



1st JUSTICE D.P. GUPTA MEMORIAL NATIONAL MOOT COURT COMPETITION, 2020

19-21 MARCH, 2020

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MOOT PROPOSITION

1. The Republic of Sindhuganga, with its capital at Swarnabhumi, is the world's largest democracy with a rich and diverse civilization that dates back more than five millennia. Gaining its independence from the United Kingdom around seven decennials ago after over two centuries of systematic loot and plunder by the colonial power, Sindhuganga constituted itself into a modern sovereign, secular, federal, democratic republic, guaranteeing a host of fundamental rights to its citizens through its much celebrated Constitution. Since its independence, Sindhuganga has emerged from the malaise of sickening levels of poverty and misery widespread amongst its entire population to one of the foremost developing industrial nations of the world, boasting of a galloping economy that currently stands at around US\$ 3 trillion in nominal GDP terms.
2. Despite its giant strides in economic development, around a quarter of Sindhuganga's over 1.3 billion population still survives in a state of utter penury, deficient in affording even the basic necessities of life. Irrespective of the political party in power either at the union/central or state/provincial level, the Governments of Sindhuganga and its constituent states keep coming up with populist welfare schemes for the deprived masses in order to raise their standard of living through improvement of their economic condition as well as to win over their support in elections. With an enormous amount required to be expended for doling out these welfare measures, the Government is ever concerned about efficient collection of taxes and boosting its revenue sources so as to ensure equitable distribution of wealth amongst all and prevent its concentration in the hands of few. Howsoever seemingly benign the Government's motive may be, the deeply entrenched corruption and malpractices in the entire administrative and corporate set-up of Sindhuganga has only enhanced the income inequality to alarming proportions, with the most affluent 1% of the country owning 60% of its wealth according to the latest Oxbridge Billionaires Report released in December 2019.
3. The entire banking system in Sindhuganga is regulated by its central bank, the Federal Bank of Sindhuganga (hereinafter, "FBS"), which controls the issue and supply of Sindhugangan National Rupee (hereinafter, "SNR"). The FBS carries out Sindhuganga's monetary policy, exercises supervision and control over its banks and non-banking finance companies and renders important financial services such as storing and

managing foreign exchange and gold reserves as well as controlling inflation. As a banker to the Government, the FBS maintains its accounts, receives payments into and makes payments out of these accounts. It facilitates external trade and promotes orderly development and maintenance of foreign exchange market in Sindhuganga.

4. Ahura Mazda Group (hereinafter, “AMG”) is a Sindhugangan multinational conglomerate holding company headquartered in Mayapuri, the capital of Sindhuganga's richest state Kuntala Pradesh. Founded in 1888 by Hormusji Framji Bhabha, AMG today is one of Sindhuganga's largest conglomerates having gained much international recognition and repute after its purchase of several global companies. With its annual profits alone amounting to approximately US\$ 100 billion, AMG employs around a million strong workforce globally. AMG's humongous business profile ranges from manufacturing and other services in a vast expanse of sectors such as automotive, airlines, defense, steel, FMCG, chemicals, electricity/power, finance, hospitality, home appliances, IT, real estate, retail and telecom. Around 67% of the equity capital of AMG is held by members of the Bhabha family and the philanthropic trusts endowed by them, such as Hormusji Bhabha Trust and Behramji Bhabha Trust.
5. Rustomji Bhabha, the scion of the Bhabha family, has been the Chairman and Managing Director (hereinafter, “CMD”) of AMG since 1995. A man of near impeccable integrity, Rustomji laboured and toiled at the helm of AMG for over two decades to take the company to unprecedented heights of achievement. Under his able leadership and management, the profits of AMG grew over fifty times, establishing it as a force to reckon within the global community of companies.
6. Adishir Anahita Industries (hereinafter, “AAI”) is another business conglomerate based in Mayapuri since its establishment in 1875 by Adishir Daruwala. Its business interests range from real estate, textiles, construction, home appliances, engineered goods, shipping, publications, power and biotechnology. Owned and controlled majorly by the Daruwala family, AAI generates an annual revenue of around US\$ 5 billion from its various businesses across the globe. Darius Daruwala, a direct descendant of Adishir Daruwala, has been serving in the capacity of the CEO of AAI since 2004. The close family and business ties between the Bhabha and Daruwala families date back to the times of Hormusji Bhabha and Adishir Daruwala. As of now, AAI together with its subsidiaries holds around 19.7% stake in AMG, with Darius Daruwala serving as a member of the latter's Board of Directors (hereinafter, “BoD”) since 2005.

