



Moot  
COURT SOCIETY



# The XVI NLSTIAM

National Law School Trilegal International Arbitration Moot

MOOT PROPOSITION

18<sup>TH</sup> – 21<sup>TH</sup> MAY, 2023

XVI NLS TRILEGAL INTERNATIONAL ARBITRATION MOOT

**IN THE MATTER OF AN ARBITRATION  
UNDER THE ARBITRATION RULES OF THE  
SINGAPORE INTERNATIONAL ARBITRATION CENTRE  
AND THE ARBITRATION ACT 1996**

**BETWEEN :**

**Exchequer Insurance Pvt Ltd**

**Claimant**

**-and-**

**Adornia Ltd**

**Respondent**

---

**Arbitral Tribunal**

Lord Martin (Chairman)

Lady Brown (Co-Arbitrator)

Professor Sharpe KC (Co-Arbitrator)

Seat of Arbitration: London, United Kingdom

### Statement of Facts

1. Priti Karnik, one of India's most well-known entrepreneurs, is often described in the financial press as a role model and her success is cited as an example of India's growing economic might. Ms Karnik decided, at an early stage of her career, that she wished to work in the hospitality industry and opened her first hotel (in Mumbai) in 1986. Since then, both she and her company, Priti Hotels Ltd, have gone from strength to strength and PHL is now one of the most well-known blue-chip companies in India.
2. Ms Karnik has always been of the view that the future of PHL lies in innovation. Its first hotel was widely acknowledged as superior to its contemporaries at the time and PHL has, ever since, tried to be one step ahead of its competitors. In the late 1990s, the PHL board decided that, while all of its hotels were doing well, both in India and elsewhere, it had to adapt to what it perceived to be changes in customer taste. Following extensive analysis with the assistance of external consultants, it concluded that the market for luxury goods (and luxury more generally) in India was rapidly growing and was likely to grow still further in the years to come, given India's expanding middle class and the steady rise in the number of HNWs. PHL incorporated a subsidiary, Adornia Ltd, in the Marshall Islands, to operate exclusively in the luxury space (the Marshall Islands was chosen mainly for tax reasons).
3. What was unique about Adornia is that it was not intended merely to be a company running luxury hotels. PHL's goal was to create a whole ecosystem for luxury living, as the board put it, and it was to this end that Adornia was created. A blueprint for the ecosystem was readily available and steps were taken to implement it without delay. It involved the acquisition of a very large quantity of land in the outskirts of Mumbai, on which Adornia built a vast network of facilities, which included (among other things) one of the most luxurious hotels in India, a world-class golf course, a small number of luxury apartments overlooking the sea with concierge and other facilities, a number of offices, restaurants catering to a variety of different cuisines and so on. This complex was named Adornia Island and it became operational in 2015 (it took nearly a decade for the construction work to be completed and for all necessary regulatory approvals to be obtained).

4. One of the biggest risks in building Adornia Island was that any major disruption to one part or component of the Island would likely affect all of it, since all of it was connected, both physically and infrastructurally. This is not a risk that affects a hotel company that owns a number of different hotels in different locations. But it was not a risk that overly troubled the PHL or the Adornia board, since it is inherent in the business model that also brought with it the advantages that had attracted them to it in the first place. They did recognise that steps needed to be taken to mitigate these risks, for example by installing the best available backup systems in relation to each part of the Island's infrastructure. They also recognised that Adornia would need extensive and comprehensive insurance coverage should the worst happen despite those backup systems.
5. A potential difficulty in obtaining the necessary insurance cover was a recent legislation enacted by the Marshall Islands legislature, namely the Speculative Contracts (Restrictions) Act 2014. The relevant provisions of the 2014 Act are set out in **Annexure 1**. The Adornia board was concerned that the effect of the 2014 Act might be to prevent Adornia – as an entity incorporated in the Marshall Islands – from entering into contracts of insurance and that any insurance obtained by its parent company or someone else on its behalf might be ineffective (for example because that entity might be found to have no insurable interest).
6. Accordingly, before deciding to commence operations, Adornia took advice from a leading City firm and King's Counsel in London, who advised that, while this was not without risk, Adornia was on balance entitled to enter into insurance contracts notwithstanding the provisions of the 2014 Act. In reliance on this advice, before Adornia Island opened to the public, Adornia instructed a well-known firm of brokers to obtain a comprehensive package of insurance cover, including business interruption cover. The brokers were able to obtain such cover on attractive terms through the Lloyds market in London but the potential exposure was so substantial that the cover was, with one exception, placed with a syndicate of insurers, Syndicate 41, rather than an individual insurer. The relevant provisions of the Syndicate 41 policy are set out in **Annexure 2** below.
7. This policy provided Adornia with cover of £250 million per year, which was thought to be the absolute minimum that it needed and likely insufficient. For this reason – and this

