

## INTERNATIONAL INSOLVENCY & BANKRUPTCY MOOT COMPETITION

FIFTH EDITION: April (08 – 10), 2022

CENTRE FOR TRANSNATIONAL COMMERCIAL LAW

NATIONAL LAW UNIVERSITY DELHI

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### MOOT PROPOSITION

1. Fairdeal Industries Limited (**FIL**) is a company incorporated under the Companies Act 1956 and holds diverse business interests spanning across Family Vacation Resorts, Hospitality, Tourism, and retail, amongst others. FIL was founded in the year 1981 by Mr Akhil Dev with trading business in textiles and diversified its interests starting from trading in coal in the State of Maharashtra in the 1990s, to establishing a network of Family Vacation Resorts, Hospitality, Tourism in the 2000s. Mr Akhil Dev's son Mr. Amar Dev played an instrumental role in the growth of FIL post 1990s. Post 2004, when Mr Akhil Dev passed away, Mr Amar Dev found tremendous support and assistance in his son and daughter, Mr. Benny Dev and Ms. Babli Dev. Mr Amar Dev was able to establish and run FIL's businesses with a formidable reputation and soon found a place in the list of the top conglomerates in the country. FIL is primarily held by Mr Amar Dev and his family through a complex holding structure involving trusts and partnership firms. Amongst other shareholders in FIL, Akhil Dev Trust (a discretionary trust) holds approx. 55% shares in FIL. Ms Ayesha, a senior and professional wealth manager, who is considered close to the Promoter Family of FIL, is the trustee of Akhil Dev Trust. The beneficiaries of Akhil Dev Trust are a limited liability partnership firm, Quess Holdings LLP (incorporated under the Limited Liability Partnership Act 2008), and a charity, namely Fairdeal Foundation, which is a professionally managed NGO. Quess Holdings LLP has three partners, viz. Mr Amar Dev, Mr Benny Dev, and Ms Babli Dev with their respective partnership share being 51%, 24.5%, and 24.5%. Mr Amar Dev also serves as the designated partner of Quess Holding LLP.

2. The Fairdeal Vacation Resorts of FIL is the largest Family Vacation Resorts Chain in the country due to which it could leverage and finance its businesses in Hospitality, Tourism and retail. FIL has one wholly-owned subsidiary company in India, Fairdeal Hotels Limited (FHL), which housed the business of Hospitality, Tourism and Travel solutions. FHL was founded in the year 2008. FHL successfully established a large network across the country and with its strategy to provide bespoke solutions packaging hospitality with tour & travel solutions, it was able to fetch a large user base becoming a major player in the country. FHL owned and operated most of these resorts and hotels, some of them were operated under franchisee agreements where the franchisees were owners or leaseholders of these assets with FHL having a share in Royalty.
  
3. The expansion plans by FHL required large financing, which was possible due to the support of FIL. FHL raised approximately INR 20,000 crore from the same consortium of 6 lenders, led by SBI, which had also provided loans to FIL, in the form of term loans to finance its project activities in setting up the business. Considering FHL only had limited assets in terms of the franchise agreements with various franchisees, FIL had to provide a major part of the security as well as corporate guarantees to the lenders. In line with the practice in project financing, the lenders also insisted on personal security from the Promoter Family of Fairdeal Group and accordingly, Mr Amar Dev signed a letter stating the following in favour of the lenders of FHL:
 

*“This letter is provided for the comfort of the Lenders, and Mr Amar Dev hereby guarantees that FHL would be able to meet its repayment obligations at all times.”*
  