7. With a view to enter the 2G mobile network and broadband market, AMG founded Mazair Telecommunications (hereinafter, “MTC”) as its wholly owned subsidiary in 2010 with its headquarters in Mayapuri, thereby launching its services. In August 2014, the Government of Sindhuganga invited bids from the various telecom operators for the auction of 3G spectrum licenses for rendering 3G telecommunication services in the country. In November 2014, AMG, through MTC, purchased nationwide 3G spectrum licenses from the Government for a consideration of 15,230 Crores SNR. Being able to make only marginal profits right since inception due to stiff competition in the telecom sector, MTC found it really difficult to expand its network coverage and customer base.
8. Shangdi Tian Teleservices (hereinafter, “STT”) is a multinational telecom company, headquartered in Shanghai, China. With its business operations running in 54 countries, STT is a global leader in providing telecommunication services, having the second-largest international mobile network. In order to raise capital through foreign investments, in January 2015, AMG contracted with STT to sell 42% stake in MTC for US\$ 4.2 billion, naming their joint venture as Shamaz Air. As per Clause 25 of the Joint Venture Agreement (hereinafter, “JVA”), STT, if it so desired, was allowed to exit the venture after a period of two years at a pre-determined share price equivalent to but not less than 50% of the price paid by STT, which was to be bought by AMG if it failed to arrange any other buyer company for the same. The arbitration clause in the JVA stipulated that any dispute between the parties was to be arbitrated by the Singapore International Arbitration Centre (hereinafter, “SIAC”). The freshly infused capital enabled Shamaz Air to expand its operations across Sindhuganga with better facilities for the customers over its network.
9. Having served as the CMD of AMG with distinction for over two decades, Rustomji Bhabha desired to step down to make way for someone with younger blood and made his decision known to the AMG's BoD in February 2015. A selection panel constituted by the BoD screened the credentials of dozens of suitable candidates and finally recommended the elevation of Darius Daruwala as the CMD. Consequently, Darius took charge of his new position in June 2015. Darius was variously described as an assiduous and diligent person, by both national as well as global media, who was expected to take AMG to newer heights of success and glory. Darius brought with him an ocean of experience in managing the affairs of a global conglomerate like AAI and the AMG's BoD, including the outgoing CMD Rustomji Bhabha, based on the

promises made by Darius, hoped that he would put his heart and soul in further expanding the businesses of AMG and augmenting its profits manifold. Rustomji, though now wishing to enter the retirement mode, said that he shall always be available for advice to the company's management in case they need his inputs.

10. Once at the helm, Darius brought about myriad changes in the functioning and management of AMG, including adding many younger talents to the executive council. Steadily, the old guard of the company slowly started to feel being marginalized. Many of the subsidiaries initially registered noteworthy growth under Darius' leadership, with him winning a lot of praise both within the company as well as in the media. Darius, along with most newly appointed members of the executive council even received a pay hike in December 2015 for their admirable performance. However, despite vast improvements in its services and enlargement of its network, Shamaz Air steered from making minute profits to incurring heavy losses December 2015 onwards. Come June 2016, the share prices of Shamaz Air reduced to a third of what it stood at in January 2015. Although some of the AMG's subsidiaries such as those involved in automotive, airlines and retail businesses registered a 50% growth in their revenue during this period, the overall annual profits of AMG plummeted by 10% to around US\$ 90 billion. Perceivably upset at the underperformance of AMG, Rustomji Bhabha in an interview to the newspaper 'The Times of Treasury', said that the job of the AMG's head has never been like a casual cakewalk of some vagabond who's got no care in the world and that Darius needs to put in strenuous efforts and listen more to experienced hands to salvage the company out of its current degrading condition.
11. Unable to bear the ever-mounting losses being incurred by Shamaz Air, the STT in December 2016, sought to exit the venture by invoking Clause 25 of the JVA, thereby giving AMG three months deadline to find a buyer for its stake in MTC. Darius attempted to dissuade STT from exercising this option by negotiating with those at the highest echelons in the management of STT, but to no avail. Having failed to arrange a buyer for STT's stake in MTC, the AMG in March 2016, made an application to the FBS for permission to purchase the shares as per the terms of the agreement. The FBS refused the application on the ground that such a transfer could not be made at a pre-determined share price on a later date as per existent regulatory restrictions.
12. Constrained as a result of the ensuing deadlock, STT triggered the arbitration clause of JVA and approached the SIAC in May 2017 for breach of agreement by AMG. AMG opposed the breach of contract claim by

