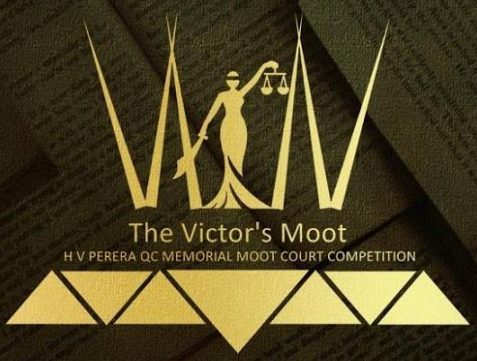
THE
MOOT PROBLEM
ORAL HEARINGS - 2021



THE MOOT SOCIETY OF
SRI LANKA LAW COLLEGE

PARTIES

1. 'Ruby Property Developers (Private) Limited' ("Ruby Developers") is a pioneer and a leading company engaged in property development catering to the hospitality and tourism sector while also providing its services to the residential and commercial real estate market over the years. The company holds a broad portfolio of projects including several successfully completed hotels and multiple ongoing developments. Ruby Developers is a private limited company incorporated under the laws of Hoen (identical to the laws of England).

    - Head office: No. 57, Mauville City, Hoen.
    - Telephone number: +1110000696
    - Email address: info@realruby.com

2. 'Leaf Green Hotels and Resorts Co.' ("Leaf Green Resorts") listed in the stock exchange of the Republic of Kanto (identical to the laws of England) is a highly reputed, award winning company running a chain of luxury hotels in the island Republic of Kanto and in other tourist destinations globally. Travelers across the world adore the Leaf Green Resorts and have built a strong liking towards its hotels and brand for the quality of service provided and attractive destinations maintain as popular holiday get-away locations.

    - Head office: No. 93, Viridian Town, Kanto.
    - Telephone number: +1120930398
    - Email address: info@leafgreen.com

FACTS

(Note: The question of monetary quantum is beyond the scope of this moot problem and participants are advised not to discuss related issues.)

1. Leaf Green Resorts have substantially outperformed its competitors in the years 2016, 2017 and 2018 due to their excellence coupled with Kanto being a popular tourist destination. Based on extensive research carried out by its management and potential growth in future with increasing deåçmand, the Board of Directors decided to expand its chain of hotels within Kanto with an addition of a modern luxury hotel along the coastal lines of Kanto with immediate sea access in December 2018. Leaf Green Resorts acquired the required land at a premium with the intention of opening the hotel to the public as soon as possible.

2. In January 2019, representatives of Leaf Green Resorts negotiated with Ruby Developers, regarding their requirement to develop a luxury beach hotel in Kanto including 500 rooms and all luxury amenities and modern facilities ("Project"). After several discussions between the parties, Leaf Green decided to enter into a formal contract with Ruby Developers as they were able to satisfy Leaf Green Resorts on their ability complete the development of the project as required within the stipulated time frame.

3. On 1st of February 2019, the parties entered into an agreement which follows a standard form of contract suggested by the Construction Authority in Kanto for use on large scale complex contracts involving the developer's services to design and build (The general clauses are similar to FIDIC form of contract - Fédération Internationale Des Ingénieurs-Conseils). The Contract includes Arbitration and

Force Majeure clauses and the Agreement is Governed by the Law of England and Wales. The Arbitration Clause is not in the FIDIC Form (Annex)

4. As per the Agreement, Leaf Green Resorts paid 40% of the total contracted sum in advance. Thereafter, subsequent to the designs and plans being approved - Ruby Developers immediately commenced its development activities on the 25th February 2019. While the project was required to be completed by 20th January 2021 in terms of the Agreement, Leaf Green Resorts intended to accept reservations for guest stays from February 2021 onwards.

5. For the first several months, Ruby Developers successfully completed their targets within the time frame set out in the Agreement and certain aspects of the development was completed ahead of the schedule. Leaf Green Resorts settled the required payments in a timely manner in terms of the Agreement.

6. In December 2019, it was identified that Ruby Developers were not in compliance with certain minor requirements of Leaf Green and also was not acting in line with the timeline agreed upon. Consequent to a request for extension of time by Ruby Developers, Leaf Green Resorts extended the date of completion by one month.

