



**THE**  
**MOOT PROBLEM**  
**VICTOR'S MOOT 2022**

**THE MOOT SOCIETY**  
**OF SRI LANKA LAW COLLEGE**

## THE VICTOR'S MOOT

### H. V. Perera QC Memorial Moot Court Competition

2022

#### PARTIES

**Claimant:** Noldor Plantations (Pvt) Ltd, No. 422, Woodland Avenue, Lindon, Rivendell.

**Respondent:** Durin Industries (Pvt) Ltd, No. 243, Mason Road, Gimlington, Moria.

#### Summary of Facts

Noldor Plantations (Pvt) Ltd is a leading cultivator and exporter of fresh fruits and vegetables incorporated under the laws of the Republic of Rivendell (identical to the laws of England).

Durin Industries (Pvt) Ltd is a large conglomerate that provides Chemical Fertilizer to the agriculture sector incorporated under the laws of Moria (identical to the laws of England).

In light of the incidents set out herein, the Claimant proceeds to exercise its right to arbitrate under and in terms of the dispute resolution clause of the contract between the Claimant "Noldor" and the Respondent "Durin".

The Import, sales and distribution of Chemical Fertilizer to Rivendell is entirely regulated and is overseen by the "National Chemical Fertilizer Commissioner" (hereinafter referred to as "NFC") of the Ministry of Agriculture in Rivendell. Durin although located in Moria is registered as an importer and supplier of Chemical Fertilizer in Rivendell.

The procedure followed by NFC at present in respect of the supply of Chemical Fertilizer to the plantation sector is as follows:

- a) The importers and suppliers of Chemical Fertilizer registered with the NFC in Rivendell, such as the Respondent, are required to submit a request for the amount of Chemical Fertilizer they require to import and supply to local customers in Rivendell;
- b) Based on such request, each importer/supplier is allocated a quota of Chemical Fertilizer;
- c) such allocation of Chemical Fertilizer that is to be imported has to be approved by the NFC and the NFC allocates buyers and quantities to each supplier in Rivendell.

## STATEMENT OF FACTS IN THE ORDER OF OCCURRENCE

Date	Event
04.02.2021	Noldor entered into a contract with Durin to purchase Chemical Fertilizer at a subsidized price, which includes a dispute resolution clause and is governed by the English law. (See Annexure 1)  (General clauses are similar to the UNCITRAL Rules of Arbitration)
10.02.2021	In terms of the contract, Noldor ordered 600 Metric Tons of Chemical Fertilizer from Durin.
14.02.2021	NFC granted permission and allocated the supply of 600 Metric tons of Chemical Fertilizer to Noldor
15.03. 2021 to 13.07.2021	Arrival of "MV Lorien" in the port of Rivendell was delayed for over 3 months due to several breakdowns of the vessel. (Annexure 2)
10.06. 2021	Durin informed NFC and Noldor that no stocks of Chemical Fertilizer will be available in Rivendell until "MV Lorien" arrives in Rivendell.
15.06.2021	The NFC, then informed Durin to supply the Chemical Fertilizer on board the "MV Lorien" in accordance with the allocation given to Noldor.
21.06.2021	In terms of the Contract Noldor placed a purchase order for the total of 600 Metric Tons of Chemical Fertilizer at the <b>subsidized price</b> of \$30, 000/= per Metric Ton and a total sum of \$18, 000, 000.00.
22.06.2021	Durin issued a proforma invoice for 600 Metric Tons of Chemical Fertilizer at the subsidized price of \$ 30, 000/= per Metric Ton and a total sum of \$ 18, 000,000.00
12.07.2021	"MV Lorien" arrives in the port of Rivendell
	However, Fertilizer on board was wrongfully detained by Rivendell Customs and not released to Durin.
16.07.2021	Durin informed Noldor of the detention of cargo. (Annexure 3)
03.08.2021	Noldor requested a refund of the purchase price paid in terms of the contract. (Annexure 4)
04.08.2021	Durin agreed to refund the purchase price paid, after setting off some outstanding amounts from previous transactions. (Annexure 5)
30.09.2021	Subsidy for Chemical Fertilizer was removed, thereby increasing the price of Chemical Fertilizer by approximately 300%.
	The NFC also prohibited the importation of chemical fertilizer to Rivendell

