Team Code:TC-29

20TH SURANA & SURANA NATIONAL CORPORATE LAW MOOT COURT COMPETITION, 2022 -23

BEFORE THE HON'BLE HIGH COURT OF KARNATAKA

WRIT PETITION No. 1001 to 1004 of 2023

Article 226 of the Indian Constitution

IN THE MATTER BETWEEN:

MIDAS ONLINE GAMES INDIA PVT. LTD

REP BY ITS RESOLUTION PROFESSIONAL BENGALURU…..……
PETITIONER

VERSUS

DIRECTORATE GENERAL OF GST INTELLIGENCE BENGALURU ……..
RESPONDENT

Most Respectfully Submitted

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LIST OF ABBREVIATIONS

Abbreviations	Meaning
AA	Adjudicating Authority
AIR	All Indian Reporter
Art	Articles
BLRC	Bankruptcy Law Reforms Committee
COC	Committee of Creditors
CGST	Central Goods and Services Tax
Code	Insolvency and Bankruptcy Code, 2016
CIRP	Corporate Insolvency Resolution Process
Govt.	Government
GST	Goods and Services Tax
HC	High Court
Hon'ble	Honourable
IBBI	Insolvency and Bankruptcy Board of India
IBC	Insolvency and bankruptcy Code, 2016
IP	Insolvency Professional
IRP	Interim Insolvency Professional
NBI	National Bank of India
NCLT	National Company Law Tribunal
NCLAT	National Company Appellate Tribunal
Ors.	Others
RP	Resolution Professional
SC	Supreme Court

SCC	Supreme Court Cases
SCN	Show Cause Notice
SCR	Supreme Court Reporter
Sec.	Section
TOPA	Transfer of Property Act
V./Vs.	Versus
WP	Writ Petition

STATEMENT OF JURISDICTION

This Hon'ble High Court of Karnataka has the jurisdiction to try and dispose of the instant matter under Article 226 of the Constitution of India 1949, which states that

"(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose

favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32"

STATEMENT OF FACTS

1. Midas Online Games India Pvt Ltd, a Bengaluru-based online betting game company, had borrowed INR 5,000 crores from National Bank of India between July 2017 and August 2022.
2. The company's revenue was around INR 5,000 crores each year, and it paid taxes on admission fees only as it believed that the pooling fees were not liable to be taxed. However, on April 1, 2022, the GST department issued a Show Cause Notice asking the company to pay 28% tax on the entire consideration, including applicable interest and penalty.
3. A dispute arose concerning the classification of games and the valuation issue. Meanwhile, a software company filed an application before the National Company Law Tribunal (NCLT) to declare Midas company insolvent and to initiate Corporate Insolvency Resolution Process (CIRP).
4. On October 6, 2022, the department-initiated recovery proceedings and directed NBI to freeze all bank accounts of the company, creating a charge on the account. NCLT orders pronounced its orders against the company, directing it to initiate CIRP by appointing an Interim Resolution Professional (IRP). On October 26, 2022, the Committee of Creditors (COC) constituted by IRP had its first meeting and passed two resolutions. One, to appoint IRP as Resolution Professional (RP) and two, immediately file writ petitions before Hon'ble Karnataka High Court challenging the orders passed by the GST department.

STATEMENT OF ISSUES

I.

WHETHER THE GST IS PAYABLE ON THE 'ENTIRE CONSIDERATION'?

II.

WHETHER THE GST DEPARTMENT BE TREATED AS A 'SECURED CREDITOR' TO HAVE PRECEDENCE OVER COMPANY'S BANK ACCOUNT?

SUMMARY OF ARGUMENTS

WHETHER THE GST IS PAYABLE ON THE 'ENTIRE CONSIDERATION'?

The petitioner humbly submits before the Karnataka High Court that the GST is not payable on the entire consideration. The petitioner while supporting the submission put forward that the games hosted by the company are game of skills and the actionable claim is not taxable amount in case where the games fall under the category of game of skills, as per the provisions of GST Act.

The petitioners also challenge the SCNs and demand order issued by the Department to the company of being outrightly arbitrary, egregious and illegal. Therefore, it is requested before the Hon'ble High Court to declare the SCNs, demand order and consequently the recovery proceeding to be null and void and discharge the company of paying the hefty and unreasonable tax, interest and penalty amounts.

WHETHER THE GST DEPARTMENT BE TREATED AS A 'SECURED CREDITOR' TO HAVE PRECEDENCE OVER COMPANY'S BANK ACCOUNT?

The petitioner humbly submits that GST department cannot be treated as a secured creditor to have precedence over company's bank account. The petitioner in supporting its submission presents that the Department is merely a operational creditor and not a secured creditor as per the relevant provisions and sections of Insolvency and Bankruptcy Code, 2016. Therefore, the petitioner requests the Hon'ble High Court to declare the GST Department to be a operational creditor and thereby, be directed to wait in the queue as per the IBC provisions to receive dues, if any.

ARGUMENTS ADVANCED

WHETHER GST IS PAYABLE ON 'ENTIRE CONSIDERATION'?