is the ‘exception’ referred to above – Adornia actively sought to enter into further insurance contracts with other insurers, although it had great difficulty in finding anyone willing to take its business, as the risks were so great. In the end, an Indian insurer – Exchequer Insurance Private Ltd – was persuaded to assist following a personal intervention by Ms Karnik. But its Chairman made it clear that under no circumstances would it provide cover in excess of £50 million and that a very substantial premium of around £8 million a year was charged even for this. Adornia was content with these terms and entered into a property damage and business interruption insurance policy with Exchequer on 10 January 2015. The relevant provisions of the Exchequer contract are set out at **Annexure 3** below.

8. Adornia Island was a great success virtually from the day it opened. It was, as one would expect, accessible only to HNWIs, priced as it was, but its growing reputation (and that of PHL) meant that it was virtually impossible to obtain a reservation to visit (let alone stay at) Adornia Island unless this was secured months in advance. It also made very substantial revenues; and its net profit for the year ended 5 April 2018 was £475 million.
9. On 16 August 2018, Hurricane Indra began in an area not far from Adornia Island. A number of warnings had been issued in the week before emphasising that Indra was likely to be the most severe hurricane India had experienced in many years. Regrettably, these warnings turned out to be accurate. By the morning of 18 August, Indra had reached Category 5 on the Saffir-Simpson hurricane wind scale and, although the hurricane gradually decreased in intensity thereafter, it did not subside until 23 August.
10. Hurricane Indra had devastating consequences. It caused flooding in Mumbai and in the outskirts of Mumbai, destroyed swathes of the transport and communications infrastructure, with the result that parts of Mumbai and much of the outskirts of Mumbai were uninhabitable for several weeks. The total damage caused by Indra is estimated to be around US\$80 billion.
11. The Indian authorities took swift action. This included compulsory evacuation of all affected areas (including Adornia Island) and strict laws prohibiting construction or other activity in affected areas without the Government’s permission. Both the Central and State Governments went to great lengths to rebuild homes that had been lost and to find

alternative housing in the meantime. Steps were also taken to rebuild infrastructure facilities that had been damaged by the hurricane.

12. Adornia Island had closed to the public and evacuated on 15 August 2018, which fortunately meant that there was no loss of life on the Island. Physical damage, although significant, was also not as catastrophic as it might have been, because the hurricane had not reached Category 5 in or very close to Adornia Island. The damage, although substantial, was therefore relatively confined: parts of the main hotel had been destroyed, as had a number of ancillary installations.
13. Ms Karnik in India and the Adornia board in the Marshall Islands decided that it was incumbent upon them as the biggest employer in the region to rebuild as swiftly as possible, whatever the cost. To this end, all affected buildings were substantially rebuilt by 21 February 2019 and Adornia Island reopened that day. However, it had virtually no business until 29 November 2019 because entry to the area was initially prohibited and then strictly regulated by the State Government, which was focused on gradually allowing residents to return but not visitors. Publicly available data shows that there was a fall of 99.5% in visitor footfall (as distinct from resident footfall) between March 2019 and November 2019 (as compared to the equivalent month in the previous year). As a result, although Adornia Island was open in name, it was, in effect, closed until 29 November 2019 when the Government lifted all restrictions on visitor entry and declared that all construction and other essential activity to repair the damage caused by Indra had been completed.
14. The losses caused to Adornia were enormous. Quite apart from the cost of construction it incurred in undertaking construction activity on the estate, the loss of profit from the absence of visitors between August 2018 and November 2019 was very substantial, in the region of £265 million. Adornia promptly made a claim on both sets of insurance policies.
15. The Syndicate 41 insurers made it clear that while they would indemnify Adornia in respect of the cost of construction it incurred in repairing the damage caused to the building, they would not make any payment in respect of the loss of profit between August 2018 and November 2019 because they did not consider that this loss was caused

