

Moot Problem for the 6th NLIU - Juris Corp – National Corporate Law Moot Court Competition
2015

IN THE HON'BLE SUPREME COURT OF PENTOS

IN THE MATTER OF

MOJO LIMITED AND ANR.

v/s.

REPUBLIC OF PENTOS. AND ANR.

1. The Republic of Pentos (“**Pentos**”) is an erstwhile colony of the British Empire and gained its independence in the mid-1900s. Pentos is an Asian democratic nation and follows principles of common law. Santos, sprawled over the west bank of the river Melody, is one of the fastest growing states in Pentos.
2. Mojo Limited (“**Mojo**”) is a public listed multinational oil and gas company incorporated in Pentos in the year 2000 as per the Pentosian Companies Act, 1956 (“**Companies Act**”), having approximately 10 lakh shareholders as on date. As on 31st March 2015, its market capitalization was INR 2.6 trillion (US\$ 48.98 billion), making it Pentos’ second largest publicly traded company. In a government survey for FY 2014-15, Mojo was ranked as the largest profit making company in Pentos. Being ranked 1st among the Top 50 Global Energy Companies, the Government of Pentos gave it the status of a ‘**Navratna Company**’. The equity shares of Mojo are listed on the National Stock Exchange of Pentos (NSE).
3. Dreamzz Limited (“**Dreamzz**”) is a public unlisted company and is *inter alia* engaged in the business of developing and dealing in real estate. It was incorporated in the year 2005 and registered in the Republic of Pentos under Section 3 of the Companies Act. Mr. Karl Singh acts as the common promoter and is on the Board of Directors for Mojo and Dreamzz. Dreamzz is the owner of a contiguous tract of land admeasuring 181 acres or 78,84,360 sq. ft situated in village Marshmelon, which has been reserved for being developed as a cyber park, to be used for software development activities and IT enabled services. Dreamzz raised money through issuance of non convertible debentures from time to time.

4. Mojo entered into a Securities Subscription Agreement dated 11.08.2009 (“**SSA**”) and a Shareholder’s Agreement dated 11.08.2009 (“**SHA**”) with Dreamzz. As per the SSA, Mojo agreed to subscribe to 100 Compulsorily Convertible Debentures (“**CCDs**”) issued by Dreamzz. The 100 CCDs were convertible within a period of 48 months from the date of allotment. Upon such conversion, Mojo is to hold 65% shareholding in Dreamzz. The SHA recorded the terms of the relationship between Mojo and Dreamzz, their *inter se* rights and obligations including matters relating to transfer of equity shares and the management and operation of Dreamzz. The CCDs automatically converted into equity on the mandatory conversion date being 12.08.2013.
5. Sometime in 2010, Dreamzz floated an investment scheme called “*Durga Scheme*” whereby it issued units equivalent to INR 5,00,00,00,000/- (Indian Rupees Five Hundred Crores Only) having minimum subscription amount of INR 10,00,000 (Indian Rupees Ten Lakh Only). The Durga Scheme offered only principal protection to investors with no commitment on interest. In promotion of the scheme, it promised returns that were significantly higher than the prevailing market rates. To make it further lucrative to a larger number of investors, the Durga Scheme was widely marketed in Pentos with personalities from various walks of life endorsing it. The main objective of the Durga Scheme was to invest the monies in volatile sectors such as real estate. For the aforesaid purpose, Dreamzz entered into a trust deed with M/s. GRU Trusteeship Services Pvt. Ltd. (“**Trustee**”) (“**Trust Deed**”), which was appointed as Trustee to act for and on behalf of several unit-holders who had invested in the scheme. It may be noted that there were other schemes also floated by Dreamzz.
6. The offer document of the Durga Scheme required Dreamzz to make continuous disclosures of any material illegality/ irregularity. The same provisions of the offer document were also reproduced in the Trust Deed which contained an obligation on Dreamzz to continuously disclose any and all non-compliance with applicable laws and regulations to the Trustee and unit-holders. Failure to comply with the terms of the Trust Deed would result in an event of default having occurred under the Trust Deed. The tenure of the Durga Scheme was 5 years with quarterly coupon payments with repayment of the principal at the time of redemption of the units. For the 1st two (2) years since the launch of the Durga Scheme, the unitholders were receiving interest @ 17.5% p.a. The interest component in respect of the Durga Scheme decreased from 17.5% p.a. to 9% p.a. in 2013. Since early 2014, there were multiple delays committed in payment of interest and in January 2015, Dreamzz defaulted in payment of interest and wished to redeem the debentures at face value. The Trustee opposed the redemption at face value and demanded interest.
7. Ms. Sudha Dev registered a complaint with the online grievance redressal mechanism of the Securities Exchange Board of Pentos (“**SEBP**”). In order to take cognizance of the complaint lodged by Ms. Sudha Dev, SEBP *suo moto* instituted an inquiry into the Durga Scheme. Upon preliminary enquiry into the nature of the Durga Scheme, SEBP chairman Mr. Kishore Parikh, warned Dreamzz to stop breaching certain basic investor - holding norms to avoid being penalized by the market regulator.