STT on the ground that the regulatory restrictions associated with foreign exchange in Sindhuganga prevented them from honouring their obligation under the JVA. The SIAC delved deep into the regulatory restriction's framework in Sindhuganga and the role played by FBS. Rendering its arbitral award on 30th October, 2017, the SIAC decided in favour of STT, directing AMG to pay them a total of US\$ 2.25 billion in lieu of buying back their stake and compensation for breach of JVA. Once again, AMG approached the FBS seeking permission to comply with the terms of the arbitral award. This application, however, was again rejected by the regulator on the ground that the award was in violation of Regulation 9 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside Sindhuganga) Regulations, 2000, which prohibited the transfer or sale of shares at a price exceeding the market price of shares arrived at by any international valuation methodology. The FBS further stated that the award was also in contravention of Section 6 of the Foreign Exchange Management Act, 1999, which empowers the FBS to prohibit, restrict or regulate the transfer of any security by a person outside Sindhuganga.

13. Again stuck in the impasse, on 15th December, 2017, STT initiated proceedings against AMG for enforcement of the arbitral award in the High Court of Swarnabhumi. Meanwhile, realizing the sensitivity associated with the case, Mr. Raghav Rangarajan, the Governor of FBS, communicated to the Union Finance Ministry of Sindhuganga that it was inclined to allow a settlement between AMG and STT in the interest of international relations. However, the Government taking a contrary stand, told FBS to strictly follow the guidelines. As a result, FBS intervened in the proceedings before the High Court, opposing the enforcement of the arbitral award under Section 48 of the Arbitration and Conciliation Act, 1996. The FBS argued before the High Court that the enforcement of the arbitral award was void in law as it had failed to consider the existent regulatory prohibitions and would effectively allow something that could not be done directly, to be done in an indirect manner. It further contented that the award had allowed a restricted capital account transaction in the garb of a breach of contract and claimed that the award was against the fundamental policy of India and incapable of enforcement under any circumstance. Both STT and AMG opposed the stance taken up by FBS by highlighting that the banking regulator could not object to civil proceedings between two private parties for the enforcement of a valid international arbitration award.

14. In its judgement dated 30th November, 2018, the High Court of Swarnabhumi upheld the arbitral award holding that there was nothing contrary to any provision of Sindhugangan law in the arbitral award

accepted by the two companies to resolve their dispute. It also concluded that a third party (the FBS) could not be allowed to oppose the compromise arrived at between the two companies in such a manner. The judgment, *inter alia*, held, “There is no such statutory requirement that where the enforcement of an arbitral award might result in remitting money to a non-Sindhuganga entity outside Sindhuganga, or to an account of a party outside Sindhuganga, the FBS has to necessarily be heard on the validity of the award. The mere fact that a statutory body’s power and jurisdiction might be discussed in an adjudication order or an award will not confer *locus standi* on such body or entity to intervene in those proceedings. ”On 15th January, 2019, upon instructions from the Government, the FBS moved in appeal against the judgment and findings of the High Court in the Supreme Court of Sindhuganga (Civil Appeal No. 194/2019).