4. Apart from the thriving Resorts, Hospitality, Travel & Tours business of the Fairdeal group, it had also forayed into the European market especially focusing on retail and fashion. A company named Fairdeal Global Enterprises PLC (**FGE**) was incorporated in the United Kingdom in the year 2011, of which Quess Holdings LLP was the 99% shareholder. The entire retail and fashion business of the Fairdeal group in Europe was housed in FGE. The expansion strategy of FGE in Europe involved the

acquisition of various local brands by raising acquisition financing in Europe, and with the formidable reputation of Fairdeal Group, FGE was able to expand exponentially between 2011 and 2019. In the process of expansion, FGE raised financing to the tune of \$ 1.25 billion (approx. Rs. 9,000 crore) from various banks in Europe led by Barclays. One of the securities for the said financing raised by FGE was the pledge over the shareholding of Quess Holdings LLP in FGE *vide* Pledge Agreement dated 11.07.2016, apart from the floating charge created in favour of debenture holders over the undertaking of FGE in UK.

5. One of the key strengths of the Fairdeal group was the ability of the Promoter family to control the entire operations of the group from their corporate offices headquartered in New Delhi, where a core group of Senior Managers would assist the family in overseeing and controlling the entire operations of the group. This core group led by the Promoter family would, in turn, assist the Board of Directors and senior management of its group companies in setting targets and goals and providing assistance in implementing short term as well as long terms plans to achieve their respective targets and goals. In terms of the family arrangement, while all members of the family are members of the Board of FIL, Mr Benny Dev and Ms Babli Dev are also directors in FHL and FGE, respectively, apart from other directors in each of the companies. FGE also operated a garments manufacturing unit at Gandhi Nagar, New Delhi along with an office to coordinate these operations.
6. Up till the year 2018, the business at Fairdeal group was going as usual with a favourable outlook from all credit ratings as regards the prospects of various businesses of the group. However, the group faced various externalities in view of which the entire ecosystem of their businesses came under stress.
7. The onset of Covid-19 Pandemic in January 2020 caused a major economic crisis resulting in a massive decrease in the hospitality, travel & tourism sector. This led to a massive loss of business for FIL starting a distress spiral as regards its businesses.

8. This apart, the aggressive expansion strategy of FGE in the European market was also not bearing the expected fruits due to two reasons. FGE was finding it hard to grab a respectable market share with its brands as the entry of new brands in the European market led to a very diverse and divided market, which was not conducive to FGE. The onset of Covid-19, in January 2020, led to widespread lockdowns, retail malls, shops establishments were closed for a long time, due to the airborne virus, people mostly adopted a work-from-home policy thus drastically cutting down on retail spendings on clothes and garments. These causes finally triggered the start of distress at FGE in the early part of the year 2021.
9. The Hospitality, Travel & Tours business in India usually was doing good, and with the large market share of FHL, it stood in a comfortable place to sustain and prosper its hold in the market. The Board of FIL, FHL had to assess their financials and the group's financials to check if FHL would be able to fund massive capital investments required for modernising this network throughout the country. FIL had provided financial assistance to FGE and FHL in the year 2018 by way of inter-corporate deposits towards which as on 31 March 2020, INR 250 crores and INR 250 crores remained outstanding and payable by FGE and FHL to FIL, respectively.
10. Mr Amar Dev is a very social person and has good relationships with the who's who of India Inc. One of Mr Amar Dev's good acquaintances is Mr Devesh Sambal, who is a promoter-founder of Sambal Group that has diverse interests in a range of businesses including a steel plant. Mr. Amar Dev and Mr. Devesh Sambal enter into a Joint Venture to create a Special Purpose Vehicle to apply for coal mining lease and then build a captive power plant that would primarily supply power to the steel plant of Sambal Group with the excess to be sold to the discoms. This company was incorporated as Sambal Power Limited (**SPL**) having its registered office in Cuttack Odisha, with Rs. 10 crore capital where Mr. Amar Dev held 40% share and Mr. Devesh Sambal held the other 60% share capital. SPL won a coal mining lease in Odisha and in January 2019, availed term loans and advances worth Rs one crore from a consortium of lenders led by Bank of Baroda. SPL was allotted land worth Rs. 50 lacs on leasehold basis from the Odisha Industrial Authority and paid 50% till the

