

**SIR JAMSHEDJI KANGA MEMORIAL MOOT COURT
COMPETITION**

PROPOSITION NO. 1

Before the Honourable District Judge, Raigad

Green Estate Homes Private Limited v. Golf Machine Engineering & Others

M/s Green Estate Homes Private Limited ("Green Estate"), a subsidiary of an American company, is a company incorporated in India engaged in the development of residential real estate projects all across the country. They have started three (3) projects at Karjat in Raigad District called GEH Gardens I, II and III.

Green Estate required golf carts for use at a golf course near these projects and these machines were not available in India. For purchasing these machines, it executed a Machine Purchase Agreement dated October 26, 2009 (the "Agreement") with M/s Golf Machine Engineering, Plc. ("GME") a company incorporated in the UK. The contract was executed in Mumbai.

The machines were to be delivered no later than November 24, 2009. However, due to the occurrence of the following events, disputes have arisen between the Parties:

1. On November 10, 2009, a third party obtained an injunction from a Court in England claiming that the machines violated the third party's patents. The injunction restrained GME from manufacturing or selling the machines. The injunction was subsequently lifted by another order of the same court and the court also dismissed all the claims of the third party as being baseless and frivolous.
2. On December 15, 2009, there was a terrorist attack in the vicinity of GME's sole manufacturing plant and thereafter, the area was cordoned off by the police and as a result, GME could not recommence manufacturing at its plant before January 1, 2010.
3. On February 2, 2010, GME finally gave delivery of the golf carts at the place specified by Green Estate. For the unloading, GME's appointed carriers and Green Estate's staff were both present and were both physically assisting in the unloading of the golf carts. Subsequently, during testing, Green Estate discovered that at least 45% of the carts experienced a malfunction which was found to be attributable to damage caused during unloading by GME as well as Green Estate's employees.
4. It is understood that GME had to give some gifts (not being bribes) to Indian customs officials to ensure that they allow GME to clear the goods from customs in two (2) days less than the ordinary time taken. It is believed that the American Department of Justice is investigating Green Estate for this payment.

Significant disputes arose between the parties due to the delay and due to the faulty golf carts. Green Estate refused to pay GME and GME threatened to initiate arbitration proceedings against Green Estate albeit no written communications were exchanged in this regard.

Green Estate subsequently filed a case against GME before the District Judge of Raigad claiming the following:

1. An injunction restraining GME from initiating arbitration proceedings against Green Estate;
2. Damages for breach of contract including direct damages cause as a result of delivery of faulty machines, consequential damages resultant from the delay in Green Estate making the golf courses operational, and punitive damages.

Please prepare a memorandum outlining the issues and arguments for the hearing scheduled for 19 February 2010.

Enclosed please find –

1. Machine Purchase Agreement between Green Estate and GME

1. PARTIES

1.1

Green Estate Homes Private Limited a company organised and existing under the laws of Indian and having its principal office at 11, Pallygunj, New Delhi, India hereinafter referred to as "Green Estate".

1.2

Golf Machine Engineering, Plc. a company organised and existing under the laws of Italy and having its principal office at Canary Square, London UGF 13F hereinafter referred to as the "Contractor".

2. BACKGROUND

2.1

Green Estate requires that the Machines shall be delivered as a complete delivery on a functional basis, i.e. all aspects shall be covered by one and the same contract, with one supplier being responsible in relation to Green Estate.

2.3

The Contractor is qualified to deliver the Machines and the Contractor agrees to take on the responsibility required by the Contractor and to deliver Machines meeting the requirements set forth in this Contract.

3. DEFINITIONS

In this Contract, any defined words and expression shall have the meaning attributed to them in Appendix 1.

4. SCOPE OF THE WORK

4.1 Contractor's acceptance

The Contractor accepts to deliver DDU at a port in India according to Incoterms 2000 fully operating Machines in full compliance with this Contract. Consequently, save for the exclusions specified in this Contract, all items of equipment and/or work not expressly stated in this Contract, but which are reasonably required for the proper, efficient, safe and stable operation and maintenance of the Machines and/or for the fulfilment of the Contractor's warranties, shall, be executed by the Contractor and be considered as included in the Contract Price as though the same have been expressly stated in this Contract.

4.2 The Contractor solely responsible

Except as specifically provided in this Contract, the Contractor shall be solely responsible for the design, engineering, manufacture, assembly, delivery, erection, supervision and testing of the Machines.