15. As a fallout of this entire episode of dispute with STT, AMG lost significant goodwill and credibility amongst foreign investors. The share prices of quite a few subsidiaries of AMG plunged during this period for incurring losses and its revenue declined by 5%. Darius shed several of AMG's overseas businesses, including initiating the selloff of its perpetually loss-making aluminium plant in Canada. His style of functioning involved taking concrete decisions, answering questions at the Annual General Meetings of the various subsidiary companies, and often nudging the AMG companies’ CEOs to change focus. Darius often expressed his concerns regarding the status of AMG's businesses that had been consistently running in loss with the top management of the company and said that he intended to withdraw from all such ventures as the company cannot be made to bleed through them eternally.
16. Throughout Darius's tenure as the head of AMG, Rustomji had been thoroughly disappointed and visibly disgusted with the downfall of the company in which he had invested his sweat and blood all his life. Darius, gradually over the course of his stint, had concentrated power and authority in his own hands. Rustomji was informed that there was little or no intention on the part of Darius to encourage active discussion on the board on important business decisions and a strategy to drive the company forward. Rustomji had reasons to believe that Darius had gradually developed deep-seated resentment with the governance structure of the company as reflected in its Articles of Association (hereinafter, “AoA”). Time and again, Rustomji made several endeavours through emails to impress upon Darius that there was brewing discontentment in the BoD, but such efforts didn’t yield any satisfactory results for the former.

17. With no other alternative in sight, Rustomji was determined to have Darius removed as CMD in order to restore the health of the company. Prior to the Board meeting of 25th January 2019, Rustomji in the presence of some directors asked Darius to step down from his post in the better interest of all. Darius refused to accede to such a dictate in the absence of any ground or any decision of the BoD. On 10th February, 2019, all the eleven directors met again for transacting the company's usual course of business. Barely fifteen minutes into the meeting, two trust nominee directors went out of the board room for a few minutes, purportedly to attend a call from Rustomji and then returned back. Subsequently, at least five directors expressed their reservations regarding company's mismanagement and dismal performance under Darius' stewardship. They complained at length about the ills being faced by the company and lay the blame squarely on Darius' mode of operation and decision-making. Darius vehemently refuted the allegations and asserted that he being a man of unimpeachable integrity, his zeal and dedication for working towards the company's welfare was unassailable. However, much to his chagrin, without it being on the agenda that day, a resolution to remove him from the post of CMD was brought forth, which had eight directors in favour and two abstentions, with Darius alone opposing it. The Board passed another resolution appointing Rustomji as the interim CMD with immediate effect. In a press statement on 11th February, 2019, Rustomji and AMG justified Darius' removal on the ground that there was gross mismanagement in the affairs of the company with its losses having worsened and debt levels increased.

18. On 20th February, 2019, the minority shareholders of AMG representing AAI moved an application at the Mayapuri Bench of the National Company Law Tribunal (hereinafter, "NCLT") under Sections 241&242 of the Companies Act, 2013, alleging prejudicial and oppressive conduct on the part of the majority shareholders. AAI contended that the AoA of AMG became tools of prejudicial and oppressive interference as they provided a veto to the trust nominee directors, on every decision taken by the BoD. Although primarily done to safeguard the interests of the majority shareholders of AMG, however, this started being interpreted as a means of requiring prior consent and affirmation on whether matters could be brought before the BoD. It was argued that this was also repugnant to the scheme of the Companies Act, 2013, which required the Boards of certain large unlisted public companies to comprise of independent directors who are duty bound to safeguard the interests of minority shareholders. AAI further contended that Darius' removal was not at all in accordance with the established procedure and was done only with a malafide intention. AMG refuted the allegation that Darius' removal was on account of some personal ill will or animosity and asserted that it was only due to his failure to deliver the promises that he had made at the

time of his selection as the CMD. It was alleged that Darius had also failed to establish a healthy and constructive governance relationship with the AMG's majority shareholding trusts, thus causing an untenable trust deficit. Vide its judgment dated 26th April, 2019, NCLT ruled in favour of AMG and dismissed the petition filed by AAI for being devoid of any merit. Aggrieved, on 10th May, 2019, AAI preferred an appeal against the decision of NCLT before the National Company Law Appellate Tribunal (hereinafter, "NCLAT").

