately”. CCZPL also stated its inability to continue delivery for next shipments unless TPL cleared the old dues along with interest at the rate of eighteen percent (18%) per annum. Citing Clause 18.1 CCZPL explained that it is TPL responsibility to hedge the currency fluctuations.

6. As there were continuing payment delays from TPL due to the differences between Parties on arriving at payment status on the earlier and future shipments, wherein CCZPL as recourse sent legal notice to TPL invoking arbitration (Clause 33.1) under the Agreement. Clause 33.1 of the Agreement explicitly stated that ***“both Parties agree to arbitrate in Malaylaka, and the law of Malaylaka will apply to this Agreement”*** .

7. Meanwhile, TPL approached Forslyeth City Civil Court by seeking for a stay on CCZPL to refrain them from taking recourse to recovery of payments by invoking the Bank Guarantee (“BG”) provided by CCZPL to TPL stating ground that it was fraud by CCZPL to invoke BG under the Agreement and the interim stay was granted against CCZPL as prayed by TPL. CCZPL appears and files detailed statement of objections to the said stay application and instead of filing written statement makes an application under s.8 of Arbitration Act seeking dismissal of suit as not maintainable. But no order was passed by the said Forslyeth District Court.

8. Aggrieved by the inaction of Forslyeth District court, CCZPL approached Hon'ble High Court of Forslyeth praying for vacating the said stay order in view of existence of said Arbitration Clause.

9. Hon'ble High Court of Forslyeth delivered judgment holding that:

- a) TPL misled Forslyeth District Court by not disclosing the Arbitration clause, therefore set asides the stay granted by the said Forslyeth Court and Directs the TPL to extend the bank guarantee.
- b) Dismissed the plea of CCZPL for arbitration under clause 33 of agreement, as clause 33.1 is against the public policy of Zelcova.

10. Aggrieved, CCZPL approached the Hon'ble Supreme Court of Zelcova. Decide.

Before Supreme Court of Zelcova

Coatland Coal Corporation Zelcova Private Limited ("CCZPL") - Appellant

v.

Thermopowergen Private Limited ("TPC") - Respondent