5. INACCURATE INFORMATION

5.1 The Contractor's responsibility

The Contractor shall be responsible for any discrepancies, errors or omissions in the Machines, whether they have been commented on or not by Green Estate, provided that those discrepancies, errors or omissions be not due to inaccurate drawings or information furnished to the Contractor by Green Estate.

5.2 Alterations and remedial work

The Contractor shall at its own expense carry out any alterations or remedial work necessitated by reason of those discrepancies, errors or omissions and shall modify the documents and drawings accordingly. If such work is done by or on behalf of Green Estate, the Contractor shall bear all costs reasonably incurred thereby.

6. CONTRACTOR'S QUALITY ASSURANCE

In due time before the Effective Date, the Contractor shall prepare a document describing the Contractor's internal procedures for quality control. Such document shall be sent to Green Estate for approval and shall be approved or amended until approved on or before the Effective Date. Green Estate's general requirements regarding quality assurance are set out in Appendix 2.

7. AUTHORIZED REPRESENTATIVES

The parties have designated the persons named in **Appendix 3** as their Authorized Representatives, to represent and act for each of them in all matters relating to this Contract. The persons named in **Appendix 3** shall be considered as key personnel, which may not be replaced without prior approval from the other party.

8. THE CONTRACT PRICE AND PAYMENTS

8.1 The Contract Price

The Contract Price and details about the payment of the Contract Price are specified in **Appendix 4**.

8.2 Payment upon completion of Milestone Events

The Contract Price shall be paid to the Contractor upon the completion of the relevant Milestone Events, as specified in the Master Schedule. Invoices relating to a Milestone Event may not be issued until all items listed on the Master Schedule which are pertaining to said Milestone Event and all items to be performed on or before the scheduled completion of the relevant Milestone Event shall have been completed. The Contractor shall inform Green Estate when the Contractor is prepared to invoice a Milestone Event. Green Estate shall reply within 10 days and confirm if Green Estate agrees that the conditions for invoicing of the Milestone Events are met.

8.3 Disputed invoices

In the case of dispute over any part of an invoice, Green Estate shall promptly advise the Contractor of the reason for dispute and Green Estate will not delay payment of the undisputed portion.

8.4 Late payments

Interest on overdue amounts shall be payable by Green Estate at a rate corresponding to MIBOR 30 days plus 2%. The Contractor shall remind Green Estate that amounts due have not been paid. Late payment interest due to the Contractor shall be invoiced in accordance with the Contract.

8.5 Tax

All invoices shall include any Tax or any other direct or indirect taxes, levies, etc., applicable under Indian laws and will (to the extent payable and not capable of being legally reduced or not payable) be paid to the Contractor. In respect of any Value Added Tax or service tax or any other direct or indirect taxes, levies, etc., under Indian laws, which is required by Indian law to be paid by Green Estate, shall be so paid by Green Estate.

9. GUARANTEES

9.1 Refund guarantee

The Contractor shall on or before the Effective Date produce to Green Estate a refund guarantee, in the form attached hereto as **Appendix 5**, issued by a bank acceptable to Green Estate and in an amount of 20 % of the Contract Price.

9.2 Warranty guarantee

The Contractor shall on or before the date of Final Acceptance produce to Green Estate a Warranty guarantee, in the form attached hereto as **Appendix 6**, issued by a bank acceptable to Green Estate and in an amount of 10% of the Contract Price.

10. FORCE MAJEURE

10.1 Definition of force majeure

The following circumstances shall be considered as cases of force majeure, if they impede the performance of the Contract or makes performance unreasonably onerous: Any circumstance beyond the control of the parties such as fire, floods, earthquakes or other natural calamities beyond adverse weather conditions, war, general mobilization or unforeseen military mobilizations to a similar extent, requisition, seizure, currency restrictions, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance. The circumstances referred to which had occurred prior to the formation of the Contract shall constitute cases of force majeure only if their effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract. The foregoing notwithstanding, strikes, lockouts or other industrial disturbances arising out of or caused by the Contractor's employees or employees of affiliated companies or employees of sub-contractors appointed by

the Contractor shall not be deemed to be an event beyond the control of the Contractor.

11. SHOP-TESTING AND INSPECTION

The tests and inspection specified in **Appendix 7** shall be completed by the Contractor during manufacture of the Machines.

