

INTERNATIONAL INSOLVENCY & BANKRUPTCY MOOT COURT COMPETITION

FOURTH EDITION: January (08 – 10), 2021

CENTRE FOR TRANSNATIONAL COMMERCIAL LAW

NATIONAL LAW UNIVERSITY DELHI

CLARIFICATIONS TO THE PROPOSITION

1. What is the nature of business structure, i.e. Conglomerate or group companies.

Please refer the Moot Proposition.

2. Was a special resolution passed by FTSL before FIL agreed to file a petition.

No, the Moot Proposition is sufficiently clear in this regard.

3. Have proceedings commenced in the UK?

Please refer the Moot Proposition.

4. Whether additional parties can be added to the dispute.

Please refer the directions of the Hon'ble NCLT in its order dated 25.10.2020.

5. Will there be FIL instead of FTSL on para 2 of page 6?

Yes, it is a typographical error. Teams are requested to replace FTSL appearing in para 2 of page 6 with FIL.

6. Date on which HSBC approached the court.

Information given in the Moot Proposition is sufficient.

7. The dispute between HSBC and Deepak Dev is separate, but the Proposition (note) bundles Mr. Ravi Shankar and Mr. Deepak Dev “on one side,” rendering us unable to ascertain which party is the applicant.

The Moot Proposition provides sufficient information about various petitions/applications and the parties therein, which are due for hearing. As regards, the memo of arguments, it is clarified that the memos for both sides are convenience

compilations for summarising the arguments of various parties in the order that they are slated to appear in terms of the order dated 25.10.2020.

8. Whether for the purpose of this moot, it will be considered that India has adopted the UNCITRAL Model Law on Cross-Border Insolvency, 1997?

Please rely only on the information given in the Moot Proposition.

9. Who was liable to pay the INR 200 crores per year under the Power Purchase Agreement with SPL?

Please refer response to Query 5 above. FIL was liable to pay SPL under the Power Purchase Agreement.

10. Was Mr. Deepak Dev a director in all Fortuna Group companies including FGE and FTSL?

Please refer the Moot Proposition.

11. Which FGE insolvency proceeding was to be consolidated under IA 1063/2020? The proceedings in the UK or the proceedings against Mr. Deepak Dev, or both?

Please refer the Moot Proposition.

12. Is Mr. James McNulty impleaded and/or submitting on behalf of the UK consortium of lenders in CP(IB)/PB/95/21/2020 against Mr. Deepak Dev?

Please refer the Moot Proposition.

13. As per page 10 of the problem, does Mr. James McNulty contest the application for annulment of the alleged preferential transaction, or does he contest the transaction itself?

Mr James McNulty is contesting the allegation of the transaction being preferential and fraudulent and accordingly, contesting the application as well.

14. Do the teams have to consider the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 (no. 9 of 2020) as it is?

All Indian laws are applicable unless mentioned otherwise in the Moot Proposition.

15. Does the term “headquarter” in the moot problem have the same meaning as “registered office”? (Page No. 3)

Information given in the Moot Proposition is sufficient.

16. As per law, every LLP is bound to have at least two designated partners, however, in the moot problem only Mr. Deepak Dev is mentioned as a designated partner of Quest Holdings

LLP. Is there any other designated partner in the LLP along with Mr. Deepak Dev? (Page No. 2)

Information given in the Moot Proposition is sufficient.

17. Please elaborate on the following sentence: “FTSL only had limited assets in terms of the right to use the spectrum licensed by the Government of India”. (Page No. 3)

Information given in the Moot Proposition is sufficient.

18. On what ground is Mr. James McNulty contesting application under section 10 to initiate insolvency proceedings against FTSL? (Page No. 10)

It is clarified that Mr James McNulty is only impleaded in IA 1063/2020 in CP(IB)/PB/7/253/2020.

19. The Power Purchase Agreement between FIL and SPL mentioned that FTSL shall be liable to pay a fixed price of 200 hundred crores per year in return of availing specified units of electricity. Is the liability of FTSL a typographical error or has it been mentioned on purpose? (Page No. 6)

Please refer responses to queries 5 and 9 above.

20. Please clarify whether a Demand Notice has been sent by HSBC in accordance to the law? Ref: “Before sending the statutory demand notice and filing of the petition to initiate insolvency resolution process before the NCLT, Principal Bench against Mr Deepak Dev, HSBC on behalf of the consortium of European lenders had served upon Mr Deepak Dev a notice calling upon him to repay the entire loan of FGE failing which the lenders would undertake necessary actions available to them under contract and / or applicable law.”