8. During the inspection, another area of concern that SEBP flagged off was with regards the utilization of proceeds under the Durga Scheme. Mr. Kishore Parikh in a press conference made a statement that *“An investor does not invest in a scheme for merely parking his money. An investor expects better appreciation of his money over a period of time. We have discovered that in a number of schemes (in particular the recent Durga Scheme launched by Dreamzz) this practice is still continuing where certain schemes are launched promising huge returns to investors. These returns are essentially paid out by accepting further deposits from a different set of investors. SEBP is examining such large scale default in the industry carefully.”* SEBP had at that time also noted that the Durga Scheme may be falling foul of the SEBP (Collective Investment Schemes) Regulations, 1999. Relevant terms of the Trust Deed are provided in **Annexure I**.
9. In May, 2015, news broke out that Dreamzz had been using a major portion of the proceeds raised by the Durga Scheme for refunding the subscription monies to the funding entity of a scheme launched in 2007 rather than using the same for disclosed objects. Some news reports indicated the alleged fraud committed by Dreamzz to be to the tune of INR 2,000 crores. The Trustee, on becoming aware of the fraud, informed Dreamzz of its failure to inform the unit-holders and the non-compliance with applicable laws and deemed its fraudulent activities as an “event of default” under the Trust Deed. Simultaneously, the Trustee issued a default notice to Dreamzz and accelerated payment obligations and demanded repayment of the entire amount as being due and payable within 15 days from receipt of the default notice, as provided under the Trust Deed.
10. Upon Dreamzz’s failure to make the payment as per the default notice, the Trustee acting on instruction of majority of unit-holders initiated arbitration proceeding, under Part I of the Pentosian Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) for the fraud perpetrated by Dreamzz and also initiated proceeding under Section 9 of the Arbitration Act before the High Court of Santos (“**Section 9 proceedings**”) praying for certain interim protection be granted to it. It is pertinent to note that at the relevant point of time the information about the alleged irregularities by Dreamzz were to the knowledge of some of the Directors of Mojo, who played an influential role in the day-to-day affairs of Dreamzz.
11. Before the High Court of Santos in the Section 9 proceedings it was argued by the Trustee that Dreamzz had failed to disclose irregularities in its functioning and in complying with securities laws. The Trustee contended that this fraud led to investors being duped of their hard earned savings. Therefore the Trustee prayed that, by way of urgent interim relief, Dreamzz be directed to furnish a bank guarantee in order to protect the interests of unit-holders from further foul play. Dreamzz refuted this by arguing that the Section 9 proceeding was not maintainable as the subject matter of the dispute was fraud which could not be decided in an arbitration proceeding. Consequently Dreamzz pleaded that the Section 9 proceeding be dismissed along with a direction to terminate the arbitration proceeding and impose costs on the Trustee for vexatious litigation. Dreamzz further argued that it could not be directed to furnish bank guarantee to the Trustee. After taking note of the submissions made by both the parties and also the

preliminary findings by SEBP as stated by Mr. Kishore Parikh, the High Court of Santos passed the following order:

