

MOOT PROPOSITION

1. The realm of technology has already witnessed a remarkable transformation – much thanks to the sweeping wave of Artificial Intelligence [AI] which has engulfed the modern world. Among the more recent developments within AI, Generative AI or specifically, Generative Pre-Trained Transformer [GPT] technology has pushed the boundaries of what technology can achieve. It has impressively showcased how Machine Learning [ML], Large Language Models [LLM] and Natural Language Processing [NLP] can be harnessed to generate new content, offer real time intelligence, and analyse the existing subsets of data, based on a simple prompt.
2. The adoption of Generative AI tools like ChatGPT, Midjourney, or CoPilot (ChatGPT being the fastest growing technology in the history of mankind) has given early signs of how Generative AI powered with the ability to leverage and integrate ML, LLM and NLP is set to revolutionize and transform the way we interact with technology. Indeed, there have been several demonstrated areas of application where these tools have successfully achieved its intended purpose like content creation, robotics, data analytics, etc.
3. The ubiquity of such tools impacting all the major industries alike has drawn the attention of Mr. Bhupinder Jogi, CEO of ‘Data Is Gold Pvt. Ltd.’, a private limited firm having its registered office at 16 M.G. Road, Bengaluru, Karnataka, India [DIG].
4. DIG is a cutting-edge data analytics firm which considers itself at the forefront of innovation. It harnesses the power of AI and new technologies to revolutionize the way organizations extract valuable insights from their data. With a passion for data-driven decision making, DIG is looking forward to adopt combination of advanced AI algorithms, machine learning models, and state of the art data processing techniques to uncover hidden patterns, identify trends, and provide actionable intelligence to businesses across diverse industries.
5. Bhupinder Jogi is a tech-nerd and a highly passionate individual who believes that businesses should constantly look for ways to innovate themselves in order to tackle the disruptive challenges that businesses may face with the rapidly evolving digital world. Bhupinder was keenly following the advent and adoption of ChatGPT, CoPilot, and other similar tools. He studied possible ways to leverage transformative capabilities of AI and how it can be employed in his firm DIG to reshape the landscape of data analysis. Particularly, he wanted to cut the Turn Around Time [TAT] for the data analysis report presented to their clients by

somehow offering real time intelligence and on the spot analysis of data through the use of relevant AI methods.

6. With this thought constantly running in his mind, Bhupinder Jogi attended a 'Data Innovation Summit' where he was invited to speak on his views about 'Technological Innovation in Data Sciences: A Comparative Review of USA with India'. After the summit, Bhupinder bumped into his old friend, Mr. Popatlal Patrakar, who introduced him to Ms. Kritim Buddhimani, Chief Technology Officer of MacroHard Technologies Pvt. Ltd. [**MhTP**], a Bengaluru based company with its registered office at 07 Koramangala Road, Bengaluru, Karnataka, India.
7. MhTP is a leading software development cum AI research and deployment company specialising in the development of software solutions, artificial general intelligence [**AGI**] tools, and other related products. Leveraging the power of AGI methods, NLP and LLM, MhTP has provided groundbreaking solutions in the form of intelligent software applications and AI tools which have driven digital transformation across a wide spectrum of industries.
8. Bhupinder and Kritim had a long discussion about the potential use of AI, NLP and LLM to disrupt industries. Bhupinder was impressed by Kritim's knowledge in this field and the work her company MhTP has managed to do. At this moment, Bhupinder realised that Kritim and her company MhTP would be the best option for him and DIG to build a real time intelligence and data analytical AI tool.
9. Bhupinder described how DIG is looking for someone to develop an innovative and intelligent system capable of understanding and processing human language to extract valuable insights from vast amounts of existing textual data. The system should also be capable of analysing the data, predicting the patterns, and delivering predictions and strategies in response to the queries raised by the users.
10. Kritim understood the assignment and demonstrated her willingness to take up this project and assured Bhupinder that she and her company MhTP is capable of delivering such required system as envisioned by Bhupinder.
11. Without wasting much time, both decided to meet the next day to discuss the modalities and commercials of the project. Interestingly, without feeling the need to consult their respective legal teams, and to generally avoid the intervention of lawyers (because they tend to delay or create roadblocks in execution of a business idea), both Bhupinder and Kritim decided to use '**Chad GPT**', a new contract generating software to generate their contract.