time the land was allotted. The construction for power plant was started along with setting up of the infrastructure for mining. However, due to the onset of the Covid-19 Pandemic in January 2020 and resultant lockdown imposed in March 2020, the construction workers engaged migrated back to their native places resulting in complete halt in the construction and setting up work. The construction plans were elaborate and most machinery was imported by making full advance payments, this resulted in onset of distress at SPL during December 2020, at that time the outstanding amount was Rs. 85 lacs. From June 2021 SPL was unable to honour its loan obligations. The Odisha Industrial Authority served a notice to terminate the leasehold land allotted upon failure to pay the balance amount due.

On 12<sup>th</sup> August 2021, SPL submitted an application under section 54-C of the I&B Code 2016 to initiate Pre-Packaged Insolvency Resolution process for SPL, at the NCLT Cuttack. The total outstanding claims of SPL were Rs. 95 lacs. On 20<sup>th</sup> December 2021, the PPIRP application of SPL was admitted by the Hon'ble NCLT. Mr. Ashu Tomar was appointed as the Interim Resolution Professional. Notice inviting plans was issued. The Mr. Devesh Sambal and Mr. Amar Dev offered to pay Rs. 25 lacs to all the creditors of SPL.

**[Prepare arguments on this issue separately (required only in the memorandum of pleadings)]**

11. Given the onset of distress in FIL and FGE since 2020, they started to default on their repayment obligations to their respective lenders. FIL's loan accounts being in India became overdue for more than 90 days by 30.06.2021, after which the lenders of FIL classified its loan accounts as Non-Performing Assets (NPA) as per the extant RBI guidelines. Given the large size of the loan book of FIL standing at INR 30,000 crores as on 30.06.2021 owed to a consortium of 10 lenders in India, the lenders constituted a Joint Lenders Forum and initiated discussions for the restructuring of the loans of FIL.

12. Post the defaults in repayment by FGE to its European lenders, FGE applied for 'soft touch' Administration order, where they could continue to manage the business,

from the UK Court at London. Under the applicable law of UK, Mr James Scott was appointed as the Administrator of FGE by the English Court *vide* an order dated 15.01.2021. On 25.01.2021 Mr. James Scott filed an application at NCLT PB for recognition of the English proceeding of FGE and sought moratorium on its assets located in India which was disallowed as the NCLT felt that the British action did not qualify as an ‘insolvency proceeding’. This decision was appealed in the NCLAT.

13. Lenders of FGE led by Barclays sought to initiate the enforcement of security actions in UK against Mr Amar Dev in terms of the provisions of the English Law, on the strength of the following Covenant to Pay in the Agreement of Guarantee dated 11.07.2016, which reads as under:

*“08. Until the discharge of all Obligations in full, the Guarantor (Mr Amar Dev) shall be liable to pay to the Lenders on demand all present and future monies, debts, and liabilities due, owing and incurred by FGE to the Lenders in any manner whatsoever.*

*“**Obligations**” means all indebtedness and other liabilities and obligations of FGE to the Lenders of every kind, nature and description, present or future, direct or indirect, secured or unsecured, joint or several, absolute or contingent, matured or not, in any currency, due or to become due, now existing or hereafter arising, regardless of how they arise or by what agreement or instrument or whether evidenced by any agreement or instrument and whether as principal or surety.”*

14. In the meanwhile, the lead lender of FIL, State Bank of India (SBI) filed a petition under Section 7 of the **IBC** before the NCLT, Principal Bench, for initiating corporate insolvency resolution process (**CIRP**) against FIL, which was numbered as CP(IB)/PB/7/253/2021. The NCLT, Principal Bench *vide* its admission order dated 30.07.2021, initiated CIRP against FIL and appointed Mr Rakesh Sunil as the Interim Resolution Professional of FIL, who was subsequently confirmed as the Resolution Professional in the first meeting of the Committee of Creditors of FIL held on 30.08.2021.