7. By January 2020, approximately 50% of the development activities had been completed and Ruby were carrying out the construction in terms of the time lines agreed upon. Leaf Green Resorts commenced promotion and marketing activities with regard to its new and upcoming beach hotel and accepted reservations from tourists around the world for stays from March 2021. The widespread publicity resulted in a massive inflow of hotel reservations leading to all its rooms being booked for the months of March, April and May 2021.

8. While minor incidents of COVID-19 were reported within Kanto in February 2020, the WHO - deeply concerned both by the alarming levels of spread and severity of the virus and by the alarming levels of inaction, made the assessment that COVID-19 can be characterized as a pandemic in March 2020.

9. Following this, the government of Kanto in order to safeguard its citizens locked down the country in the months of March, April, October and November. Notwithstanding the

effects of the lockdown, the country operated in its regular manner during the other months while adhering to health and safety protocols. However, quarantine restriction on foreigners arriving in Kanto was in place till December 2020.

10. By early December 2020, over 80% of the project was completed, However, Ruby Developers were not within the stipulated time frames and in compliance with targets as per the Agreement. Following the engineer's reports, the management of Leaf Green Resorts determined that the project cannot be completed within the time period agreed upon i.e., February 20, 2021.

11. Ruby Developers stated that:

    (a) The project had come to a standstill due to the lockdown for over four months and therefore Ruby were entitled to a corresponding extension of time; and

    (b) Project was delayed as 4 major high-powered, speed passenger lifts and 3 heavy-duty service lifts were not shipped and brought to the site of construction within time and that has caused the extended delay even during the months where the Country operated normally without a lockdown. The vessel and its crew being quarantined was cited as the

reason. As such, Ruby Developers notified Leaf Green Resorts that they intended to claim a further extension of time for completion of the project.

(c) Not being satisfied with the state of development, Green Leaf Resorts proceeded to immediately terminate the contract with Ruby Developers and proceeded to obtain services of another developer, 'Sapphire Constructions' to complete its hotel in time ahead of its grand opening in order to cater to its customers. However, the hotel is only expected to be completed by June 2021.

(d) Ruby Developers took steps in terms of the Arbitration clause in the Agreement and on the 25th of February 2021, they filed a notice of arbitration to the Kanto International Arbitration Center in accordance with its rules (identical to the

UNCITRAL Arbitration Rules as revised in 2010). Ruby Developers claimed for the following reliefs:

a. A declaration that Ruby was entitled to an extension of five months due to the pandemic situation and the resultant lockdown of Kanto;
b. An Award directing Green Leaf Resorts to pay Ruby Developers US$ 4,865,400.00 with relevant taxes which sum included the payment for work already carried out and damages.
c. Interest; and
d. Costs of arbitration;

(e) Leaf Green Resorts denied the claims by Ruby Developers and filed its Statement of Defense seeking the following reliefs:

a. Dismissal of Ruby's Claim;
b. an Award directing Ruby Developers to pay Leaf Green Resorts US$ 6,000,000.00 as damages;
c. Interest; and
d. Costs of arbitration;

(f) During the course of the arbitration, Ruby Developers was led to understand through external sources that the Arbitrator proposed by Leaf Green Resorts have continuously been proposed as an arbitrator in several other arbitrations in which Leaf Green Resorts or associate companies were parties and Leaf Green Resorts and their associate Companies were represented by the same Firm of Attorneys at the said Arbitrations (who were incidentally representing Leaf Green Resorts in the present arbitration). AS such, Ruby made a separate application that there is apparent bias in respect of the Arbitrator appointed by Leaf Green Resorts.

ANNEXURES

"15.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

15.2 Termination by Employer

15.2.1 The Employer shall he entitled to terminate the Contract if the Contractor:

(i) fails to comply with Sub-Clause 4.2 (Performance Security) or with a notice under Sub-Clause 15.1 (Notice to Correct);

(ii) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract;

(iii) without reasonable excuse fails:

a. to proceed with the Works in accordance with Clause 8.0 (Commencement, Delays and Suspension); or

b. to comply with a notice issued under Sub-Clause 7.4 (Rejection) or Sub-Clause 7.5 (Remedial Work), within 28 days after receiving it;

(iv) subcontracts the whole of the Works or part of the works without prior consent of the Engineer or assigns the Contract without the required agreement;

(v) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or

(vi) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward: for doing or forbearing to do any action in relation to the Contract; or for showing or forbearing to show favour or disfavour to any person in relation to the Contract, or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or

reward as is described in this sub-paragraph (). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

15.2.2 In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site.

15.2.3 The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

15.2.4 The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract; and (ii) for the protection of life or property or for the safety of the Works.

15.2.5 After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

15.2.6 The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor. "

18.0 Claims, Disputes and Arbitration

Arbitration

Any doubt, difference, dispute, controversy or claim arising, out of or in connection with or touching or concerning the execution or maintenance of the works in this contract, or on the interpretation thereof or on the rights, duties, obligations, or liabilities of any of the parties thereto or on the operation, breach termination, abandonment, foreclosure or invalidity thereof, shall be finally settled by arbitration after written notice by either party to the Contract to the other for a decision to a sole arbitrator to be appointed as hereinafter provided.

The party desiring arbitration shall nominate three arbitrators out of which one to be nominated by the other party within 21 Days of the receipt of the said request. If the other party does not nominate and appoint one of the said nominees to serve as Arbitrator within the stipulated period the party calling for arbitration shall nominate and appoint one of the three and inform the other party accordingly. There after the other party shall nominate and appoint its arbitrator. The two arbitrators so appointed shall appoint a third arbitrator who shall act as the Chairman of the Tribunal.

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 Kanto and the seat of arbitration shall be the Kanto.

20.1 Force Majeure

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

1. which is beyond a Party's control;
2. which such Party could not reasonably have provided against before entering into the Contract;
3. which, having arisen, such Party could not reasonably have avoided or overcome, and
4. which is not substantially attributable to the other Party.

Force Majeure includes:

1. war, hostilities (whether war be declared or not), invasion, act of foreign enemies.
2. rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
3. riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub -contractors,
4. munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
5. natural catastrophes such as earthquake hurricane, typhoon or volcanic activity.

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.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

20.3 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 20.2 (Notice of Force Majeure) or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 (Cessation of Work and Removal of Contractor's Equipment).

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

1. the amounts payable for any work carried out for which a price is stated in the Contract;

2. the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal.

ANSWERS TO THE CLARIFICATIONS OF THE MOOT PROBLEM

Page No.2

Paragraph 1:

1. Are Kanto and Hoen contracting states to the CISG?

   Yes.

2. Have the parties elected to be governed by the UNIDROIT Principles?

   No.

3. Are Kanto and Hoen party to any significant International Treaties?

   All particulars necessary and scope expected of contestants to address are included within the moot problem.

Paragraph 3:

4. Whether the "Construction Authority" is a statutory authority or not?

   Yes, It is a statutory authority.

5. Is it the whole agreement or only the arbitration agreement which is governed by the Law of England and Wales?

   The whole agreement is governed by English Law.

6. Does the FIDIC in the question refer to the FIDIC 1999 Red Book? Which FIDIC book has been used for the standard form contract between the parties?

   FIDIC 1999 Red Book

7. Do we need to refer to the whole document of the FIDIC form of contract for the provisions not annexed with the proposition?

   Not necessary
   Explanation: The FIDIC 1999 Red Book applies only to the provisions in the annexures of the moot problem. For example it applies to clause 4.2 as it is mentioned, but since clauses 4.1 and 4.3 are not a part of the moot problem at all, those clauses do not apply. Thus, the book can be referred to only with regards to the clauses that have been expressly mentioned in the Moot problem. As the clarifications state, all the necessary provisions have already been mentioned in the moot problem itself. Therefore, the ones in which only the sections are mentioned in the moot problem without the substance, if necessary to be applied by the participants, they can do so. However, they should be limited to the sections that have been mentioned within the moot problem.

8. Which English laws/ Acts govern the contract?

   Participants expected to identify and apply related laws.

Page No. 3

9. Why did the government of Kanto (in order to safeguard its citizens) lock down the country only in the months of March, April, October and November (and not in the 5 months in between)?

   The government was of the view that the spread of the virus was contained and that the economy needs to resume activities. However, due to surge in reported cases, the government decided to reimpose the lockdown.

10. Page 3, Clause 4; and Page 5, Clause 11(d)(b):
    What is the $4,865,400 (requested by Ruby Developers on page 5) meant to be damages for? Is it solely the 60% of the remaining sum promised on page 3? Or does it include damages over and above the remaining 60% promised in the agreement? Conversely, is it completely unrelated to the total contracted sum?

    It includes damages beyond the contracted sum.Contestants expected to anaylse and argue/justify for or against the sum.

