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**MOOT PROBLEM – 1**

**IN THE HON'BLE SUPREME COURT OF INDIA**

**VECULA EXCLUSIVE CONSULTANCIES**

**... APPELLANT**

**v.**

**PERSEUSS INC.**

**.... RESPONDENT**

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**Facts :**

1. Vecula Exclusive Consultancies Ltd. (VEX) is one of India's leading consultancy companies. They provide services to a large cross-section of the corporate sector clients including advice on resource allocation, project finance, financial management, staff training and public relations management, thus enabling start-up companies to streamline their resources allocation, internal functioning and optimization of productivity. VEX has developed a formula for streamlining businesses that is extremely successful and is being applied to many of the large corporate houses in the country. As part of its services, VEX also provides various computer programs developed by its Information Technology Department to help its clients to keep track of the output of each employee to ensure that every employee is working to his/ her optimal level. VEX charges a percentage of the incremental profits of each client each year as its fees and seeks reimbursement of its costs on actuals.
2. Perseuss Inc. (SEUSS) is a start-up venture started by a group of friends who met in Fashion School. The company began as a project which was part of their syllabus. SEUSS designs and manufactures a line of clothing and accessories to be sold in various retail outlets across the country.
3. As a part of their research for the project they came across VEX and agreed among themselves to avail of its services when they eventually incorporated their company. When they graduated in May 2007, they incorporated SEUSS as a private limited company, and in July 2007, approached VEX to advise them on running their business.
4. VEX has hired the country's reputed lawyers to protect their legal interests. The firm's lawyers have drafted a standard-form contract that VEX insists every client should sign. The contract contains several negative covenants against VEX that prohibit its clients from disclosing any information provided to them by VEX during the tenure of the contract and for a period of 7 years after its termination. Correspondingly, VEX also covenants with its clients to maintain client confidentiality for like term of 7 years. VEX refuses to negotiate the terms of this contract and present it to prospective clients on a 'take-it-or-leave-it' basis.
5. SEUSS hired their own solicitors who went over the contract with a fine tooth comb and pointed out certain clauses including the clause regarding liquidated damages to their clients. SEUSS's solicitors advised them that the amount of liquidated damages provided for in case of breach was an exorbitant sum.

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6. SEUSS sent a letter to VEX asking how they have arrived at the amount of liquidated damages provided for in Clause 42. VEX replied that it was the pre-estimated loss, specific to the fashion industry if information regarding their business formulae or any of their computer programs and applications were leaked by SEUSS or otherwise misused by them for purposes not pre-approved by VEX.

7. The parties executed the contract on August 2, 2007. The relevant clauses of the contract are as below:

*41. Any disputes and differences between the parties to this contract arising in relation only to the breach or repudiation of any of the confidentiality covenants in the contract will be solely decided by Mr. Rohan Hair (a reputed name in the fashion space) within 15 days of such disputes or differences arising between the parties. The decision of Mr. Rohan Hair shall be final and binding and shall exclude all other remedies including those of seeking redressal from a court of law by the unsuccessful party with respect to such disputes or differences.*

*42. Any breach committed by SEUSS of any of the covenants of confidentiality appearing hereinbefore in the contract will make SEUSS liable for liquidated damages. The parties agree that the sum of Rs. 16,52,70,000/- is a pre-estimate of the damages likely to be suffered or be occasioned due to the breach of ANY of the confidentiality covenants contained in the contract.*

8. On October 10, 2010 SEUSS found that the names, contact information and billing details of SEUSS's retailers has been published on VEX's website under the heading of 'Frequently Asked Questions' on VEX's home page as an instance of the kind of services that VEX provides to fashion industry clients. The information was widely publicized at a city fashion extravaganza.

9. On October 16, 2010 SEUSS sent legal notice to VEX. In their notice SEUSS stated that VEX had committed breach of the confidentiality covenant contained in the contract and that they were the innocent party to the breach of the confidentiality covenant committed by VEX. SEUSS informed VEX that they had not accepted the repudiation of the contract by VEX and the contract continued in existence. SEUSS invoked Clause 42 of the contract and claimed liquidated damages as stipulated by the said clause of the contract only for breach of the covenant of confidentiality.

10. SEUSS's retailers, angered by the breach of their privacy because of the release of their personal information wrote to SEUSS refusing to stock their clothes in their shops. Faced with falling revenues and increasing liabilities and inventories and being a start-up themselves, SEUSS approached VEX seeking advice on how to salvage SEUSS's public relations and their relationships with their retailers. SEUSS received advise from VEX of a circular letter to be written by SEUSS to all their retailers to salvage the situation.

11. On January 16, 2011 SEUSS, having received no reply to the notice dated October 16, 2010 from VEX, instituted the suit for damages for breach of the covenant of confidentiality by VEX.

12. The Trial Court found in favour of SEUSS and awarded damages to the tune of Rs. 16,52,70,000/- with interest at 18% p.a. from the date of the decree until the date of realization.

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13. VEX challenged the decree before the High Court and averred that the Clause 41 is valid and that Mr. Rohan Hair was solely entitled to take a final and binding decision with respect to VEX's liability to SEUSS. VEX further contended that in any case SEUSS has waived Clause 42 by continuing with the contract and by seeking their advise post the notice dated October 16, 2010.
  14. The High Court held clause 41 of the Contract is invalid because of the provisions of Section 23 and 28 of the Contract Act and Clause 42 of the Contract could have been applicable in the present situation. However, on further consideration, the High Court found that because SEUSS had chosen to go to VEX for advice and VEX had provided that advice and SEUSS had acted on such advise, SEUSS had waived its right to claim damages and thus, the High Court overturned the finding of the Trial Court, set aside the decree of damages and dismissed SEUSS's suit.
  15. The matter has now been placed in appeal before the Supreme Court of India. The substantial questions for determination which are of general importance, broadly stated, are as follows:
    - a) *Whether Clause 41 of the Contract dated August 2, 2007 is valid?*
    - b) *Whether SEUSS is entitled to invoke Clause 42 of the Contract dated August 2, 2007, and to claim damages?*