by damage from the hurricane itself, but rather by government action following on from the hurricane (which was not an insured peril). Exchequer took the same position.

16. Adornia served notices of arbitration on both the Syndicate 41 insurers and Exchequer. The Syndicate 41 insurers and Exchequer were both represented by the same law firm, BLT LLP (a specialist insurance defence firm based in London) and by the same counsel (from chambers in London). At an early stage of both arbitrations, BLT wrote on behalf of both sets of insurers to Adornia inviting it to consent to the consolidation of the two arbitrations by appointing common arbitrators for both references. This letter is set out at **Annexure 5**.
17. Adornia responded on 2 March 2020 indicating that it was not prepared to consent to consolidation, but that it was prepared to consent to a stay of one arbitration pending the conclusion of the other, as that would in practice be determinative of the outcome. It indicated that its preference was for the Syndicate 41 arbitration to be stayed pending the conclusion of the Exchequer arbitration, but Exchequer refused to consent to this; and ultimately the Syndicate 41 insurers were persuaded, with some reluctance, that their arbitration should go first.
18. Accordingly, by an order dated 6 March 2020, the Tribunal in these proceedings (the Exchequer proceedings) stayed the arbitration by consent pending the conclusion of the Syndicate 41 arbitration. There are no common arbitrators in the two arbitrations.
19. Exchequer was closely involved at every stage of the Syndicate 41 arbitration. As already noted above, it was represented by the same team of solicitors and counsel and representatives of Exchequer attended all procedural and substantive hearings in the Syndicate 41 arbitration (Adornia not taking any point about confidentiality or otherwise seeking to exclude Exchequer). Exchequer also contributed to the costs incurred by the Syndicate 41 insurers in defending Adornia's claim: this was done in practice by BLT sending a joint invoice to all the insurers (including Exchequer) and each insurer paying a proportion of the invoice that corresponded to the share of that insurer's risk as a percentage of the total cover provided to Adornia. These matters are set out in more detail in a witness statement of Devika Ghosh, a partner of Forty Nine Law & Partners, which has acted for Adornia throughout these proceedings. Ms Ghosh's evidence is not disputed

for the purposes of this arbitration. The relevant extract of Ms Ghosh's witness statement is set out in **Annexure 4**.