19. Back again at the helm of AMG since 11th February, 2019, Rustomji began overhauling the management and operations of the company. Many of the distinguished former employees were brought back to the executive council so that a blend of their copious experience with the talent of the younger members serves to rejuvenate and infuse fresh life and blood in the affairs of the company. He was particularly distressed at the dingy and disgraceful condition that Shamaz Air had been into all along. With ever increasing losses, Shamaz Air's cumulative debts now stood at a staggering 24,675 Crores SNR. It had also defaulted several times in its payment of corporate taxes to the Government. Together with penalties and interests, it owed around 10,987 Crores SNR to the Government. Rustomji was unable to conceive any plan to revive the fortunes of Shamaz Air to make it profitable as well as to clear its dues of debts and taxes.
20. On 15th May, 2019, AMG made an application as per the procedure under the Companies Act, 2013 to the Registrar of Companies (hereinafter, "RoC"), requesting to classify itself as a private company. All the requisite documents and proofs were duly submitted to the RoC in support of the same and all the records were accessible by the public at large. None of the directors or any other shareholder with a meaningful shareholding, except AAI, were opposed to this decision. On 20th May, 2019, AAI moved the NCLT, Mayapuri challenging AMG's decision to convert itself into a private company. Vide its order dated 25th May, 2019, the NCLT cleared the decks for AMG going private, declaring it to be well within the bounds of legality. Accordingly, on 30th May, 2019, AMG received a clearance from the RoC approving the change in its status from a deemed public limited company to a private limited company. The Union Ministry of Corporate Affairs, in a press statement issued on the 31st of May, 2019, asserted that there was no illegality in conversion of AMG from public to private. The statement further read, "Nothing has been prescribed. There is no requirement. This has been done only for ease of doing business," adding that the RoC was 'duty-bound' to change the status of AMG and there was no hurry or ill motive on its part in the conversion.

21. Aggrieved by the NCLT's order dated 25th May, 2019, AAI moved an appeal against it in NCLAT, arguing that AMG's conversion from public to private was in utter violation of Section 14 of the Companies Act, 2013 and also amounted to oppression of minority shareholders. AMG, on its part argued that all laid down procedures were duly followed in doing so and also informed the court that AMG had always been a private company right since inception, but after insertion of Section 43A (1A) in the Companies Act, 1956, on the basis of average annual turnover, it assumed the character of a deemed public company with effect from 1st February, 1975.
22. Delivering its combined judgement and order on 15th December, 2019 in respect of both the appeals filed by AAI, the NCLAT held that the effect of AMG's AoA that gave a veto power to nominee directors was such that important matters which could rightly benefit from the deliberation by all members of the Board were deprived of any inputs by not even being brought before the Board, thus amply demonstrating the preeminent position that the nominated directors of Hormusji and Behramji Trusts held on the Board. Such a prejudicial conduct inevitably resulted in oppression of minority shareholders of AMG. The tribunal declared Darius' unceremonial removal from the BoD and Rustomji's hasty appointment as CMD to be illegal on account of being violative of the relevant provisions of the Companies Act, 2013. Going even beyond the specific relief claimed by Darius, the NCLAT ordered his reinstatement as CMD. The tribunal also absolved Darius of all charges of mismanagement, finding that his hurried removal from his post had no basis, with losses being incurred by some of AMG's businesses happening solely due to the abuse of power by the directors nominated by the Hormusji and Behramji Trusts. With regard to the issue of conversion of AMG to public to private company, the NCLAT held it to be in violation of Section 14 of the Companies Act, 2013, declaring that the RoC had erroneously approved the application of AMG without following the procedure under law. Questioning the timing of such a move by AMG, the tribunal ascribing ulterior motives to such an action, observed that the only motivation of the conversion was to marginalize and further oppress the only independent minority shareholder, i.e. AAI. Consequently, the tribunal ordered the RoC to restore in its records the public nature of AMG. Against this verdict of NCLAT, AMG immediately moved the Supreme Court of Sindhuganga seeking a stay on it, which it was promptly granted. Further, it filed an appeal against the judgment and findings of NCLAT in the Supreme Court on 10th January, 2020 (Company Appeal No. 156/2020).

