



TNDALU



THE TAMIL NADU DR. AMBEDKAR LAW UNIVERSITY

SCHOOL OF EXCELLENCE IN LAW

CHENNAI, TAMIL NADU, INDIA

12TH PRO BONO ENVIRO NATIONAL MOOT COURT COMPETITION, 2018

5TH – 7TH OCTOBER, 2018

MOOT PROPOSITION

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1. Margos India Limited, a company registered under the Companies Act, 1956, was once a market leader in India and a leading exporter of plastic to African countries from India. It specialised in the manufacturing of low density polyethylene (LDPE), used for making bags, films, sheets, bubble wraps and toys. In 2013, the Company won a price from the Government of India, for being a leader in exports of plastic in India, having the highest trade volume. It has recently received a huge tender from the Government of Mendango, for supply of bags, which it wished to use for packaging various products, issued under the Government's welfare scheme.
2. Watchdog International, is an NGO commenced by one Mr. Xi Alonso, an American citizen with Chinese roots, belonging to the Xi family, a leading business group in China. The Xi family, among other things, was a major exporter of plastic (LDPE) to South American countries. Watchdog International, is known for its service, in the areas of health and environment, across the globe, especially in African countries, where it has worked with great rigour in dealing with the menace of the Ebola Virus, which was greatly appreciated by as many as five governments in the African Region. Watchdog India, is the Indian wing of the Watchdog International, which is run by one Mr. Yogesh, who is a social activist, who had, prior to joining Watchdog India, played a key role in the 'India Against Corruption' movement. It is believed that Mr. Xi Alonso, keen on working in India, was so impressed by Mr. Yogesh's credentials, that he has handed over the management of Watchdog India, entirely to Mr. Yogesh and has not interfered with the Indian operations of the NGO, ever since 2015.
3. Upon taking his place as National Coordinator in Watchdog India, having its head office in Chennai, Mr. Yogesh heard of the need for help in Karapuram Village, near Coimbatore, where he heard, several children were suffering from malnutrition and diseases from the consumption of contaminated water. Mr. Yogesh, decided to review the situation himself and flew to Coimbatore and enroute to Karapuram Village, he found the

* The Moot Proposition has been drafted by Mr. Avinash Krishnan Ravi, Advocate, B.B.A. LL.B (Hons); CS (Grad); BCL (Distinction) Oxon. Any attempt to contact the drafter will lead to immediate disqualification.

roads blocked, owing to certain agitations by a group of farmers, from the Tarapuram Village, a village near Karapuram Village, where crops had been failing repeatedly for three years then, owing to poor irrigation facilities and poor quality of water. On learning these facts, Mr. Yogesh, upon reaching Karapuram, made enquiries about the source of water for the village and found that there was a major waterbody, near the border of three villages, namely Karapuram, Tarapuram and Palanad, which was only source of water for these villages. Mr. Yogesh, suspecting that the issues in Karapuram and Tarapuram were somehow connected by this lake, Mooveri, decided to visit the lake and make some inspections with his team of experts.

4. Subsequently, sometime in September 2015, Mr. Yogesh, along with his team of experts, visited the Mooveri Lake and collected water samples to test them for any chemicals. Mr. Yogesh informed the local leaders that he was taking samples of the water from the lake to conduct enquiries and tests, to determine if there was any contamination in the water and promised to initiate cleaning process, if it was found contaminated, through international funding. The efforts of Mr. Yogesh were met with huge cheer and welcome from the people of the three villages. Upon conduct of appropriate tests in the water samples collected, it was found there was excessive content of *resin*, in the water.
5. Simultaneously, in the wake of the protests by the farmers from Tarapuram, the Collector of Coimbatore, had agreed to send officials from the District Agricultural Department, to examine the quality of soil in these villages, to deploy remedies to help the farmers overcome the repeated failure of crops. Sometime around August 2015, samples of soil from across the Tarapuram village was collected by the Agricultural Department and the same were sent to the lab for testing. Also, a group of experts from the government, tested the soil for its temperature to see if it was suitable for bearing crops. In the report of the Agricultural Department, issued in November 2015, it was found that the soil in Tarapuram village was of an unusually higher temperature than normal soil in other villages in the Coimbatore district and it was found that there were substantial amounts of LDPE waste, found in the soil in this village. This report of the government, received wide coverage across the media.

6. Upon learning of the government's report from the media, Mr. Yogesh, decided to dig a little deeper into the cause of such water and soil contamination in the region and learnt that the factory of Margos India Ltd., was situated 15 kilometres from the banks of the lake and manufactured plastic, which could be a source of LDPE residue in soil as well as *resin* residue in water. However, Mr. Yogesh was unable to determine how this factory, situated nearly 15 kilometres away from the lake, could be contaminating its water and the soil, which is further away. While it appeared to him that it had something to do with the water getting contaminated underground, he was unable to find the exact cause of the same. In the meanwhile, rumours started spreading that the cause of water and soil contamination in the area was owing to pollution caused by the factory of Margos India Ltd. and agitations started outside the factory premises, sometime in January 2016. Political parties and organisations from across the State of Tamil Nadu, jumped into action, raising slogans to close down the factory, which in turn forced the government to jump into action and issue an order of temporary shutdown, until further investigation. Margos India Ltd. issued a press release dated 3 May 2016, stating that it was not in any manner responsible for the pollution in the area and that it would respect the government's decision for a temporary shutdown, until investigation was completed in this regard. The Company requested the government to complete the investigation within 30 days.
7. Nearly 10 months lapsed and the factory of the company remained shut, leaving the company unable to meet its orders and resulting in substantial losses. Unable to bear the brunt of such delay, the Company, vide a writ petition, challenged the order of temporary closure, before the Hon'ble Madras High Court in March 2017, with interim prayers to reopen the factory until disposal of the writ petition. The Hon'ble Madras High Court, vide its order dated 26 November 2017, declined to allow the company to reopen its factory, but directed the government to complete its investigation within 8 weeks therefrom. The Government, despite some delay, after a lapse of close to 13 weeks, finished its investigation and found that waste from the factory, was mixing with the ground water, nearly 50 feet below ground level, which in turn was affecting the source

of the lake, thereby contaminating soil as well as the lake, through ground water. Upon such finding in the report, the government ordered the factory to be permanently shut.