20. In the Syndicate 41 arbitration, neither party contended that the Syndicate 41 contract was invalid or unenforceable because the view generally accepted at the time was that the 2014 Act did not prevent Marshall Island companies from entering into a contract of insurance for legitimate commercial reasons. The only issue raised in the arbitration was whether the sum claimed by Adornia fell within the insuring clause (the insurers contended that it did not and Adornia that it did). The Syndicate 41 Tribunal fixed a merits hearing at which it heard detailed submissions from the parties and received all the evidence that they wished to lead. Having considered all of that material, it issued an award dated 21 December 2020 in which it found that all of the losses for which Adornia claims under the policy fall within the insuring clause because all of them represent business interruption suffered in consequence of the damage to the property.
21. Accordingly, the Tribunal ordered the Syndicate 41 insurers to pay Adornia £250 million, which was the limit of cover available under the Syndicate 41 policy, and the costs of the arbitration. That award is yet to be enforced but that there is every expectation that it will be and indeed that the insurers may voluntarily comply with it. The fact that the award had been made (and the amount awarded) was publicly disclosed by Adornia, as it was obliged to do under Marshall Islands law requiring disclosure of such matters. But the reasons given by the Tribunal were not disclosed, nor was a copy of the award made available to anyone other than the parties to the Syndicate 41 arbitration, namely Adornia and the Syndicate 41 insurers (albeit that BLT LLP then shared a copy of it with Exchequer, as it had been closely involved in the arbitration).
22. The outcome of the Syndicate 41 arbitration meant that Adornia would still be out of pocket by around £15 million, which was the difference between the loss of profit between August 2018 and November 2019 and the cover available under the Syndicate 41 policy. It was apparent to insurers that Adornia would seek to recover this in the Exchequer arbitration and might seek to rely in that arbitration on findings made by the Syndicate 41 tribunal. Accordingly, one week after the Syndicate 41 award was issued, BLT (on behalf of all insurers, including Exchequer) wrote to Forty Nine Law, notifying



it that the Award was confidential and making it clear that the Syndicate 41 insurers would not consent to any attempt by Adornia to use it in the Exchequer arbitration.

23. Shortly thereafter, Adornia applied to the Exchequer Tribunal (i.e. this Tribunal) to lift the stay, which the Tribunal granted.
24. Before the Tribunal could fix a merits hearing, the Marshall Islands Supreme Court gave judgment in a case concerning Zebra Plastics Ltd, another Marshall Islands company, in which it held – contrary to the generally accepted view at the time – that section 9 of the 2014 Act did prevent any Marshall Islands company from entering into a contract of insurance, even for legitimate commercial reasons. This came as a surprise to Adornia. Having considered the judgment and its implications, it applied to the Tribunal under Rule 20.5 for permission to amend its pleadings in the Exchequer arbitration to advance a different case, namely that:
  - (1) The Exchequer contract was void for want of capacity. Adornia is therefore entitled to recover all the premium it had paid (£32 million by 2020) by way of restitution for unjust enrichment.
  - (2) If, contrary to the above, the Exchequer contract is not void, Exchequer is liable to pay £15 million under the insuring clause because:
    - (a) Exchequer is bound by certain findings made by the Syndicate 41 Tribunal (which were not at this stage set out or summarised in the amendment application) by reason of issue estoppel as there is a relationship of privity between Exchequer on the one hand and the Syndicate 41 insurers on the other.
    - (b) In any event, this Tribunal should find as a matter of construction that the sum claimed by Adornia falls within the insuring clause.
25. In response to the amendment application summarised at para 24 above, Exchequer indicated that it objected to Adornia’s attempt to refer to the Syndicate 41 Award on the ground that it was confidential, including under Rule 39.1 of the SIAC Rules, not least because the Syndicate 41 parties had indicated in writing that they would not waive confidentiality (see para 22 above). Adornia, for its part, contended that the consent of

the Syndicate 41 insurers was not necessary because the exception to confidentiality in Rule 39.2(c) of the SIAC Rules was applicable in this case and invited the Tribunal on that basis (among others) to permit it to rely on the contents of the Syndicate 41 Award in advancing its claims in the Exchequer arbitration.

26. The Tribunal allowed the amendment application, subject only to reserving the confidentiality objection for consideration at the merits hearing.
27. By Procedural Order No. 4, the Tribunal has identified the issues that it requires counsel to at the merits hearing listed for May 2023. The relevant provisions of Procedural Order No. 4 are set out at **Annexure 6**.

