

## CLARIFICATIONS ON THE MOOT PROPOSITION

2<sup>ND</sup> INSOLVENCY AND BANKRUPTCY MOOT COMPETITION, 15-17 NOVEMBER 2018

NATIONAL LAW UNIVERSITY, DELHI.

1. Are Container Fin, Mecator Fin and Citi Fin, U.S. based banks/ financial institutions?

**Yes. They are all U.S.-based.**

2. Can the current Market Value of each asset of the company be provided, individually?

**Required information will be provided in the Information Memorandum to be published after shortlisting of teams for Oral Rounds.**

3. Did Kelvin Murray apply for recognition as foreign main proceedings?

**Participants/counsel may raise suitable arguments as per their analysis. Facts mention that Mr. Kevin Murray applied to AA for recognition of a foreign proceeding.**

4. Does the payment of Rs. 100 crores mentioned in the last line of para 2, page 6, include the excess amount of Rs. 20 crores as referred to in para 2 of page 9?

**Yes. Para 2 of Page 9 refers to payments in the financial year 2016-17. The alleged excess payment is part of the INR 100 crores reflected in the audited financial statement of APL for 2016-17.**

5. Format for information memorandum and its required documents.

**Same as Answer to Question 2.**

6. Is the fully-owned subsidiary, ALSL incorporated in India or abroad? Further, where were the operations of ALSL carried out?

**ALSL was incorporated in USA. Its registered office is in USA. It has offices and assets located in Singapore, UAE, Cyprus, Visakhapatnam. The Board of Directors usually meet and manage the company from Visakhapatnam.**

7. Is there any limitation for the number of issues that can be addressed?

**No. However, prescribed page limit has to be strictly observed. Flagging the issues and providing a neutral and brief analysis of the same shall be sufficient for the purposes of Memorandum.**

8. It says the Coc has already approved of the resolution plan of RCL. In the IBBI website there is a case law which states that the CoC is the ultimate authority in rejecting or approving the Resolution plan and NCLT does not have discretionary power for modifications of resolution plans. So, does that mean RCL's plan has been approved and no modifications can be made to it? (Case law: Gupta Energy Pvt. Ltd. [MA 24, 80 & 110/2018 in C.P. No. 43/I&BP/2017])

**Participants are allowed to raise questions seeking clarifications of a factual nature only. Comprehension, interpretation and checking the correctness of case law is entirely left to the participating teams to consider.**

9. Liquidation for the assets which's values are not provided.

**Same as Answer to Question 2.**

10. Referring to Para 1, page 2, what is the interest rate at which the consideration amount of INR 500 crores was to be paid by ACL to GK Constructions? Further, how much of the interest amount has already been paid?

**The table in Page 7 of the Moot Proposition indicate that the outstanding amount owed to GKCL as at 30.03.2018 is INR 250 crores. This figure includes interest accrued till the**

said date. The agreement dated 05.07.2010 between ACL and GKCL envisaged complete repayment over a period of 10 years. The amounts deemed repaid so far by ACL to GKCL's account were set-off from the gains made by GKL from being engaged as a dealer for at least 30% of ACL's sales in a given year, as envisaged in the agreement. This arrangement continued until March 2018. The outstanding INR 250 crores is mostly comprising of the principal amount as only a little more than 2 years were remaining on the 10 years period. The interest rates applied were ordinary market rates. There is no dispute between ACL and GKCL regarding the amount outstanding on the debt.

11. Referring to Para 2, of the first page of the moot proposition, the face value of the shares of ACL has been given as Rs.10. Is the Rs. 100 Crore that is raised by ACL, the Market Value of the total share capital, or is it the issued share capital that would be shown in the company's balance sheet?

**The 100 crores is not the market value of the share capital of ACL.**

12. Referring to the last para on page 3 of the problem, line 7, does the 'manufacturing plant and machinery' refer to the entire plant and machinery of ACL or just to the plant and machinery in Rajasthan?

**'Manufacturing plant and machinery' in Para 3 of page 3 of the Moot Proposition refer to plant and machinery owned by ACL as of the date in which the loan agreements were entered into.**

13. Should we address the Coc or Adjudicating Authority considering the Coc only has powers of modification?

**Depending on the specific round, the participants may address their submissions on issues to different fora. For the memorandum, only a neutral analysis of the issue is required, which may be addressed to the Adjudicating Authority.**

14. The date of completion of 85 storage facilities by GKCL?

**The last of the 85 storage facilities was constructed in July 2015.**

15. The initial paid up capital of APL?

**Same as Answer to Question 2.**

16. Was the resolution plan of JMCL in conjunction with the conditions laid down in section 30(2) of the IBC?

**Yes, unless the given facts otherwise indicate.**

17. Was there any process document or agreement between the RP of ACL and the Committee of Creditors which suggested that they shall negotiate only with the highest bidder?

**The Invitation for Resolution Plan as well as the Evaluation Matrix was approved by the Committee of Creditors before evaluation of resolution plans.**

18. Were there any common directors in ACL and APL? What percentage of APL's stock was held by ACL?

**APL was wholly-owned by ACL. There was one common director in ACL and APL.**

19. What form of cooperation was sought by Kelvin Murray with respect to the USD 100 million loan?

**Refer to Answer to Question 3.**

20. What is a non-adversarial format for the memorandum? Should there be applicants and respondents? If not, what is the format for that?

**There is no need to have applicants and respondents. A neutral, brief analysis of the issues will be sufficient. However, if the participating teams prefer to present the issues in the form of arguments from applicants and respondents, they may do so.**

21. What is the nexus between Rambo Constructions Limited (RCL) and JMCL to ACL?

**None other than that indicated in the given facts.**

22. What is the place of incorporation of ALSL? What percentage of its turnover is attributable to its business in the US, if any?

**ALSL was incorporated in USA. Its registered office is in USA. It has offices and assets located in Singapore, UAE, Cyprus, Visakhapatnam. A major part of business turnover accrues from non-USA located offices/centres.**

23. What is the power grid referred to as mentioned on page 2, para 3, line 6 of the proposition?  
By whom is the same owned and controlled?

**It refers to a stipulation in the PPA to build transmission facilities to connect APL (generator) to the power grid.**

24. What was the date of submission of the revised resolution plan by JMCL ?

**19.10.2018**

25. What was the percentage utilisation by ACL of the total power output by APL in 2016-17?

**Since APL was(is) not connected to the grid, the entire output was consumed by ACL.**