12. Chad GPT is based on an advanced AI algorithm which uses predetermined rules and criteria to generate a balanced contract in its final form. Chad GPT analyses relevant prompt provided by the parties, interprets it, and produces a final executed contract that reflects their intentions. The only problem with this feature is that if the prompt entered is not detailed and sufficiently vague, it would produce a contract with vague and ambiguous terms.
13. Both Bhupinder and Kritim were authorised by their respective companies to negotiate, settle, and enter into any contract on behalf of their respective companies. Accordingly, both Bhupinder and Kritim jointly created a detailed prompt [**attached as Annexure A**] to generate a final contract called ‘Technology Development Agreement’ (**‘Agreement’**).
14. The generated Agreement had all the necessary commercial terms and provisions, including other relevant provisions such as provisions related to representation and warranties [**relevant part of warranties reproduced as Annexure B**]. Interestingly, ‘Liability Clause’, which generally ascertains liability of parties in case of a breach of a contract, was missing from the Agreement. Bhupinder and Kritim failed to notice the absence of this clause despite a careful review of the Agreement.
15. Nonetheless, Bhupinder and Kritim signed the Agreement in due compliance with law and went to a nearby bakery to raise a ‘toast’ to their efficient execution of the contract and for the fact that they did not require any lawyer to execute such complex transaction.
16. The Agreement’s execution took place and the obligations envisaged therein were duly discharged by DIG and MhTP. DIG duly made the payment as agreed, provided all the necessary details about their requirements, and coordinated with MhTP to provide testing data. In return, MhTP built a fully operational, advanced AI system called ‘Kaptaan’.
17. Kaptaan harnesses the synergy of AGI, LLM and NLP to understand and process human language to generate analytical reports, predictions, and strategical recommendations by analysing and identifying patterns in vast amounts of existing data and by browsing the web to understand key industrial insights through available literature.
18. For example, a typical use of Kaptaan would be this: A leading supermarket would upload existing data of customers, their preferences, locations, and the frequent grocery items they have ordered. The user would then write a prompt asking Kaptaan to analyse the uploaded data and suggest at what places could they open a new outlet, or if they would need more riders to deliver based on the projections of increasing demand of grocery items, or if they



need to alter their offerings or price based on the demand generated on grocery items. Accordingly, Kaptaan would analyse the data, identify the patterns, search the web for key market insights and suggest recommendations and strategies to the user.

19. DIG reviewed Kaptaan through multiple sandboxing and formally accepted it. DIG then introduced Kaptaan in its offerings to the clients projecting it as the latest, innovative and 'state of the art' AI data prediction tool to deliver bespoke strategic consulting to businesses.
20. DIG received a few clients and projects where it successfully used Kaptaan to advise businesses. Although in these projects, there were a few minor complaints about the inaccuracies of the data analysis and the predictions generated by it. The same was brought to the friendly notice of MhTP and Kritim to which they responded by saying that these are trivial data variations falling under margins of error which are inevitable and would not significantly alter the predictions or the outcome of the data.
21. After 6 months of the delivery of Kaptaan, DIG received a major multi crore project from one of its long-standing client 'Piggy' – an online food ordering and delivery aggregator platform. Piggy was a market leader and had the highest market share in India. Piggy sought DIG's help to analyse their data and provide suggestions as to where Piggy could open curated dark kitchens or cloud kitchens across the country to meet the increasing demand for food delivery and also quicken the delivery time taken to deliver an order.
22. Piggy provided with data sets related to the customers, their locations across the country, customer preferences, top restaurants, preferred food items and the restaurants selling them, etc. to DIG and DIG had to advise them accordingly. DIG deployed Kaptaan and used it to seek recommendations and strategies to further advise Piggy. Although DIG charged a significant premium to provide consulting services to Piggy, there was a peculiar arrangement between Piggy and DIG that in case the action plan suggested by DIG does not work or results into losses to Piggy, DIG would indemnify Piggy and return the premium paid to DIG.
23. DIG solely relied on Kaptaan to analyse the data and relied on its strategies and recommendations to advise Piggy. Unfortunately, the recommendations provided by DIG did not yield any results and in fact caused losses to Piggy. As per their internal arrangement, Piggy invoked the indemnity by virtue of which DIG had to pay INR 2 Crores (Indian Rupees Two Crores Only) to Piggy.