**Annexure 1**

**The Speculative Contracts (Restrictions) Act 2014**

**9 Prohibition on entry into speculative contracts**

(1) No company, corporation or other legal person incorporated in the Marshall Islands shall enter into any contract or other arrangement under which a sum of money is payable either by or to that company, corporation or other legal person upon the happening of a future event which neither the company, corporation or other legal person (as the case may be) nor the other party to the contract or other arrangement has control, unless:

(a) at least one the parties to the contract or other arrangement is contractually obliged to cause that event to happen or to prevent that event from happening; or

(b) the occurrence or non-occurrence of the event is, on the date the contract or other arrangement is made, reasonably expected by both parties to be within the control of at least one of them.

(2) Any contract or other arrangement that infringes the prohibition set out in sub-section (1) above shall be void irrespective of the law governing that contract.

**Annexure 2**

**Contract of insurance dated 19 September 2014**

**14 Insuring Clause**

In consideration of payment of the premium by the Insured, the Insurers agree to indemnify the Insured against damage, destruction or physical loss (except as excluded herein) to the Property.

**19 Business Interruption Cover**

If (a) any property owned or used by the Insured for the purpose of its business suffers damage as defined in clause 14; and (b) the Insured's business is, as a consequence thereof, interrupted or interfered with, the Insurers will pay to the Insured the amount of the loss resulting from such interruption.

**23 Governing law**

This Policy shall be governed in all respects by English law.

**24 Arbitration**

Any dispute arising out of or in connection with this Policy shall be resolved by arbitration in accordance with the Arbitration Rules of the Singapore International Arbitration Centre, which rules are deemed to be incorporated by reference into this Policy. The seat of arbitration shall be Mumbai, India, and the language of the arbitration shall be English.

**Annexure 3**

**Contract of insurance with Exchequer dated 10 January 2015**

**11 Insuring Clause**

In consideration of payment of the premium by the Insured, the Insurer agrees to indemnify the Insured against damage, destruction or physical loss (except as excluded herein) to the Property.

**12 Business Interruption Cover**

If (a) any property owned or used by the Insured for the purpose of its business suffers damage as defined in clause 11 above; and (b) the Insured's business is, as a consequence thereof, interrupted or interfered with, the Insurer will pay to the Insured the amount of the loss resulting from such interruption.

**17 Governing law**

This Policy shall be governed in all respects by Indian law, save that the arbitration agreement in clause 18 below shall be governed by English law.

**18 Arbitration**

Any dispute arising out of or in connection with this Policy shall be resolved by arbitration in accordance with the Arbitration Rules of the Singapore International Arbitration Centre. The seat of arbitration shall be London, United Kingdom, and the language of the arbitration shall be English.

**Annexure 4**

**Extract of the witness statement of Devika Ghosh**

I, Devika Ghosh, of 22 Baker Street, London **WILL SAY** as follows:

1. I have been a Partner at Forty Nine Law & Partners since 2015. I have degrees in Law and Business Administration and my area of specialisation is dispute resolution. I have conducted the present arbitration proceedings on behalf of Adornia, the Claimant in these proceedings. I am authorised to make this statement on behalf of the Claimant.
2. Adornia served notices of arbitration on both Syndicate 41 and Exchequer (collectively, the **Respondents**) at the same time, and both the parties were aware of it. On 21 February 2020, BLT LLP, acting for the Respondents, issued a letter to my firm with respect to the consolidation of the arbitration proceedings. However, we did not consent to consolidation, since different governing laws were also a procedural hurdle in both the proceedings being consolidated. We did, however, consent to a stay of one of the arbitration proceedings pending the conclusion of the other with the intention that one would be determinative of the other. Following discussions between the parties, the Exchequer proceeding was stayed pending the conclusion of the Syndicate 41 proceedings.
3. Since Exchequer and Syndicate 41 have been represented by the same legal team, I can confirm that Exchequer has attended all hearings in the arbitration matter of Syndicate 41 and Adornia. I understand that Exchequer is also privy to all the details with respect to costs incurred during the arbitration proceedings and has contributed by paying a proportion of the invoice that corresponded to the share of its risk as a percentage of the total cover provided to Adornia. I would say that Exchequer has taken an active role in the proceedings by attendance at the procedural and substantive hearings and providing deposits by way of security for the costs of those proceedings.
4. Adornia has also not raised any point about confidentiality or otherwise sought to exclude Exchequer in the Syndicate 41 arbitration. All three parties have given voluntary disclosure in the arbitration, provided written evidence through witness statements and orally at the arbitration, and were in very regular attendance both at the many procedural hearings and throughout the merits hearing.
5. In several matters concerning the insurance coverage, what was reflected was essentially a collective interest in which a common position was taken by both Syndicate 41 and Exchequer. Hence, I was of the belief that there was some co-ordination of the positions taken by both the companies.
6. The Tribunal awarded Adornia £250 million, the limit of cover available under the Syndicate 41 policy, and the costs of the arbitration. Exchequer also had complete knowledge of this order.

[... end of extract]

**Annexure 5**

**PRE-REGISTERED COURIER**

Forty Nine Law & Partners  
22 Baker Street  
London W1U 3BX

21 February 2020

INVITATION TO CONSENT TO CONSOLIDATION OF ARBITRATIONS

Dear Sirs,

We write to you on behalf of our clients, Syndicate 41 and Exchequer.

In the interests of time and convenience, we propose to consolidate the arbitration proceedings pending against Exchequer and Syndicate 41. We understand that we might face some procedural restrictions in the consolidation. However, we would propose (and invite you to consent) that consolidation be effected by appointing common arbitrators for both references and selecting a common seat of arbitration (we would suggest London, United Kingdom, but are prepared to consider alternatives).

Since the issues in contention are similar in both the proceedings, we believe that consolidating both the proceedings would reduce the burden on all the parties and save costs. We look forward to hearing from you. Thank you.

Yours sincerely,

Joshua McLovin

Partner,

BLT LLP

Annexure 6

**PROCEDURAL ORDER NO. 4**

EXCHEQUER INSURANCE PVT LTD

CLAIMANT

-AND-

ADORNIA LTD

RESPONDENT

---

Arbitral Tribunal:

Lord Martin (Chairman)

Lady Brown (Co-Arbitrator)

Professor Sharpe KC (Co-Arbitrator)

Seat of Arbitration: London, United Kingdom

1. Any requests for clarification arising from the Statement of Facts shall be made no later than 11:59 pm IST on 21 February 2023 by emailing [nlstiam@nls.ac.in](mailto:nlstiam@nls.ac.in).
2. Written submissions on behalf of the Claimant and the Respondent shall be filed by 11:59 pm IST on 21 March 2023 by email to [nlstiam@nls.ac.in](mailto:nlstiam@nls.ac.in).



3. The oral hearings shall take place on 21 May 2023.
4. In the written submissions and at the merits hearing in May 2023, the parties shall address the following issues:
  - (1) What conflict of laws rules (if any) should the Tribunal apply to decide whether the Exchequer contract is void for want of capacity by reason of the 2014 Act?
  - (2) Applying those conflict of laws rules, is the Exchequer contract void for want of capacity by reason of the 2014 Act?
  - (3) If the Exchequer contract is void:
    - (a) Does Adornia have a claim to recover the premium paid by way of restitution of unjust enrichment?
    - (b) If so, does Exchequer have a defence of change of position?
  - (4) If the Exchequer contract is not void:
    - (a) Is Adornia, without the consent of the Syndicate 41 insurers, entitled (whether under Rule 39.2 of the SIAC Rules or otherwise), to refer to the contents of the Syndicate 41 Award?
    - (b) If so, is Exchequer bound by issue estoppel by the Syndicate 41 Tribunal's findings as to whether the losses for which Adornia was seeking an indemnity fell within the insuring clause?
    - (c) If not, do those losses in fact fall within the insuring clause?

CONTACT DETAILS

Mouli Kaushal Jain  
Convenor, MCS 2022-23  
+91 9826387687

Arth Doshi  
Joint-Convenor, MCS 2022-23  
+91 7567556405