8. Aggrieved by the said order of the Government, the Company filed a writ before the Hon'ble Supreme Court of India, under Article 32, alleging violation of its rights under Article 14 and 19 (1) (g), stated that the investigation report was never served upon it to obtain its response and consequently, the order passed by the government, being in violation of principles of natural justice was *non est*. The Hon'ble Supreme Court, on admission, vide an order dated 8 January 2018 was pleased to stay the order of the Tamil Nadu Government, finding a strong *prima facie* case in favour of the Company for violation of principles of natural justice. As a result of the order of stay passed by the Hon'ble Supreme Court vide its order dated 8 January 2018, the Company had already commenced its efforts to reopen the factory and commence commercial operations, which it was permitted to do, as there was no order barring it from resuming its productions. In light of the same, on 13th February 2018, the Company commenced its manufacturing process again.
9. In the meanwhile, the State Bank of Tamil Nadu, which had lent a sum of nearly Rs. 80 crores to the Company, filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, against the company in December 2017, alleging that monies lent by the Bank to the Company had fallen in default and consequently, the company petition ought to be admitted and an interim insolvency resolution professional ought to be appointed. The State Bank of Tamil Nadu, had as its security for monies lent, the factory premises in Coimbatore, as well as the trade receivables of the company. The Hon'ble NCLT, Chennai Bench, vide its order dated 24 February 2018, was pleased to pass an order, admitting the petition of the State Bank of Tamil Nadu and ordering the commencement of insolvency resolution process in the company. One Mr. Ramachandran, was appointed as the Interim Resolution Professional of the Company by the NCLT.
10. Upon learning of the fact that manufacturing had again commenced in the factory, several protestors again took to the road and started agitations to prevent manufacturing from proceeding. However, Mr. Ramachandran, now in charge of the company as a result of

the order of the NCLT, vide a press release, informed the agitating public that there was no bar for the company to proceed with the manufacturing process and said that he was duty bound to run the company as a going concern, as per the Insolvency and Bankruptcy Code, 2016. Further, after making the press release, he moved the Hon'ble NCLT, Chennai Bench, for the issuance of an order against all protestors, to not interfere with the insolvency resolution process and the Hon'ble Tribunal was pleased to pass the same on 3 March 2018.

11. In the meanwhile, the Government of Tamil Nadu, on 8 March 2018, was pleased to pass a Government Order,¹ in relation to a long pending policy decision to ban the manufacture of plastic in the state, which came into effect forthwith, i.e. from 8 March 2018 itself. Mr. Yograj, one of the protestors in these agitations, was pleased to call upon the Resolution Professional, Mr. Ramachandran to take note of the GO passed by the Government of Tamil Nadu and close all manufacturing immediately. However, Mr. Ramachandran, taking note of his obligation to keep the company as a going concern under Section 20 of the Insolvency and Bankruptcy Code, read with Section 238 of the said Code, took a view that the tenets of the IBC would supersede the tenets of the GO passed by the Government of Tamil Nadu and consequently refused to stop the manufacturing process.
12. Aggrieved by the said response of the Resolution Professional, Mr. Yograj approached the Hon'ble National Green Tribunal, vide a petition under Section 14 of the NGT Act, praying that the Hon'ble Tribunal order immediate seizure of all manufacturing activities in the factory of the Company in Coimbatore. The Resolution Professional was represented by his counsel and it was agreed between the counsel that the matter may be disposed of finally, by dealing with the following questions, which were in dispute between the parties:
 - i. Whether the petition under Section 14 of the NGT Act, was barred by the moratorium granted by the Hon'ble NCLT under Section 14 of the IBC?

¹ G.O (Ms). No. 84 of the Department of Environment and Forests, dated 25.06.2018, may be taken as the G.O. passed by the Government of Tamil Nadu, for the sake of this moot problem.

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- ii. Whether the petition under Section 14 of the NGT was barred by limitation and was beyond the scope of original jurisdiction conferred upon the NGT under Schedule 1 of the NGT Act?
- iii. Whether the tenets of Section 20 of the IBC, would supersede G.O (Ms). No. 84 and permit the Company to proceed with its manufacturing process, in light of Section 238 of the IBC?
- iv. Whether G.O (Ms). No. 84, was an absolute bar to manufacture plastic within the State of Tamil Nadu or could it be manufactured for limited purposes, identified in the G.O itself?

In addition to these issues, the participants are free to raise such issues as they deem fit. For the sake of this proposition, Watchdog India, through Mr. Yograj, may be taken as the petitioner and Margos India Limited, through Mr. Ramachandran, its RP, may be taken as the Respondent.

Disclaimer: The moot proposition is purely based on fictitious incidents whereby the characters and incidents, the government and orders passed, and the course of events referred to are completely imaginary and have no relation to any government or any person living or dead or any real-life incident. The proposition is purely for training law students in developing an analytical mind and to augment their advocating skills.

Any required clarification regarding the moot proposition should be addressed to the following email address with the subject '**Clarification regarding the Moot Proposition: 12th Pro Bono Enviro National Moot Court Competition, 2018**' on or before 15th September 2018, 11:59 pm.

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