“Dreamzz shall not sell, transfer, or otherwise dispose off or part with or encumber its businesses/ divisions/ assets/ properties or undertake any other manner of divestment during the pendency of the arbitration proceedings. It is further directed that the above restraint would be lifted in the event Dreamzz furnishes to the Trustee an unconditional bank guarantee or a parent company guarantee to cover the liability of the investors of Durga Scheme, which would be kept alive by Dreamzz during the pendency of the arbitral proceedings.....”

(the “**Guarantee Order**”).

12. There were press reports suggesting that Mojo would be considering providing the Guarantee.
13. Meanwhile, in view of reports of fraud and opinions expressed by SEBP, the Central Government, taking into consideration the interest of lakhs of investors who could get adversely affected by having invested in the *Durga Scheme*, was of the prima facie opinion that in the interest of public at large, both the companies i.e. Mojo and Dreamzz should be amalgamated to pay off the debts of the unit-holders and issued a preliminary draft notification under Section 396 of the Companies Act to that effect and invited objections from the public at large (“**Draft Notification**”), relevant extracts of which have been produced in **Annexure II**. Mojo and its shareholders decided to oppose the said Notification by way of a writ petition before the High Court of Santos under Article 226 of the Constitution of Pentos. The High Court dismissed the writ petition on the grounds that there is merely a Draft Notification. Aggrieved by the summary dismissal of the writ petition by the High Court of Santos, Mojo and its shareholders moved the Supreme Court of Pentos by way of special leave to appeal.
14. Dreamzz has passed a shareholders resolution for voluntary winding up and is in the process of initiating the formalities at the High Court of Santos.
15. The Trustee, on hearing news of the writ petition before the High Court being dismissed, decided to implead itself in the special leave petition initiated by Mojo and the shareholders of Mojo before the Supreme Court and filed an application to the effect that the unit-holders had considerable interest in the proceeding as the merger of Mojo with Dreamzz would allow the unit-holders to recover the money so invested by them and therefore the same was in public interest.
16. The Hon’ble Chief Justice of the Supreme Court is deciding the SLP between *Mojo and its Shareholders v/s Republic of Pentos*. The Trustee is supporting Republic of Pentos in its application.

Note to participants:

1. The laws of Pentos are *pari-materia* to the laws of India.
2. Industry specific laws, such as laws pertaining to real estate, oil and gas, etc. are not applicable.
3. All common law jurisprudence would have persuasive value in Pentos.
4. Organizations such as the SEBP are similar in structure to that of the Securities Exchange Board of India (“**SEBI**”) and laws pertaining to SEBI would be applicable to SEBP.
5. Issues relating to the Supreme Court’s jurisdiction to hear the appeal should not be raised.
6. Submission for Trustee can be made in the same Memorial as the Submissions for Republic of Pentos.
7. A maximum of 3 issues can be raised by either side.
8. All names and references to a person, entity or trade names used in the proposition are fictitious and any resemblance to any existing persons, entities or trade names is purely coincidental and unintentional.
9. For the purposes of this moot proposition the position of law as on the date of release of this moot proposition shall be applicable;

ANNEXURE I

Relevant Clauses of the Trust Deed

5. Utilization of proceeds:

The proceeds of this issue shall be utilized for meeting the general day to day requirements of the Company for carrying out its various construction and development activities.

6. Disclosure:

- 6.1. Dreamzz (“**Company/ Issuer**”) confirms that all necessary disclosures have been made in the Offer Document including but not limited to statutory and other regulatory disclosures under all applicable laws. Investors should carefully read and note the contents of the Offer Document. Each prospective investor must make their own independent assessment of the investment in these units and the Company. Investors are required to make their own independent evaluation and judgment before making the investment and are believed to be experienced in investing in debt markets and are able to bear the economic risk of investing in such instruments.
- 6.2. The Company shall inform the Trustee of any order, direction of any court or tribunal affecting the Security for this issue.
- 6.3. The Company shall not, before informing the Trustee, voluntarily suffer any act, which has a substantial effect on its business profits, production or sales.
- 6.4. The Company shall not, before informing the Trustee, allow any act or action where by the Company’s right to conduct business is in danger of being terminated or repayment of the principal or payment of interest may be interfered with.