04.10.2021	<p>Rivendell Customs withdrew its objections for Durin to import/distribute the cargo.</p> <p>Before the monies were refunded by Doring, Noldor informed Durin that since they could not purchase Chemical Fertilizer from another supplier in Rivendell they are willing to purchase the Chemical Fertilizer from Durin according to the contract.</p>
14.10.2021	<p>NFC withdrew the prohibition of chemical fertilizer (limited) to a list of buyers to whom Chemical Fertilizer can be supplied at the subsidized price. This list did not include Noldor.</p> <p>NFC permitted the supply of chemical fertilizer to other buyers who are not in the list without the subsidy.</p> <p>As such, in terms of the above directions NFC informed Durin that they can supply the fertilizer to Noldor at a non- subsidised price.</p>
22.10.2022	<p>Durin wrote to NFC and requested permission to issue Chemical Fertilizer to the existing buyers, including Noldor, at the prices stipulated in the invoice(s).</p>
25.10.2021	<p>Durin's request was rejected by the NFC.</p>
26.10.2021	<p>Durin informed Noldor of the aforesaid fact and the new commercial prices without the subsidy and as directed by the NFC. (Annexure 6)</p>
09.11.2021	<p>Noldor insisted on the supply of goods at the subsidized price after getting to know that Durin had been informed of the impending removal of the subsidy even before the Noldor's order was placed. (Annexure 7)</p>
10.11.2021	<p>Noldor filed a notice of arbitration to the Rivendell International Arbitration Centre in terms of the Arbitration clause in the Agreement.</p>

## REQUESTED RELIFES BY THE PARTIES

### Claimant

- I. An Award directing the Respondent to deliver to the Claimant the quantity of Chemical Fertilizer amounting to 600 Metric Tons at the contracted subsidized price;
- II. For damages for the delay /non-delivery caused by the Respondent in supplying Chemical Fertilizer to the Claimant;
- III. Interest;
- IV. Costs of arbitration.

## Respondent

- I. Dismiss the Statement of Claim
- II. Interest;
- III. Costs of arbitration.

## ISSUES

- (1) Whether the Respondent breached the Contract.
- (2) Supervening illegality - Whether the NFC's prohibition of the importation of chemical fertilizer to Rivendell acts as a supervening illegality? [ However, the ban was imposed after the stock of fertilizer arrived in Rivendell but before it was cleared from the Port by Durin]
- (3) Frustration of Contracts / Force Majeure
  - a. Delay caused due to the breakdown of the carrier
  - b. Delay caused due to the wrongful detention of the stock of fertilizer by the Customs
  - c. Removal of Subsidy
- (4) Damages and remedies
  - a) Causation and remoteness
  - b) Whether the Claimant is entitled to the said quantity of Chemical Fertilizer at the contract price
  - c) Whether the Claimant is entitled to damages for the delay
- (5) Jurisdiction of a Tribunal to hear and determine a dispute where any pre-condition as provided in the Dispute Resolution Clause is not fulfilled.

## **Annexure 1 – Relevant Clauses in the Contract**

### **Article 12: Disputes**

- 12.1 This Agreement shall be governed by the laws of the Republic of Rivendell.
- 12.2 With respect to any and all disputes arising out of or relating to this Agreement, the Parties shall initially attempt in good faith to resolve all disputes amicably between themselves. If such negotiations fail, it is agreed by both parties that such disputes shall be finally submitted to the Rivendell International Arbitration Centre (RIAC) for arbitration in accordance with the Arbitration Rules of the RIAC.

The Arbitration shall be conducted in terms of the **UNCITRAL Rules of Arbitration**.

### **19 - Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Rivendell and the seat of arbitration shall be the Rivendell.

### **20 – Termination of Contract**

In the event one of the Parties hereto commits a breach of this Contract and upon being notified by the other Party (Innocent Party) the Party at breach has not remedied the breach specified in such notice within a period of thirty (30) days or such greater number of days as may be specified in the said notice it will amount to termination of the contract by such Innocent Party.

### **21 - Force Majeure**

In this Clause, "Force Majeure means an exceptional event or circumstance

- I. which is beyond a Party's control.
- II. which such Party could not reasonably have provided against before entering into the Contract.
- III. which, having arisen, such Party could not reasonably have avoided or overcome, and
- IV. which is not substantially attributable to the other Party.

### **20.2 - Notice of Force Majeure**

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure. The Party shall, having given notice, be

excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

## Annexure 2

From: [info@durin.com](mailto:info@durin.com)

To: [noldorofficial@gmail.com](mailto:noldorofficial@gmail.com)

Date: 10.04.2021 9:50 am

Subject: *Delay in Shipping*

*Dear Sir/Madam,*

*We would like to apologize for the late arrival of your order of 600 Metric Tons of Chemical Fertilizer due to unavoidable circumstances.*

*Your shipment on board the vessel "MV Lorien" has been delayed due to several breakdowns of the vessel while sailing in international waters.*

*We are doing everything in our power to make sure that your shipment will reach you in time.*