15. Post the commencement of CIRP of FIL, FHL also started facing distress leading to irregular payments to its lenders and ultimately was unable to meet its loan servicing timelines.
16. The Consortium of Creditors of FHL applied for a forensics & auditing firm to find out details about its financial affairs; Forensic7 was duly appointed for the same. Forensic7 reported that the defaults in FHL are due to various externalities. They were able to find traces of suspect transactions where it appeared that monies were used in the purchase of properties in names of Akhil Dev Trust in New Delhi, Cuttack, Bangladesh, England.
17. The consultant also suggested that future projections of FHL appear better only if it invests further in the Hospitality, Tourism and retail across India, as the adverse effect of Pandemic was decreasing and there was high probability of increased trade and commerce activities. However, FHL does not have sufficient leverage to raise financing for the new capital investments.
18. The SBI, as lead consortium banker, filed a petition under Section 7 of the I&B Code, 2016, to initiate CIRP of FHL, which was numbered as CP(IB)/PB/9/95/2021. The application was admitted on 26.09.2021.
19. The RP Mr Rakesh Sunil, upon recommendation & approval from the CoC, filed a separate interlocutory application for consolidation of the insolvency proceedings to be conducted as a group for efficient resolution, value maximisation and ensuring benefit of all stakeholders and subsequently, the CIRPs of FIL, FHL, and FGE, in which application Mr Rakesh Sunil also impleaded Mr James Scott as the Administrator of FGE. This consolidation application was numbered as IA 1093/2021 in CP(IB)/PB/7/253/2021 and CP(IB)/PB/10/95/2021.

20. The RP Mr Rakesh Sunil, having concluded the forensic audit of FIL, has also filed an application under Sections 43 and 66 of the IBC for avoidance actions and wrongful trading with respect to properties in name of Quess Holdings LLP at New Delhi, Cuttack, Bangladesh, England, which seem to have been acquired via routing the funds from FIL, FHL.

21. The Hon'ble NCLT Principal Bench consolidated all the insolvency proceedings with respect to the FIL, FHL, FGE, due to the seemingly inter-dependencies between businesses, into one consolidated proceeding, pursuant to which EoI for Resolution Plans was issued by the Resolution Professional Mr. Rakesh Sunil. Three Resolution Plan were received, (1) Quantash Co. (2) Dimpy Co. (3) Fidelities Co. The Resolution Plan submitted by Fidelities Co. for Rs. 4,100 crores was found suitable by the CoC who recommended its approval by the Adjudicatory Authority.

22. On 10.01.2022 the NCLT PB approved the Resolution Plan of Fidelities Co. after finding it satisfied the requirements laid down under the Insolvency and Bankruptcy Code, 2016. On 25.01.2022 this order was challenged by the operational creditors in the NCLAT, citing also among other issues, that they were kept out of the Resolution Plan discussion and selection process.

The total outstanding for FIL, FHL, FGE were (admitted claims in crores):

Sr. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount claimed	Amount Provided under the Plan	Amount provided to the Amount claimed (%)
1	Secured Financial Creditors	(a) Banks	59,000	3485	85%
3	Operational Creditors	(a) Related Party of CD ('FIL')	500	0	0%
		(b) Other than above	3000	492	12%
		(a): i. Workmen & Employees ii. Trade Creditors	2000	123	3%
	Total		64,500	4,100	

The liquidation value of the group was assessed at Rs. 3,600 crores.



23. Upon approval of the Resolution Plan and consequently lifting of the CIRP imposed moratorium, the British lenders commenced court proceedings in India and England to recover and enforce their security interest on FGE assets, (and also invoked the guarantee provided by Mr. Amar Dev), (Administration came to an end in UK during December 2021 upon entering a Company Voluntary Arrangement (CVA) between FGE and its lenders).
24. The successful Resolution Applicant Fidelities Co., applied in UK court for recognition and enforcement of the Resolution Plan approved by NCLT PB which was opposed by Barclays Bank and other European creditors relying upon the 'Gibbs Rule'.
25. RP Mr. Rakesh Sunil filed avoidance transactions applications in respect of various properties located in New Delhi, Cuttack, Bangladesh, England owned by Quess Holdings citing that they were created out of the funds of FIL, FHL, FGE. Fidelities Co. filed application to become a party in the avoidance applications that had already been filed by Mr. Rakesh Sunil and claimed as the sole beneficiary.