23. EVENT OF DEFAULT

The occurrence of any one or more of the following events shall constitute an Event of Default and would entitle the Trustee to the rights set out in Clause 24 of this Deed:

- (a) in case of any information, representation, warranty, statement, certificate given by the Issuer or deemed to be given to the Unit-holder or the Trustee is misleading or incorrect in any material respect;
- (b) default is committed in payment of any redemption amount or amounts due and payable by the Issuer on the due date i.e. the amount payable is not cleared after 10 (ten) business days of being payable;
- (c) any default is committed in the payment of any interest on the Units;
- (d) If in the sole judgement of the Trustee/Unit-holders any material fact has been intentionally concealed and/or become subsequently known to the Trustee/Unitholders;
or
- (e) if any extra-ordinary circumstances having a material adverse effect on the rights/interests of the Unit-holders has occurred which makes it improbable for the Issuer to fulfil its obligations;

- 24.** On the occurrence of an Event of Default, or any default under any of the transaction documents, the Trustee shall declare all the Units outstanding and all accrued interest thereon to be immediately due and upon such declaration the same shall thereupon become due and payable forthwith at the Early Redemption Date (as may be determined by the Trustee). The Trustee shall in that event have the rights described hereunder and the rights available under Applicable Law, as well as enforcement of the Security created hereunder and in accordance with this Deed:
- a. Cancel any outstanding commitments;
 - b. Declare that all or part of the Units, together with accrued interest, and all other amounts accrued or outstanding be immediately due and payable, whereupon they shall become immediately due and payable; and/or
 - c. Accelerate the redemption of the Units.

34. Governing Law and Jurisdiction:

This Trust Deed, the rights and obligations of the parties hereto and any claims or disputes relating hereto are to be governed by and construed in accordance with the laws of Pentos.

35. Dispute Resolution

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) (“**Dispute**”) shall, in the first instance, be attempted to be resolved amicably by the Parties in accordance with the conciliation procedure set forth in Clause 36.

36. Conciliation

In the event of any Dispute between the Parties, either Party may appoint a mediator to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the mediator or without the intervention of the mediator, either Party may require such Dispute to be referred to persons in charge of the management of the Parties. The said persons shall meet no later than 7 (seven) days from the date of notice of such Dispute in writing informing the other Party of the Dispute to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the abovementioned notice or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 37.

37. Arbitration

- 37.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 36, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 37.2. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Pentos and the language of arbitration proceedings shall be English.
- 37.2 There shall be a board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected.

- 37.3 The Arbitral Tribunal shall make a reasoned award (“**Award**”). Any Award made in any arbitration held pursuant to this Article 37 shall be final and binding on the Parties as from the date it is made, and the Trustee and Dreamzz Limited agree and undertake to carry out such Award without delay.
- 37.4 The Trustee and Dreamzz Limited agree that an Award may be enforced against the Trustee and/or Dreamzz Limited as the case may be, and their respective assets wherever situated.
- 37.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ANNEXURE II
GOVERNMENT OF PENTOS
MINISTRY OF CORPORATE AFFAIRS

The Ministry of Corporate Affairs in exercise of the powers conferred under section 396 of the Companies Act, 1956 and on the basis of prima facie opinion that it is essential in public interest that Mojo Limited and Dreamzz Trade Limited (collectively referred to as “**Companies**”) should be amalgamated into a single company, has issued the present notification.

The Government of Pentos invites objections and suggestions from the all parties who have an interest in the affairs of the Companies.

Signature

Additional Secretary to Government of Pentos

On behalf of the Government of Pentos