*Once again kindly accept our sincere apologies for taking time to notify you.*

*We look forward to doing business with you.*

*Yours Sincerely,*

*Hector Thorington,*

*General Manager*

**Annexure 3**

*From: [info@durin.com](mailto:info@durin.com)*

*To: [noldorofficial@gmail.com](mailto:noldorofficial@gmail.com)*

*Date: 16.07. 2021 11.12 am*

*Subject: Shipment seized by customs*

*Dear Sir/Madam,*

*The vessel 'MV Lorien' carrying your shipment has arrived at the Port of Rivendell on 12<sup>th</sup> July 2021. However, the shipment on board the vessel has been seized by the Customs in Rivendell on unfounded charges.*

*We have been in contact with the Customs Authority in Rivendell and we are doing everything in our power to get your shipment released from custody.*

*Once again kindly accept our sincere apologies for the further delay in delivering your order.*

*We look forward to doing business with you.*

*Yours Sincerely,*

*Hector Thorington,*

*General Manager,*

*Durin Industries*

**Annexure 4**

From: [noldorofficial@gmail.com](mailto:noldorofficial@gmail.com)

To: [info@durin.com](mailto:info@durin.com)

Date: 03.08.2021 8.45 am

Subject: *Requesting a refund of our payment*

Dear Mr. Thorington,

*This letter serves as a formal request for a full refund on the Chemical Fertilizer that we bought from your company.*

*We purchased 600 Metric Tons of Chemical Fertilizer and paid a total sum of \$18, 000, 000.00*

*The delay in releasing the said shipment has caused havoc in our plantation operations as the lack of Chemical Fertilizer has affected the overall quality and wellbeing of the plants. Due to this we have been compelled to place orders for Chemical Fertilizer from other suppliers.*

*We have attached the receipt that we received as proof of my purchase. Please refund us the total sum paid amounting to \$18, 000, 000.00*

*I hope to hear from you soon about the procedures for receiving a refund.*

*Sincerely,*

*Finn Gordon,*

*Chief Executive Officer,*

*Noldor Plantations*

*Annexure 5*

*From: [info@durin.com](mailto:info@durin.com)*

*To: [noldorofficial@gmail.com](mailto:noldorofficial@gmail.com)*

*Date: 04.08. 2021 14.18 pm*

*Subject: Re: Requesting a refund of our payment*

*Dear Mr. Gordon,*

*We have received your letter requesting a refund for the shipment of Chemical Fertilizer that you have ordered.*

*After setting off some of the outstanding amounts due to us from previous transactions, we will give you a refund of \$ 10,598, 760. Please refer the attached documents for a full breakdown of the amounts.*

*We will be issuing you a refund as soon as we have completed the necessary paperwork for your account.*

*Yours Sincerely,*

*Hector Thorington,*

*General Manager,*

*Durin Industries*

*Annexure 6*

*From: [info@durin.com](mailto:info@durin.com)*

*To: [noldorofficial@gmail.com](mailto:noldorofficial@gmail.com)*

*Date: 26.10. 2021 11.12 am*

*Subject: Subsidy for Chemical Fertilizer was removed*

*Dear Mr Gordon,*

*As you are aware, the subsidy for Chemical Fertilizer granted by the Government of Rivendell has been removed as of 30<sup>th</sup> September 2021. This has resulted in an increase of the price of Chemical Fertilizer.*

*According to the new regulations issued by the NFC, we are allowed to supply Chemical Fertilizer only at the new purchase price. Our request to supply Chemical Fertilizer at the subsidized rate to existing buyers, including Noldor Plantations, was rejected by the NFC.*

*I hope you would appreciate our efforts to supply Chemical Fertilizer to you amidst the import/price restrictions that are currently in place.*

*Please find the annexed to this email the document containing our revised prices.*

*We apologize for any inconvenience caused.*

*We look forward to doing business with you.*

*Yours Sincerely,*

*Hector Thorington,*

*General Manager,*

*Durin Industries*

*Annexure 7*

*From: [noldorofficial@gmail.com](mailto:noldorofficial@gmail.com)*

*To: [info@durin.com](mailto:info@durin.com)*

*Date: 09.11.2021 14.14 pm*

*Subject: Request to purchase goods at contract price*

*Dear Mr. Thorington,*

*We are shocked and dismayed by your refusal to supply the Chemical Fertilizer at the subsidized price contained in the contract agreed between both parties. We will be compelled to seek legal action against your company in accordance with the terms of the contract if you deny us the opportunity to purchase goods at the contracted price.*

*I would also like to remind you that you were aware of the pending actions of the NFC before we sealed the deal and I believe you withheld this information from us fraudulently.*

*Sincerely,*

*Finn Gordon,*

*Chief Executive Officer,*

*Noldor Plantations*