#### **Notes:**

1. The teams are requested to prepare a memorandum of arguments on behalf:
  - a. Appellants before NCLAT- as per issues below
  - b. For the pre-package issue- Bank of Baroda and Trade creditors
  - c. Respondents before NCLAT- as per issues below
  - d. only for the pre-package issue- CD SPL
2. Teams shall assume that Part III of the IBC has been notified in entirety with effect from 01.02.2020
3. Teams shall assume that Part Z (Cross-Border Insolvency along with the Rules and Regulations) of the IBC has been notified in entirety with effect from 01.10.2020
4. Arguments on the following issues are to be taken up in the Memorandum of Pleadings. For oral rounds, issues are likely to be identified separately (but not vastly different from those in the memorandum).
5. Some further information may be provided prior to a suitable stage of oral rounds that could be utilised for arguments.

## Part-A:

Issue 1: Whether the NCLT rightfully applied the Part Z (Cross-Border Insolvency along with the Rules and Regulations) of the IBC, Right of Foreign Representatives, while rejecting the application of James Scott dt. 20.04.2021. [Parties: James Scott V/s CoC/ RP, at NCLAT]

Issue 2. Opposing the consolidation application; [James Scott V/s CoC at NCLAT]

Issue 3: Whether the Resolution Plan approved by the CoC meets the requirements of IBC? [Parties: OC vs CoC, at NCLAT] (*only in the memo, may not argue in rounds*)

Issue 4: Avoidance actions under S 43 and 66 of IBC [Parties: Fidelities (SRA) vs CoC, NCLAT]

Issue 5: Barclays Bank and European Lenders initiate court proceedings in India to enforce their security interest. [Parties: Barclays Bank and European Lenders v FGE]

## Part-B:

Whether the Resolution Plan can be recognised and enforced in the UK/ applicability of the Gibbs Rule [SRA V/s Barclays & foreign lenders, at the Insolvency and Company Court at Rolls Building, London UK]

## Part-C:

The drafting of the Pre-Package Insolvency application and proposal could be a separate issue as the proceedings of SPL were not consolidated by NCLAT.

## References:

- 2018 ILC Cross-Border Insolvency Report with Part Z  
[https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport\\_22102018.pdf](https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf)
- Report on the Rules and Regulations on Cross-Border Insolvency,  
<https://www.ibbi.gov.in/uploads/whatsnew/2021-11-23-215206-0clh9-6e353aefb83dd0138211640994127c27.pdf>  
<https://www.ibbi.gov.in/uploads/whatsnew/3b444655b288bc815526933d75d1aefb.pdf>
- UNCITRAL Model Law on Cross-Border Insolvency, 1997  
[https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border\\_insolvency](https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency)
- Insolvency Act 1986 UK <https://www.legislation.gov.uk/ukpga/1986/45/contents>
- Cross Border Insolvency Regulations 2006 UK  
<https://www.legislation.gov.uk/uksi/2006/1030/contents/made>

## **INTERNATIONAL INSOLVENCY AND BANKRUPTCY MOOT COMPETITION, 2022**

### **NATIONAL LAW UNIVERSITY, DELHI**

**FIFTH EDITION: APRIL 08-10, 2022**

#### **FORMAT FOR MEMORANDUM**

##### **COVER PAGE**

This part must include team code (Each team will be assigned an identification number. This has to appear in the uppermost right-hand corner of its front memorial cover), the title of the matter and the name of competition and year. The sample is attached at the end.