12. REPRESENTATIONS AND WARRANTIES

12.1 Technical representation and warranty

The Contractor represents and warrants the Work against defects in design, workmanship and materials. Subject to the terms of **Appendix 8**, the Contractor shall remedy any defect resulting from faulty design, materials or workmanship.

12.2 Functional warranty

In addition to the warranty described above, the Contractor warrants that, for a period of 12 months from the date of delivery, in normal operating conditions and with maintenance in accordance with the Specifications, the Machines shall not require any changes in configuration and shall continue to operate in accordance with the Specifications without Green Estate having to incur any costs apart from the costs of servicing, operating and replacing wear and tear-consumable parts in the Machines.

14. TERMINATION

14.1 The Contractor's default

Notwithstanding any other provisions of this Contract, the Contractor shall be considered in default of its contractual obligation under this Contract if, due to reasons attributable to the Contractor:

- a. The Contractor fails to perform its obligations in conformity with the terms of this Contract or fails to fulfil any of the significant terms of this Contract and fails to cure such breach within 30 days after written notification from Green Estate; or
- b. During or upon completion of the Final Test it becomes obvious that the Machines will not fulfil in a significant way the requirements of this Contract; or
- c. The Contractor becomes insolvent or files, or has filed against it a petition for rearrangement, composition, compromises with its creditors, has a judicial suspension of payment of its debts, enters into a scheme of administration or enters into receivership (these terms being used as appropriate for the relevant jurisdiction) under any applicable law.

14.2 Notice of default

Upon the occurrence of any of the foregoing, Green Estate shall notify the Contractor in writing of the nature of the failure and of the intention to terminate this Contract for default and the intention to call upon guarantees under this Contract, if applicable.

14.3 Consequences of termination for default

In case of termination of this Contract in accordance with the provisions of Article 14.1 above, Green Estate may in its election request repayment of all sums paid to the Contractor and seek damages. In this situation, Green Estate is entitled to call upon Refund guarantee or Warranty guarantee, as applicable. Green Estate may only claim additional amounts if Green Estate can demonstrate that the direct costs of termination exceed the amounts thus received (i.e. the amount secured by Refund guarantee or Warranty guarantee, if applicable). Upon full payment to Green Estate, all Machines delivered to Green Estate shall be available for the Contractor, to be removed at the Contractor's expense. If the Contractor fails to remove such equipment or material within 10 weeks after written notification from Green Estate to this effect, Green Estate may at the Contractor's expense remove or sell such equipment or material.

15. INTELLECTUAL/INDUSTRIAL PROPERTY

15.1 License

The Contractor hereby grants to Green Estate and its affiliates, free of charge without limit to time, a license to use all such patents, copyrights, processes, products or writings, whether patentable or otherwise capable of being protected by intellectual property rights and within the scope of this Contract, without any restriction for its own operations (including but not limited to production of spare parts by third parties) and even in case of and after termination of this Contract for whatever reason. For the avoidance of doubt; Green Estate may freely transfer its license hereunder to a third party, in connection with the relocation, sale or lease of any part of the Machines.

15.2 Indemnification upon infringement

The Contractor hereby indemnifies and shall defend and hold harmless Green Estate from and against all claims, actions, losses, damages and expenses, including lawyer's fees incurred as a result of or in connection with any claim, whether rightful or otherwise, against any equipment, material, concept, product or process or any part thereof specified or supplied by or through the Contractor under this Contract that the same infringes any intellectual or industrial property rights. If use of any part of such equipment, material, concept, product or process is limited or prohibited, the Contractor shall at its sole expense, procure the necessary licenses to use the infringing equipment, material, concept, product or process, or with Green Estate's prior written approval, substitute infringing equipment, materials, concepts, products or processes or modify such infringing equipment, materials, concept, products and processes so they become non-infringing, provided that such substituted and modified equipment, materials, concepts, products and processes shall meet all the requirements and be subject to all of the provisions of this Contract.

16. INSURANCES

16.1 Contractor's insurance cover

The Contractor shall carry and maintain at its sole expense at all times during the performance of this Contract, insurance coverage meeting the requirements set forth in **Appendix 9** and with insurers and under forms of policies satisfactory to

Green Estate. The Contractor shall, on or before the Effective Date, deliver to Green Estate evidence that policies providing such coverage are in full force and effect.

