

Supreme Constructions Consortium v. Investment Advisors India Ltd

1. Investment Advisors India Ltd (“IAIL”), an Indian Company, is a growing private equity firm based in Mumbai. It had an annual turnover of Rs. 200 crore for the fiscal year 2005–2006.
2. Supreme Constructions Consortium (“SCC”) is also an Indian Company. It is a real estate contractor, which has executed several prestigious building contracts for top corporate houses over the years and has become a reputed name in the real estate industry.
3. In June, 2005 it was decided in the Board Meeting of IAIL to setup their own corporate house in Mumbai, at a unique address in keeping with their growing market repute etc. In July, 2005 for the aforementioned purposes, IAIL procured a piece of land from MMRDA in the prestigious locale of Bandra – Kurla Complex (“BKC”). In August, 2005 IAIL invited Request for Proposal (“RFP”) (including Building designs, quotation etc) for constructing their corporate house. In September, 2005 after reviewing several proposals, IAIL selected the proposal submitted by SCC for its unique design, costs and other factors. On 15 September 2005, IAIL and SCC signed the contract that provided: -
 - a. SCC shall complete the construction of the project by December, 2006;
 - b. The total cost of the project was Rs. 60 crore;
 - c. IAIL will make payment in four equal tranches of Rs. 15 crore each, in October-2005, February-2006, June-2006. The final settlement was to be made in December-2006 when the project was completed and was handed over to IAIL.
 - d. SCC was required to furnish a bank guarantee in favour of IAIL to cover breach on their part; which was 50% of the value of the contract or Rs. 30 crore.
4. The construction began in October, 2005 and continued as per plan without any delay till June, 2006. On 10 June, 2006 a fire broke out on the top two floors of building causing severe damage to the project under construction. It was found that a certain machinery kept by SCC caught fire; thus substantially delaying the construction work. SCC and IAIL set up a committee of their officers to investigate the fire. The Committee recorded minutes that the fire arose from the position of machinery kept by SCC, and that the committee was unable to conclude whether SCC was at fault, and that this question of deciding fault will be referred to experts by IAIL immediately. IAIL never made this reference. The committee also noted that the fire had caused loss to the incomplete structure, and that the cost for completion would increase by at least 20%. After heated discussions at the meeting about extra costs, and about who shall bear these, IAIL and SCC decided to discuss these in a later meeting. This meeting also never happened.
5. The construction was finally completed in March, 2007, three months behind schedule. The final tranche of payment (Rs. 15 crore) was withheld by IAIL till the construction was complete on 1 March, 2007. SCC sent a letter on 15 March 2007 to IAIL claiming

the last tranche of payment that was due and additional charges of Rs. 5 crore for the delay in construction citing clause 11 & 12 of the contract. The clauses read as under:

“11.0 SCC will not be liable for any loss or damage arising out of the work carried out under this contract;

12.0 Furthermore, SCC is entitled to levy additional charges where (i) extra work is required to prepare the project before handing over of the finished project, and (ii) increase in costs arising from delay in completion of project, where delay occurs from causes outside the control of SCC.”

6. IAIL refuted the contentions made by SCC vide a reply letter dated 20 March, 2007, stating that construction had not been completed as per schedule agreed under the contract, furthermore, it pointed out that due to delay in completion of the building, IAIL had incurred a loss of Rs. 50 lakhs as rental charges towards its leased office premises for the period of January-March, 2007. It also emphasized that it had the right to invoke the bank guarantee that was furnished as part of the contract. Further, IAIL stated that it was withholding the payments due to SCC for these reasons.
7. Meanwhile, an article containing an interview with the CEO of IAIL published in a popular business magazine mentioned how the contracts entered with SCC were performed in bad faith.
8. On 30 March 2007, IAIL invoked the bank guarantee and collected 50 lakhs under the guarantee from the bank.
9. On 20 May, 2007, SCC filed a Civil Suit (C.S. No 1000/2007) against IAIL in the City Civil Court Mumbai claiming the amount of Rs 15 crores of the final tranche of payment, Rs 5 crores for extra cost caused by the delay in construction, 50 lakhs being the amount collected by IAIL under the bank guarantee, interest on these amounts, and also for Rs. 5 crore as compensation for loss arising from libellous statements made against its reputation. In the reply to the plaint, IAIL has refuted the contentions stating inter alia that they were entitled to withhold payments for non-adherence to time schedule by SCC and losses that arose as a consequence.
10. Pending this suit, in July 2009, and at the instance of the Court, IAIL deposited 15 Crores in the Court and SCC handed over the constructed corporate house to IAIL. Parties did this without prejudice to their rights.
11. The facts stated in paras 1 to 8 are either admitted or sufficiently proved. The matter is fixed for final hearing. Argue for (i) Supreme Construction Consortium, or (ii) Investment Advisors India Ltd in the said civil suit.

This imaginary problem is formulated for the purpose of moot court only.

Provisions of the Indian Contract Act 1872.

37 - Obligation of parties to contracts:

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

54 - Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises:

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

73 - Compensation for loss or damage caused by breach of contract:

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Compensation for failure to discharge obligation resembling those created by contract.- When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation - In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

126 - "Contract of guarantee", "surety", "principal debtor" and "creditor":

A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.