##### **TABLE OF CONTENTS**

##### **LIST OF ABBREVIATIONS**

##### **TABLE OF AUTHORITIES**

##### **STATEMENT OF FACTS**

Briefly point out the relevant facts from the moot proposition. The page limit for this section is 2 pages.

##### **ISSUES RAISED**

Enumerate the identified issues on behalf of all the parties. As per the directions of the Hon'ble NCLT, the Hon'ble Tribunal has specified the order in which parties are to appear, accordingly, two memos of arguments/written submissions covering the arguments of respective parties.

##### **ANALYSIS OF ISSUES**

The participants are required to include a thorough analysis of all issues taking in consideration all the parties as per the moot proposition.

**FORMAT FOR COVER PAGE**

**TEAM CODE: XXX**

**INTERNATIONAL INSOLVENCY AND BANKRUPTCY MOOT**

**COMPETITION 2022**

**IN THE MATTER OF**

**XXXXXX, CORPORATE DEBTOR**

**[CASE NUMBERS, as applicable]**

**WRITTEN SUBMISSIONS ON BEHALF OF THE XXXX, YYYY, ZZZZ (as applicable)**

## F.A.Q.

1. To facilitate anonymous grading, names of the team members and the institution they represent must not appear on the memorial.
2. The teams may add other issues in addition to the 'key issues identified' if they think it is necessary.
3. Each participating side (corporate debtor, operational creditors and so on) may raise different issues.
4. Plagiarism in the analysis of the issues will lead to immediate disqualification.
5. Plagiarism refers to (but may not be limited to) cases of using another person's words without attributing credit to that person, such as copying or paraphrasing text and/or using the same string of views laid down in the works of another person without proper attribution and citation to the author of the source. This is left to the determination of the memo judges who may make use of Turnitin apart from their judgement. A passage in the answer may be deemed plagiarised regardless of intent of the team, whether it was just overlooked, whether someone forgot to check, or whether it was done with complete innocence.
6. Please make one memorial for each party. Part A, Part B and Part C can be included as separate parts in the same memorial document.
7. All these clarifications are for written memorial and fresh information and facts will be provided at a later stage for the purpose of oral rounds. Participants will be informed about the same at the suitable stage of the competition.

### ***Questions seeking clarifications***

1. Did NCLT PB then recognise the UK Proceedings as Main Proceeding (refer to para 2, page 6)? If not, what was the judgment?

***Answer: N/A***

2. Were foreign creditors invited in Indian CIRP of FGE?

***Answer: No comments***

3. What were the applicable laws in key contracts between FGE and lender banks?

***Answer: UK Laws***

4. Are the 'court proceedings by British lenders' (refer to para 3, page 8) connected to/same as the application for Administration Order by Barclays Bank (refer to para 4, page 5)? Or are they separate lawsuits commenced by the British lenders concurrently in both countries? If yes, was the action taken under insolvency, or some other law?

***Answer: Facts have been modified. Please refer to the updated moot problem for clarity.***

5. Were the properties in the names of Benny, Babli, and Akhil Dev Trust (refer to para 2, page 7) or Quess Holdings LLP (refer to para 6, page 7)?

***Answer: Facts have been modified. Please refer to the updated moot problem for clarity.***

6. Are any values missing in the row of 'OC/Trade Creditors' in the table (refer page 8)?

***Answer: Kindly refer to the data given in the table.***

7. On page 9, Mr. Rakesh Sunil has been mentioned as the person who filed the avoidance application. However, on page 7, Mr. Ravi Shankar has been mentioned as the person who filed it. Can it be clarified who has filed the avoidance application?

***Answer: Facts have been modified. Please refer to the updated moot problem for clarity.***

8. Do we have to prepare a separate memo for the pre-package proceedings, or continue it in the same memo?

***Answer: Only one memorial is required to be submitted for each party. The participants may have separate parts in the same document for addressing Part-A, Part-B and Part-C.***