16.2 Deductibles

The deductibles under the said insurances shall be set at such limit as Green Estate shall approve, the payment of any and all deductibles being the responsibility of the party being responsible for the relevant event.

16.3 Dealing with insurers

In case any claim or action shall be commenced against Green Estate or Contractor, in circumstances where Green Estate or the Contractor shall have the benefit of an indemnity under this Contract, the parties agree that the party concerned may deal with the insurers directly and may have the full management of any claim subject to the approval of the said insurers.

17. TITLE

17.1 Passing of title

Title to all equipment, items of Machines, reports, drawings, specifications and any other documents created by the Contractor, arising out of and as a direct result of this Contract, shall pass to Green Estate upon the earlier of payment or delivery to Green Estate.

18. THE CONTRACTOR INDEPENDENT

The Contractor represents that the Contractor is fully experienced, properly qualified, registered, licensed, equipped, organized and financed to perform this Contract. The Contractor shall act as an independent contractor in performing this Contract, maintaining complete control over its employees and all of its and subcontractors. Nothing contained in this Contract or any subcontract awarded by the Contractor shall create any contractual relationship between any such subcontractor and Green Estate. The Contractor shall perform this Contract in accordance with its own methods subject to compliance with this Contract.

19. CONFLICTS OF INTEREST

19.1 No payment to Green Estate's employees

Contractor shall not pay any fee, commission, rebate or other thing of value to or for the benefit of any employee of Green Estate or its affiliates, nor will the Contractor do business with any company knowing that the results might benefit an employee of Green Estate or its affiliates. The Contractor shall use its best endeavours to prevent any of its employees engaging in any activity contrary or detrimental to the best interests of Green Estate.

19.2 No payment to officials

The Contractor will not make any payment or pass on any portion of any payment received from Green Estate to any official or employee of any national government in any country or political subdivision thereof for the private benefit of such person

who have any decision-making authority or to induce him to use his influence over any act or decision of such government affecting Green Estate's business.

20. CONFIDENTIALITY

20.1 Confidential information

Information or design supplied by Green Estate in connection with this Contract shall remain the property of Green Estate, be kept confidential and shall not be disclosed - except to subcontractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the subcontract - or made use of by the Contractor, except as necessary for the performance of this Contract. The Contractor shall not make copies of the foregoing, except where necessary for the performance of this Contract. Upon Final Acceptance, such material and all copies thereof shall be returned to Green Estate, including those supplied to subcontractors if so requested by Green Estate.

20.2 Confidentiality agreements

If so requested by Green Estate, the Contractor agrees to require its employees, its subcontractors and their employees to execute a confidentiality agreement in such forms as Green Estate shall specify.

21. NON-WAIVER

No failure on the part of either party at any time to enforce or to require the strict adherence of any of the terms of this Contract shall constitute a waiver of such term and/or impair such term in any way or the right of either party to avail itself to such remedies as it may have for each and every breach of such term.

22. ENTIRE AGREEMENT AND ASSIGNMENT

22.1 Entire agreement

This Contract together with all appendices as listed embodies the entire agreement between Green Estate and the Contractor and supersedes all other writings. The parties shall not be bound by, or be liable for any statement, representation, promise, inducement or understanding not set forth herein. No amendments or modifications of any of the terms or conditions shall be valid unless reduced to writing and signed by both parties.

22.2 Assignment

Neither party may assign or transfer this Contract to any third party, without prior written consent from the other party, which consent shall not be unreasonably withheld. The parties may assign or transfer this Contract to an affiliated company, provided that the original contracting party shall remain jointly and severally liable, as for its own debt, for the proper performance of this Contract by the assignee. Notice of any such assignment or transfer shall be given promptly in writing by the assigning party to the other party.

23. SURVIVAL

The rights and obligations of the parties which by their nature survive termination or completion of this Contract shall remain in full force and effect notwithstanding the termination or completion of this Contract.

24. GOVERNING LAW AND DISPUTES

24.1 Indian law

The Contract shall be governed by and construed in accordance with the substantive provisions of the laws of the Republic of India. The Convention on International Sales of Goods shall not be applied.

24.2 Arbitration

Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules of the London Court of International Arbitration. The arbitral tribunal shall be composed of three arbitrators. The place of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.

This Contract has been executed in two originals.

For and on behalf of

For and on behalf of

Green Estate
Plc

Golf Machine Engineering,

Name:

Name:

Name: