MOOT PROPOSITION

PETRO OIL CORPORATION

V.

NATIONAL INSURANCE CORPORATION

1. M.V. Shazia is a Malaysian flag vessel owned by Modular Shipping Corporation (MSC). This global shipping company is now the world's 4th largest carrier in respect of container slot capacity and of the number of container vessels operated. Established in the year 1990, MSC has a history of adopting best practices and providing proficient services, it has hence earned immense goodwill in the shipping sector internationally which is evident from the fact that it has a very high credit rating.

2. M.V. Shazia was carrying the cargoes of biodiesel owned by Petro Oil Company (POC), a state owned enterprise in India on a voyage between Malaysia and Mumbai. The vessel has 18 crew members including the Captain and an armed guard. 10 crew members including the armed guard have been privy to this route only since November 2011, however being a recent addition to the MSC staff the Captain has been on this route only twice prior to this voyage.

3. The Captain of the vessel in order to save time took a deviation from the normal route between Malaysia and Mumbai. Incidentally one of the 10 crew members who are familiar with the route fell sick when the voyage started from Malaysia. *En route* the vessel was captured on 19 August 2013, near

Jaffna, Sri Lanka by Somali pirates and taken with her crew into Somali coastal waters. The armed guard died during the capture in an encounter.

4. When M.V.Shazia was seized, she was taken to a position off the coast at Eyl. On 20 August 2013, only a day after the seizure, one of the Malaysian shippers of the Petro Oil Company's cargoes (which are insured with the National Insurance Corporation) sent an email saying that MSC was already in negotiation with the pirates. On 26 August 2013, the insured received a message directly from MSC confirming such negotiations. On 31 August 2013, MSC briefed the families of the Malaysian crew to the effect that "the ordeal will be over in 30-40 days". On 2 September 2013, MSC issued a press release to confirm negotiations were ongoing. On 15 September 2013, Lloyd's List reported to the Secretary of the Malaysian Security Council that negotiations with the pirates were on going. Meanwhile, a U.S. Naval Ship intercepted a message between the Somali pirates which gave them cause to believe that the vessel with its crew and cargo were not likely to be released in short order as the pirates were not satisfied with the ongoing negotiations.

5. Negotiations between MSC and the pirates for the payment of a ransom for the release of the vessel commenced immediately, but were carried out without any consultation with the cargo owner. Upon a communication vide a letter dated 16 September 2013, the MSC tried to seek the opinion of the cargo owner however no official response came in regard to the same from the other side. Petro Oil Company was still out of possession of its cargoes and planned to initiate negotiations with its insurer, the National Insurance Corporation (NIC) having its registered office at Kolkata.

6. The contract for insurance stipulated that only 80% of total loss suffered on account of intervention by Pirates can be compensated. Afraid by the said terms of contract, Mr. Das who is authorized on behalf of Insured Company (POC) called up Mr. Bhullar who is authorized on behalf of the Insurance Company (NIC) to amend these terms. During the telephonic conversation, Mr. Das repeatedly requested Mr. Bhullar to increase the insurance coverage upto 100% for losses incurred on account of Pirate intervention. Mr. Bhullar replied in affirmative and said that this proposal would most likely be approved by his Board. However, he further added that he will himself reply in one week time after taking approval of the Board. Despite the statements made by Mr. Bhullar, no reply was received by Mr. Das even after passage of a full month. The contract contained amendment clause as:

   "*The terms and conditions of the contract can be altered or amended by the mutual consent of the parties before conclusion of the contract. Amendments to the contract can be made either orally or in writing, but the mutual consent of both the parties must be reflected by it.*"

7. Subsequently, Petro Oil Company served a notice of abandonment to NIC on 17 October 2013. On the ground that the vessel was in the custody of pirates and the loss cannot be treated as total loss within the meaning of Marine Insurance Act the notice was rejected, but proceedings by agreement were deemed to have been commenced on that day.

8. The Pirates were given a ransom of US $2 million by MSC. Wherein upon knowledge of the same various eminent legal personalities commented that the payment of ransom to pirates is illegal and opposed to public policy.

9. The vessel, her crew and cargoes were released 11 days later on payment of ransom. The voyage to Mumbai was completed on 4 November 2013. Despite the delay the goods were delivered in good order. However, it is common ground that if Petro Oil Corporations had a good claim for a total loss as at 17 October 2013, the fact of the cargoes' later recovery would not affect the position.

10. Petro Oil Corporation therefore commenced proceedings against National Insurance Corporation for rejection of their claim for treating the cargo as total loss. The claim was for the 100% value of the cargo as on the date the claim was made. The insurance contract provided for jurisdiction clause. The jurisdiction clause read as:

> "*Any dispute arising out of this contract shall be subject to jurisdiction of Courts at Delhi.*"

11. The contract is governed by the Indian laws on maritime insurance and contracting. The Petro Oil Corporation commenced proceedings against National Insurance Corporation by filing a suit at the place where the cargo was delivered which is Mumbai after one year and two months. Bombay High Court took cognizance of the matter. During the initial hearing, argument relating to jurisdiction of the High Court was raised by Defendant Company by relying upon the jurisdiction clause provided in the Contract. Moreover, Defendant Company also argued that contract was never amended and even if total loss is accepted, only 80% amount could be recovered. During the proceeding, it was found that Mr. Bhullar who was authorized on behalf of Defendant Company has left the employment. Further, it was brought to the

notice of the Court that Mr. Bhullar during his tenure made many negligent decisions and reply given to Mr. Das during telephonic conversation was one of such negligent acts. Therefore, the Defendant argued that no amendment took place between the parties.

12. However, Court without dismissed the suit summarily on grounds of lack of jurisdiction. In the judgment, High Court mentioned that although Plaintiff is having a strong case on merits, but they have approached the wrong forum and it is liable to be dismissed. Appeal filed before the Division Bench of the High Court was also dismissed in *limine.*

13. Aggrieved by the decision of Bombay High Court, POC has preferred a Special Leave Petition before the Hon'ble Supreme Court of India claiming 100% of total loss and arguing that contract does not specifically or expressly bars the jurisdiction of Court in Bombay. The matter is presented for hearing before the Hon'ble Supreme Court on 22nd March 2014.

NOTE:

A. *The onus of framing the issues of both law and fact lies on the participants.*

B. *All existing laws and laws in force till 1st February 2014 are applicable in its entirety.*

C. *The problem shall be read as it is subject to clarifications.*

D. *This problem has been framed by Mr. Hari Narayan, Advocate, High Court of Kerala. Participants are precluded from contacting the drafter of the problem under any circumstances. Any attempt to do so will attract immediate disqualification.*