24. This made DIG furious, and they launched an inquiry to find out as to who was responsible for the deficiency and defect in service provided to Piggy. The internal inquiries revealed that the data analysis provided by Kaptaan and the action plan recommended by it was faulty, erroneous and erratic. Consequently, DIG's Board of Management decided to sue MhTP for the faulty, defective, and substandard quality of Kaptaan delivered to them. To be doubly sure, DIG hired an expert to corroborate and validate the findings of the internal committee's inquiry to confirm whether Kaptaan's analysis and suggestions and thereby its performance was indeed defective, faulty and of substandard quality. The relevant excerpt from the expert report is mentioned below:

“Based on a careful scrutiny of the data provided by DIG related to the inquiry concerning Piggy and functionality of Kaptaan, there appears to be several inconsistencies in analysing the data and the subsequent suggestion of recommendations by Kaptaan. A bare perusal of the customer data and the data related to demand and supply would reveal that Kaptaan has disproportionately suggested opening of dark kitchens or cloud kitchens at places where there is not enough demand. It appears that the AI tool, Kaptaan may have failed to appreciate this data while suggesting reforms. However, there is a likelihood that there might be certain inconsistencies in the data supplied by Piggy which may have resulted in such unsuitable output.”

25. Thereafter, DIG, through their legal team, sent a legal notice to MhTP and sought for damages to the tune of INR 2.75 Crores (Indian Rupees Two Crores and Seventy Five Lakhs Only) plus interest for supplying defective, faulty, and low quality goods relying on under the provisions of the Sale of Goods Act, 1930.

26. MhTP came across the legal notice and was shocked to see the allegations made. MhTP immediately convened an emergency board meeting involving top executives and asked their Legal Head to immediately take actions to protect MhTP's reputation and liability.

27. MhTP responded to the legal notice of DIG and denied all the allegations. Thereafter, DIG complied with all the procedural formalities to file a commercial suit for recovery of damages before the Commercial Court, Bengaluru, Karnataka. DIG approached Commercial Court for two reasons, *first*, the AI generated contract did not include a dispute resolution clause pre-determining the mode of dispute resolution, which Bhupinder and Kritim failed to notice due to their non legal background. *Second*, the high level executives heard about the recent revamp

of commercial courts in India and how the same are now equipped to expeditiously resolve commercial disputes in India offering expert adjudication.

28. DIG, *inter alia*, broadly argued that:

- a. The Technology Development Agreement executed between DIG and MhTP is a contract of sale under the Sale of Goods Act, 1930. The goods supplied as per the Agreement is Kaptaan, which is essentially a software and softwares are considered as goods under the Sale of Goods Act, 1930. Thereby the supply of defective and non-conforming goods under the Sale of Goods Act, 1930 amounts to the breach of contract of sale which gives rise to a claim for damages. Moreover, MhTP is also in breach of the warranties assured by them which also raises another ground for a claim for damages.
- b. The damage and the loss caused to DIG is due to the faulty analysis and predictions of the data analytical tool Kaptaan. Any act done by Kaptaan which causes any loss or damage to any person shall be attributable to its creator, i.e., MhTP since they are not only vicariously liable for it but also for developing it in a manner which has resulted in the faulty performance of the AI tool. Therefore, the liability to pay the legitimate damages arising from the act which has caused damage to DIG is attributed to MhTP and hence MhTP is bound to pay damages to DIG.
- c. MhTP is liable to compensate DIG for the damages caused to the tune of INR 2.75 Crores (Indian Rupees Two Crores and Seventy Five Lakhs Only) plus interest as the loss caused to DIG is directly attributable to the defectiveness and non-conformity of goods. In addition, MhTP is also in gross breach of its warranties assured by them in the Agreement.