Paragraph 4:

11. Leaf Green paid 40% of the total amount. It is further stated in Para 5 that "Leaf Green Resorts settled the required payments in a timely manner in terms of the Agreement." Did Leaf Green settle the payment completely i.e. the remaining 60% or is there some amount left?

    No. The entire contracted sum was not settled.

12. Clause 4 of this paragraph states that 40% has been paid in advance. Is the remaining 60% meant to be paid in full upon completion of contract? Or how is payment meant to be done?

    All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information.

Paragraph 6:

13. Was notice served to Ruby Developers by the engineers for not being in compliance with minor requirements of Leaf Green?

Participants expected to present their case in accordance to the facts provided. If delivery of document is not mentioned, contestants may argue for or against it.

14. If notice was served to Ruby Developers by the engineers for not being in compliance with minor requirements of Leaf Green, then how many days' notice was served to them?

Participants expected to present their case in accordance to the facts provided. If delivery of document is not mentioned, contestants may argue for or against it.

15. How much time was given for correction to Ruby Developers?

No clarification necessary. Refer Para 6. Participants expected to present their case in accordance to the facts provided.

16. Did Ruby Developers do the correction for not being in compliance with minor requirements of Leaf Green and not acting in line with the timeline agreed upon?

Participants expected to present their case in accordance to the facts provided.

17. Paragraph 8: When did the WHO's concern with COVID happen? In February or March?

Refer to official WHO statements/press release.

18. Paragraph 9: What was the government's policy on gatherings in Kanto during the pandemic?

Gatherings were not permitted - Severe lockdown measures were in operation. Only essential services namely, healthcare, security and delivery of essentials were permitted. Citizens were strictly required to stay indoors.

Page No. 4

Paragraph 9:

19. How extensive were the lockdown measures in Kanto?

Severe lockdown measures were in operation. Only essential services namely, healthcare, security and delivery of essentials were permitted. Citizens were strictly required to stay indoors.

20. Were there instances of COVID before Feb'20?

    Minor Incidents were reported (Refer Para 8)

    Paragraph 10:

21. Did Ruby deliver a notice to Leaf claiming force majeure? If yes, when?

    Participants expected to present their case in accordance to the facts provided. If delivery of document is not mentioned, contestants may argue for or against it.

22. As per the engineer report, by when the project would have been completed by Ruby?

    No clarification needed. All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information

23. When was it determined that the project cannot be completed within the time period agreed upon i.e., February 20, 2021?

    By December 2020 (Para 10)

24. On what date the engineer's reports were made?

    No clarification needed. All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information

25. When exactly did the "extended delays" start to occur? Was it before the start of the lockdown, or did it only occur after the lockdown was initiated?

    No clarification needed. All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information

26. When exactly did the quarantine of the vessel and crew happen?

    Standard real-world applications may be presumed/adopted. No clarification needed. All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information

27. Was the quarantine restriction put on the workers of the Ruby Developers from March 2020 till December 2020?

    Severe lockdown measures were in operation. Only essential services namely, healthcare, security and delivery of essentials were permitted. Citizens were strictly required to stay indoors.

28. Paragraph 11(a):
    How much extension (months) was requested by Ruby Developers?

    No clarification necessary. Refer Para 11(a). Participants expected to present their case in accordance to the facts provided.

29. Whether Ruby Developers provided the notice of force majeure as per the agreement?

    Participants expected to present their case in accordance to the facts provided. If delivery of document is not mentioned, contestants may argue for or against it.

Paragraph 11(b):

30. Does lockdown mean that the business cannot be carried out at all? What does the lockdown entail? Was construction work carried out during the months of lockdown?

    Severe lockdown measures were in operation. Only essential services - namely, healthcare, security and delivery of essentials were permitted. Citizens were strictly required to stay indoors.

31. When did the quarantine start? Can we assume it started when the lockdown?

    Yes. Lockdown measures were adopted in view of quarantine.

32. Does "service lifts were not shipped and brought to the site of construction", mean that the lifts never did leave the country that it was supposed to be shipped from, and if so, would this be because of laws of lockdown in the other country?

    Yes. Prevalence of Covid-19 as a Global pandemic across the world is to be noted.

33. How long was the quarantine of the vessel and its crew for?

    Standard real-world applications may be presumed/adopted. No clarification needed. All details & particulars necessary and scope

expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information

34. How long/severe was the "extended delay"?

    No clarification necessary. Participants expected to present their case in accordance to the facts provided.

35. Were all the workers of Ruby Developers foreigners?

    No.

36. How much extension (months) was requested by Ruby Developers?

    No clarification necessary. Participants expected to present their case in accordance to the facts provided.

37. Was the extension claimed by Ruby Developers was under the Force Majeure Clause of the Agreement?

    Standard request for extension in terms of s15 of annexure as the project was not completed in accordance with the timeline.

38. For how many days the vessel and its crew were being quarantined?

    No clarification needed. All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information

39. The facts omit the mention of any formal notice being given within the meaning of section 20.2 (Notice of Force Majeure) of the Annex, save their possible intention to do so stated in paragraph 11(b). Similarly, in paragraph 11(c), the facts do not mention whether Leaf Green gave notice of the termination of the contract with Ruby. Thus, can we assume that no formal notice had been tendered in both occasions?

    Participants expected to present their case in accordance to the facts provided. If delivery of document is not mentioned, contestants may argue for or against it.

40. Where it is mentioned about the notice by Ruby Developers, of its intent to seek extension, was this notice sent before/after the engineer's report (mentioned in Para 10) was given to Leaf Green? We seek clarity in the chronology of events in this regard.

    The facts are chronologically presented in order of the sequence of events.

Paragraph 11(c):

41. What type of company is Sapphire Constructions?

    No clarification necessary.

42. Was notice served to Ruby Developers regarding the termination of their contract?

    Yes, 11(c)

43. Under which country's law is Sapphire Constructions incorporated and where is its head office located?

    No clarification necessary, Beyond scope of the Moot Problem.

44. On which date did Leaf Green enter into contract with Sapphire Constructions?

    The facts are chronologically presented in order of the sequence of events.

45. When exactly did Leaf Green Resorts terminate the contract?

    The facts are chronologically presented in order of the sequence of events.

46. Till what day was the plant of Ruby Developers operating at the site?

    No clarification necessary

47. With respect to the last paragraph of the facts, who appointed the same arbitrator in the present case?

    No clarification necessary. Participants expected to present their case in accordance to the facts provided.

48. Ruby claims a delay for 4 over months when the lockdown was only for 4 months. Are there any other factors contributing to the delay apart from the lockdown?

    No clarification necessary. Participants expected to present their case in accordance to the facts provided.

49. We would like to seek clarification on the aspect that whether the termination brought about by Leaf Green was preceded by the 14 days notice period, as stipulated in the termination clause, or not?

Participants expected to present their case in accordance to the facts provided.

Page No. 5

50. Paragraph 11(b) & (e):
What are the grounds on which the Leaf Green Resorts prayed for compensation amounting to US $ 6,000,000?

No clarification needed.

51. Paragraph 11(d):
From which date did Ruby Developers claimed an extension of five months due to the pandemic situation and the resultant lockdown of Kanto?

The facts are chronologically presented in order of the sequence of events.

Paragraph 11(f)

52. Through which external source Ruby Developers came to know that the Arbitrator proposed by Leaf Green Resorts have continuously been proposed as an arbitrator?

No clarification needed.

53. Did Ruby Developers come to know that the Arbitrator proposed by Green Leaf Resorts have continuously been proposed as an arbitrator after it nominated the three arbitrators?

Yes, Ruby Developers came to know of the fact after the arbitration proceedings commenced.

Paragraph 11(e):

54. When did Green Leaf Resorts filed its Statement of Defense?

The facts are chronologically presented in order of the sequence of events.

55. Did Ruby Developers nominate three arbitrators out of which one was to be nominated by the other party within 21 days of the receipt of the said request?

Yes, the third arbitrator was appointed by the two arbitrators proposed by Ruby & LeafGrean

56. Did Ruby Developers send notice to the Leaf Green for nominating arbitrator from the three nominated arbitrators nominated by Ruby within 21 days of the receipt of the said request?

    Arbitrators were nominated by Ruby & LeafGreen, they both proceeded to nominate the third arbitrator

57. Is the third arbitrator who shall act as the Chairman of the Tribunal appointed by the two Arbitrators?

    Yes.

58. Do we have to include the month of February in the extension period of 5 months?

    No clarification needed.

59. Did Ruby inform Leaf Green about the vessel and crew being quarantined, thereby delaying delivery?

    No clarification needed.

60. How much does Leaf Green have to pay Sapphire constructions for completion of the resort?

    No clarification needed.

61. How much amount has already been paid by Leaf to Ruby on the date of the Arbitration for the work done previously?

    No clarification needed.

