

Sarvesh Shah and Juhi Sharma are in the business of fashion-garment manufacture. They operate under the name 'Sarju's' (hereafter 'Sarju's'). Sarvesh Shah takes care of manufacture. Juhi handles designing and marketing. All documents of Sarju's are signed by its proprietor Sarvesh Shah 'for Sarju's'. Their unit is located at Nagpur.

In response to an enquiry dated 1 January 2011 from Bright'n Green Garments (hereafter 'Bright'n Green') located at London, Sarju's sent a quotation for supply of garments. They also sent a brochure with photographs of different garments of different styles, each with its code number and price, and asked Bright'n Green to choose the styles and the number of items for each style.

The brochure states that the garments are made from cloth manufactured by various well-known cloth-makers. The brochure introduces both Sarvesh Shah and Juhi Sharma and their qualifications, and also describes them as a 'team' which makes 'quality garments'.

Their quotation states the following terms:

1. The Seller shall sell to the Purchaser garments of the type and at the price indicated in the brochure of such quantity as may be ordered by the Purchaser.
2. These garments are made from cloth manufactured by Needle-Thread Industries, a renowned manufacturer of cloth, especially of traditional designs and material.
3. The garments shall be delivered to the Purchaser on or before 30 March 2011.
4. The price shall be paid 15 % on 20 January 2011, and balance on delivery.
5. The price is inclusive of all taxes and duties levied in India, and freight, insurance and all expenses incidental for transport of goods to London.
6. Transaction is subject to usual *force majeure*. In the event of unforeseen circumstances, advance / price will be returned without interest.
7. Subject to Nagpur jurisdiction.

Bright'n Green sent an order according to the quotation and with reference to the brochure, indicating the garments by their codes, and the number of items for each. Bright'n Green also sent with the order a cheque for 15 % of price calculated on that basis, which after conversion amounted to Rs 15 lakhs (1 lakh = 100,000). Sarju's received this amount. Sarju's placed an order with Needle-Thread Industries for cloth and paid an advance of Rs 5 lakhs.

In February 2011, Needle-Thread Industries was closed and its cloth was not available. It was not known when it would commence manufacture.

On 15 February 2011, Juhi Sharma for Sarju's wrote a letter to Bright'n Green: "On account of sudden closure of Needle-Thread Industries, we request you to select another cloth of equivalent quality from those manufactured by (i) Sarang Clothing, (ii) Vastrodyog, or (iii) Fabric of India. Let us know immediately so that we can complete the order by 30 March 2011".

Bright'n Green wrote on 19 February 2011 in reply: "Kindly return within 15 days the amount of advance we paid."

On 22 February 2011, Sarvesh Shah on behalf of Sarju's wrote to Bright'n Green: "We are ready to supply garments according to our contract. Please let us know your choice of cloth soon, else we will proceed to make the garments of the same style using cloth made by Vastrodyog." Bright'n Green did not reply.

In April 2011, 'Sarju's' have filed a civil suit at Nagpur for damages, and claim damages for loss of profit (being 20 % of total contract price), and Rs 5 lakhs being the advance they had paid to Needle-Thread Industries.

Bright'n Green has appeared, and at the first opportunity, contested the suit *inter alia* on the grounds in alternative: (i) the court at Nagpur has no jurisdiction, (ii) the suit is premature; (iii) Sarju's have

committed breach, (iv) Sarju's are liable to pay damages to Bright'n Green being 30 % of the agreed price, which Bright'n Green will claim in other appropriate proceedings in London, (v) Sarju's cannot claim damages unless they first return Rs 15 lakhs under section 64 of the Contract Act; (vi) in any case, the contract has discharged upon closure of Needle-Thread Industries and hence Sarju's are liable to return Rs 15 lakhs paid as advance, for which Bright'n Green shall take appropriate proceedings in London.

It may be assumed that (i) Sarju's and Bright'n Green earn a normal profit in such contracts of 20 % and 30 % respectively, and (ii) all letters exchanged are first faxed and received by the recipients on the same day; and then have also been sent by post. Terms 1 to 7 mentioned above are exactly quoted from the quotation. Other facts stated above are either admitted or sufficiently proved. There are no more facts. Argue for (i) Sarju's, and (ii) Bright'n Green Garments.

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This imaginary problem is drafted by Nilima Bhadbhade, ILS Law College, Pune. Anyone is free to use it for non-commercial educational purposes, provided the author is acknowledged.

Facts are located in India. Laws in India apply, viz. The Indian Contract Act 1872, The Code of Civil Procedure 1908, Sale of Goods Act 1930.

**Issues involved:** formation of contract, acceptance of proposal, anticipatory breach, impossibility / frustration, force majeure clauses, sale of goods, essential terms, conditions and warranties, place of contract, jurisdiction of courts, conflict of laws / private international law, civil procedure.