29. In response to DIG's frivolous claims, MhTP argued that:

- a. The Technology Development Agreement is not a contract of sale. The data analytical AI tool is not a good but a service. Therefore, Sale of Goods Act, 1930 or any of the remedies envisaged under it is not applicable to the present dispute. MhTP is also not in breach of any of the warranty stipulated under the Agreement.
- b. MhTP is not liable for the faults of any alleged defect in an AI tool. The creators of any AI tool are not liable for any unexpected outcomes due to defects in machine learning, NLP, LLM or any AGI technology, if any.

- c. MhTP is not liable to pay any damages under the Sale of Goods Act, 1930 or any other law for any damage caused to DIG as the same are indirect, remote, unforeseeable, and has no direct causal link to the alleged act or the Agreement.
30. According to the procedure prescribed under the Commercial Courts Act, 2015, the Parties duly participated in the pre-institution mediation to amicably resolve the dispute. Unfortunately, the same has not resulted in any settlement and therefore, DIG is invoking the jurisdiction of the Ld. Commercial Court, Bengaluru.
31. During the admission hearing, the Ld. Judge at the Commercial Court, Bengaluru remarked about the negative consequences of replacing the task of lawyers with AI and categorically said that AI will never replace humans but humans using AI will replace the humans who are not using AI.
32. However, the Commercial Court, Bengaluru, admitted the hearing and indicated counsels that it wishes to hear the submissions of the Parties on the following issues:
 - a. Whether Kaptaan, an artificial intelligence system can be considered as a ‘good’ under the Sale of Goods Act, 1930?
 - b. Who is liable for any defect in the product and performance of Kaptaan, an AI data analytical tool developed by MhTP?
 - c. Whether damages claimed by DIG are indirect, remote, and unconnected to the transaction between DIG and MhTP?

INSTRUCTIONS

33. The jurisdiction of the Commercial Court, Bengaluru is undisputed and no arguments on the issue of jurisdiction should be made.
34. Participants are encouraged to follow the rules and regulations stipulated by the Moot Court Association with regards to the guidelines for memorial submissions and the oral hearings.



ANNEXURE A

You are an expert in contract negotiation and drafting. We are two parties representing our respective companies who wish to enter into a contract for technology development. Party 1 is a data analytics firm which harnesses the power of AI and new technologies to revolutionize the way organizations extract valuable insights from their data. Party 1 combines advanced AI algorithms, machine learning models, and state of the art data processing techniques to uncover hidden patterns, identify trends, and provide actionable intelligence to businesses across diverse industries. Party 2 is a leading software development company specializing in the development of software solutions focused on Generative AI, NLP, and LLM. Party 1 requires to develop an innovative and intelligent system capable of understanding and processing human language to extract valuable insights from vast amounts of textual data. The new technology should also be able to generate analytical reports, predictions, and strategic recommendations by analysing and identifying patterns in vast amounts of existing data and by browsing the web to understand key industrial insights through available literature. Party 2 will be responsible for building this system. I want you to draft a balanced contract keeping in mind the interests of both the parties. The consideration for the contract would be INR 72 Lakhs to be payable in three tranches. The delivery of the software should be made within 5 months from today. You are free to decide other commercial and technical terms on your own as long as they are balanced. Please draft the contract as comprehensive and accurately as possible so that the Parties can execute the contract immediately.



ANNEXURE B

Warranty:

16.1 MhTP warrants that it has the necessary skills, expertise, and resources to develop Kaptaan in accordance with the requirements as provided by DIG in due course.

16.2 MhTP warrants that Kaptaan, when delivered, will be free from defects in materials and workmanship and will function in accordance with agreed-upon specifications and purpose.