Page No. 6

Clause 15 :

62. How many days' notice is to be given by the Engineer to the Contractor?

    All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information. However, participants may apply other clauses if necessary.

63. Who is an Engineer in this contract? Is it a typographical error that is intended to be the employer?

Engineer overseeing the construction. No further clarification needed.

64. Is sub-clause 4.2 in the FIDIC? Similarly, if any other clause is mentioned but not given in the facts; must we:

(i) Take it from the FIDIC; and
(ii) Bring it into arguments?

All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information. However, participants may apply other clauses if necessary.

65. Where are the rest of the clauses, such as sub-clauses 4.2, 7.4 and 7.5? Are we supposed to find the FIDIC clauses ourselves? Are the "sub-clauses" mentioned in the provisions of the Annexures referring to the clauses in the FIDIC?

All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information. However, participants may apply other clauses if necessary.

Page No. 7

66. What does it mean by "any required Goods" (do they refer to goods they were supposed to deliver as part of the contract)?

If any, yes.

67. Was notice being served to Ruby Developers to release their equipment and temporary works at or near the site?

No clarification necessary. Participants expected to present their case in accordance to the facts provided.

68. Were the items belonging to Ruby Developers (Equipment and temporary works) recovered by them?

No clarification necessary. Participants expected to present their case in accordance to the facts provided.

69. Were the items belonging to Ruby Developers (Equipments and temporary works) sold by the Employer (Leaf Green) in order to recover their payment?

All details & particulars necessary and scope expected of contestants to address are included within the moot problem.Participants are expected to identify the relevant information.

70. Kindly mention Sub-Clause 4.2 (Performance Security).
71. Kindly mention Clause 8.0 (Commencements, Delay and Suspension).
72. Kindly mention Sub-Clause 7.4 (Rejection) or Sub-Clause 7.5 (Remedial Work)

Clarifications No. 70, 71 and 72 are not part of the moot problem

Clause 18:

73. In the Annexures provides for the method of appointment of arbitrators by the parties, wherein it is stated that if the parties are not able to reach a consensus as to a sole arbitrator, the party invoking arbitration shall appoint its own arbitrator, after which the other party shall appoint its arbitrator, and finally a third arbitrator shall be appointed by the two arbitrators. We would like to seek clarification, since it is not explicitly mentioned in the proposition, as to whether the parties were able to reach consensus as to a sole arbitrator, or it as the case that the parties failed to do so and the procedure to appoint three arbitrators was adopted.

Panel of 3 arbitrators were appointed. Refer 11(f)

74. The sentence in question has two parts.

1)“Arbitrator proposed by Leaf Green Resorts have continuously been proposed as an arbitrator in several other arbitrations in which Leaf Green Resorts or associate companies were parties and

2) Leaf Green Resorts and their associate Companies were represented by the same Firm of Attorneys at the said Arbitrations (who were incidentally representing Leaf Green Resorts in the present arbitration).”
"The first sentence is understandable. However, we do not understand sentence 2).
Why Ruby would make an allegation of apparent bias if Leaf Green Resorts are being represented by the same attorneys as at previous arbitrations. Isn’t

a firm allowed to engage the same attorneys? (e.g. a company engages a firm to be its solicitors in all its legal matters)

No clarification needed.

Clause 20:

75. Is the list provided in Clause 20.1 of the contract exhaustive?

No clarification needed. Participants may use the clause 20.1 as is, to support their claim/arguments.

76. In FIDIC 1999, the 2nd clause under "Definition of Force Majeure" (i.e. Force Majeure includes) was drafted such that ALL first 4 conditions in the preceding clause must have been satisfied before the 2nd clause is allowed to operate.

Are the 4 requirements under 20.1 Force Majeure listed in the facts similarly meant to be read conjunctively?

The question is unclear. Further elaboration is needed.

77. Was the Force Majeure Clause of the agreement invoked by Ruby Developers in the Arbitration? And was notice of Force Majeure served the within 14 days of Ruby Developers aware of the situation to Leaf Green by Ruby Developers?

No clarification needed. Participants may use the clauses and facts provided to support their claim/arguments.

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Clause 19:

78. Does 'Agreement' in clause 19 of the contract refer to the whole agreement or only the arbitration agreement?

Whole agreement.

GENERAL CLARIFICATIONS

79. Have the parties discussed or come to an agreement as to what issues will be discussed at the oral hearing?

No