23. Meanwhile, due to its dilapidated financial condition with an ever tumbling down share prices, Shamaz Air was finding it impossible to stay afloat. Facing severe capital crunch, it was unable to keep up with repeated demand notices from tax authorities and its creditors. Its employee base of around twelve thousand hadn't even been paid their salaries for over four months and counting. Left with no other alternative, on 5th December, 2019, Shamaz Air filed an application with the Mayapuri Bench of the NCLT under Section 10 of the Insolvency and Bankruptcy Code, 2016 for initiating its insolvency resolution process. Fearing for their jobs and unpaid salaries, the employees' welfare association of Shamaz Air wrote a letter to the Government of Sindhuganga, praying that urgent and decisive action be taken to remedy this situation and safeguard their interests. The move created a lot of furore receiving wide press coverage, with the media repeatedly questioning the Government on the measures that they intend to take. The Government, staring at the fiscal deficit that had already exceeded its estimate of 3.5% by 1.25% in the relevant financial year, was in no way willing to forego any part of the total 10,987 Crores SNR in taxes that was owed to it by Shamaz Air.
24. Consequently, on the 10th December, 2019, the Union Cabinet met to discuss this issue of rising public importance and deliberated over its possible solutions. In accordance with the decision taken therein, the Union Ministry of Finance proposed to amalgamate AMG and MTC in public interest by invoking its powers under Section 237 of the Companies Act, 2013. A copy of the proposed order was sent to the management of both AMG and MTC on 12th December, 2019. In their replies dated 18th December 2019, both AMG and MTC vigorously opposed their compulsory amalgamation by the Government, arguing that such an action was wholly arbitrary, unreasonable and devoid of any logic or merit. They contended that this would have unprecedented adverse ramifications for the corporate industry in the country. The Union Finance Minister, in an interview to The Times of Treasury on 28th December 2019, said that if AMG has the wherewithal to pay US\$ 2.25 billion to STT, it shouldn't have to take any pains in coughing up 10, 987 Crores SNR that it owes in taxes to the Government as well as in making payments due to its creditors and paying the salaries of the employees of Shamaz Air. He further claimed that the Government has only taken this step-in public interest so as to save the jobs of around twelve thousand people and ensure that all outstanding revenue is duly and efficiently collected in order that it can be utilized for the development of the country and the well-being of our citizens. Unrelenting in its decision to amalgamate AMG and MTC, the Government notified the same in the Official Gazette on 5th January, 2020. Disgruntled with this move,

AMG filed a writ petition in the Supreme Court, maintaining that the Government's action was thoroughly capricious and totally unjust and praying that Section 237 of the Companies Act, 2013 itself be declared unconstitutional on account of being violative of Article 14 of the Constitution of Sindhuganga (W.P. No. 54/2020).

25. The Supreme Court, having clubbed Civil Appeal No. 194/2019, Company Appeal No. 156/2020 and W.P. No. 54/2020, have posted them for final hearing on 21st March, 2020. The following issues have been determined by the Supreme Court to be arising out of the matters contained herein:

- I. Whether the arbitral award rendered by SIAC is in violation of the laws and public policy of Sindhuganga and whether a third party (the FBS) can oppose the enforcement of the award even when both the parties to the arbitration have consented to its enforcement?
- II. Whether the concerned conduct of removing Darius Daruwala from the post of CMD of AMG amounts to prejudice and oppression of minority shareholders, thus being illegal on account of being violative of the relevant provisions of the Companies Act, 2013?
- III. Whether the AMG's conversion from a public company to a private company is in contravention of the law of the land, specifically Section 14 of the Companies Act, 2013 and whether this too amounts to oppression of the minority shareholders of AMG?
- IV. Whether the Government of Sindhuganga's decision to amalgamate AMG and MTC is arbitrary, unfair and unreasonable and whether Section 237 of Companies Act, 2013 is liable to be declared unconstitutional on account of being violative of Article 14 of the Constitution?

N.B.: 1). All laws of the Republic of Sindhuganga are in *pari materia* to those of the Republic of India as amended up to date.

2). The SNR is pegged at par with the Indian Rupees.

3). Participants are at liberty to raise any additional issue/sub-issue subject to the admittance of the same by the judges during hearing.

*This moot proposition has been drafted by **Mr. Rishi Mishra**, Advocate, Supreme Court and High Court of Delhi. Any attempt by participants to contact him for purposes related to this moot shall result in disqualification.*