Information given in the Moot Proposition is sufficient.

21. Instead of contesting the recovery of 280 Crores by Mr. Ravi Shankar on behalf of FIL, why Mr. James is contesting Preferential and Fraudulent Transaction?

Please refer the response to Query 13 above.

22. Please clarify: Why does Mr. Ravi Shankar, in the application under section 43 and section 66 for annulment of Assignment cum Settlement Agreement, seek necessary order to recover 280 crores and 120 crores from FGE and FTSL respectively?

Information given in the Moot Proposition is sufficient.

23. Where is the Registered office of FIL and FTSL situated?

Information given in the Moot Proposition is sufficient.

24. Who is/ are the Settlor(s) in Atul Dev Trust?

Information given in the Moot Proposition is sufficient.

25. When was the Atul Dev Trust formed?

It was formed after the death of Mr Atul Dev.

26. Whether the prayer, made by the RP Mr. Ravi Shankar, for consolidation of the insolvency proceedings of FIL, FTSL and FGE was made for a procedural coordination or a substantive consolidation?

Information given in the Moot Proposition is sufficient.

27. Whether India has also adopted the UNCITRAL Model Law on Enterprise Group Insolvency, 2019 for the purpose of this moot?

Information given in the Moot Proposition is sufficient.

28. Whether SBI Bank was a part of the Joint Lenders Forum?

Information given in the Moot Proposition is sufficient.

29. When was the insolvency application under Section 7 filed against FIL?

Information given in the Moot Proposition is sufficient.

30. Whether the FIL had any Directors other than Mr. Deepak Dev, Mr. Rishabh Dev and Miss. Ridhima Dev?

Yes, there were two (2) more directors.

31. Do FIL and FTSL share common lenders?

Information given in the Moot Proposition is sufficient.

32. Whether FIL, FTSL and FGE have a consolidated balance sheet?

Information given in the Moot Proposition is sufficient.

33. Please clarify the term 'various externalities' mentioned on page 4 and 9.

Information given in the Moot Proposition is sufficient.

34. Who are the shareholders of FIL other than the Atul Dev Trust?

Information given in the Moot Proposition is sufficient.

35. What is the line of business of Quest Holding LLP?

Information given in the Moot Proposition is sufficient.

36. Are the lenders of FIL and FTSL common?

Information given in the Moot Proposition is sufficient.

37. Is FGE, being a Public Limited Company, listed overseas or in India or both?

Information given in the Moot Proposition is sufficient.

38. Are there any public shareholders in holding of FIL?

Information given in the Moot Proposition is sufficient.

39. As per the problem, Part III has been notified in entirety with effect from 01.02.2020. Does it have retrospective application?

Information given in the Moot Proposition is sufficient.

40. The balance amount of Rs. 100 crore, from the Assignment cum settlement agreement and the receivables of FGE and FTSL. Is there any statement showing the accounting of this transaction

Information given in the Moot Proposition is sufficient.

41. Since Mr. James McNulty was impleaded in the IA pertaining to Sec. 43 and 66 of IBC, 2016, is there any other factual matrix supporting the same?

Information given in the Moot Proposition is sufficient.

42. Is there any chance that the Financial details in the form of Financial Statements are provided for the understanding of the company structure.

Information given in the Moot Proposition is sufficient.

43. Since the expansion strategy of FGE was to acquire local brands, is there any sort of contingency or indemnity that has been provided to these local brands?

Information given in the Moot Proposition is sufficient.

44. When FIL defaulted in paying the dues of SPL for two years, then, what happened with the fixed charge which was created on FTSL by FIL in favour of SPL under the Power Purchasing Agreement

Information given in the Moot Proposition is sufficient.

45. Are there any assets of FGE situated in India?

Information given in the Moot Proposition is sufficient.

46. Are there any assets of Mr. Deepak Dev situated in United Kingdom?

Information given in the Moot Proposition is sufficient.

47. Where is the registered office of FGE located?

Information given in the Moot Proposition is sufficient.

48. On page 8 of the proposition, it is mentioned that HSBC served statutory notice to Mr. Deepak Dev; however, nothing is mentioned in regards to Mr. Deepak's response to it. In the absence of this, is it correct to assume that he failed to respond during the notice period?

Information given in the Moot Proposition is sufficient.

49. Till which particular date should one follow the ordinances introduced by the government? This is imperative to be known as it directly has an impact on two of the issues in the memorial. For eg- Section 10A and its implications

The applicable law has also been clarified in one of the queries, i.e. all Indian laws apply unless mentioned otherwise in the problem. The only development is the new ordinance which does not have any bearing on the problem.