1. **The actionable claim is not taxable amount as per the provisions of CGST Act.** The petitioner Midas Online Games Pvt. Ltd. Is a company registered under the Companies Act, 2013, having registered its office in Bengaluru. It can be put forth as an organized commercial activity between two parties, wherein one party predicts the outcome of an event and the other party who loses the game agrees to pay the money to the player. It provides **service to skilled players in exchange of fees**, similar to how services are provided by Ola and Uber. There are two monetary transactions involved, as the payment is done in the form of admission fee and payment fee. Admission fee constitutes 25% of the entire consideration; whereas, pooling fee constituting 75% which is later transferred to escrow account is prize money is actionable claim. Actionable claim as per CGST ACT, 2017– under section 2(1) is "*actionable claim shall have the same meaning as a site in section 3 of the TOPA,1882".* Actionable claim as per section 3 of Transfer of Property Act is *"actionnable claim means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."* And as per provisions of CGST Act Transactions/activities in actionable claims are kept outside the ambit of GST.
2. The first one, **admission fees is for facilitating service** for the online skill based gaming players. And **the pooling fees is the amount being played between players after winning.** Midas Company, thus earns consideration, in the form of admission fee

only. Whereas**, the second transaction is purely between players; the company merely holds and manages money** and deposits of the player**s for easy accountability and settlement** towards the end of the game. Hence company earns no profit from the pooling fees. For the purposes of payment of GST, the company is liable to pay GST add the rate of 18% on the admission please component that is 25% of the entire consideration received from the participants and accordingly paid the GST promptly.

3. As regards to the valuation of such actionable claims, rule 31A of CGST Rules, 2017 provides that the - "31A. *(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter. (2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organizing State, whichever is higher. (3) Value of supply of actionable claims in the form of chance to win in betting, gambling or horse racing in race club shall be 100% of the face value of the bet to the amount paid into the totalizator.* "On reading the above rule it is clear that it is applicable on only four types of actionable claim- i.e., lottery, betting, gambling and horse racing. It is pertinent to note that there is no mention of online gaming. Moreover, the Rule is under the scrutiny of judicial review. Hence, is submitted that since remaining 75% did not belong to the company since it was an actionable claim of the winning participants the demand of the Directorate General of GST intelligence is unsuitable in law and the company is not liable to pay GST on entire consideration.

4. **Actionable claim is not liable to be taxed under the provisions of the GST act considering the games posted by the company are all games of skill and not games of chance.** Games that allow players to win by utilising their skills and expertise rather than relying solely on unpredictable future occurrences are referred to as games of skills. The

outcome of a skill game can be determined by the player's physical or intellectual prowess. The game will probably be labelled as skill-based if any mathematical or strategical ability is required. These kinds of games give players the chance to discover their strengths and These types of games allow players the opportunity to explore their capabilities and encourage a better understanding of how the games work. **Players are expected to practise and create new ways to adopt various strategies in order to advance in the game and increase their success rate.** Using these games of chance, users can risk cash or other items by choosing a number of alternatives and then pressing a button, hoping that it will land on their choice. In these types of games, gamer is not able to control the outcome by using his/her expertise or abilities.

5. Indian Courts have adopted a simple method to differentiate between the game of skill and game of chance. The game of skill can be learned with time and experience and on the other hand game of chance cannot be; because it is dependent on an occurrence and non-occurrence of a certain event. The Indian courts have used the **"dominant factor test"** to distinguish if a game is game of skills or a game of chance. The test identifies and recognizes that most games involve both skill and chance, but **the dominance of one factor over another is considered to be decisive factor in determining whether it fits the game of skills or chance category**. A game of 'mere skills' according to these criteria is the one in which the skill element is the most important element in winning of the game.
6. While there is ample jurisprudence available that has evolved over time, it is humbly submitted that the real nature of a transaction ultimately depends on the facts of the case and in the present case since **Midas on profits only from 25% of the entire consideration**. Thus, the petitioner is liable to pay tax only on the partial amount and not on the entire consideration. The games the players play on petitioner's platform has been held to be games of skill through various judicial precedents. The division bench of the High Court of Karnataka in the case of *All India Gaming Federation and others*

versus State of Karnataka and others[1] in the petition filed before apex court had held that game **rummy,** carom, chess, pool, bridge, crossword, scrabble and **fantasy sports** like cricket, etc., **whether with or without streaks do not constitute betting and gambling as long as the primarily requires skill, judgement, knowledge or technique**.

The Supreme Court in *RMD Chamarbaugwalla v. Union of India*[2] has construed the words 'mere skills' include games that are based on preponderance of skill and laid down that the competition where a substantial degree of skill is involved will not come under the category of gambling even if an element of chance is present in it. The Apex court construed from **the phrase 'mere skill' to encompass games that are predominantly skilled based, despite moderate components of chance**. The Supreme Court observed that the method of determining whether a game is a game of chance or a game of skill has to be decided on case-to-case basis.

Following the rationale of Chamarbaugwalla case, the Supreme Court in the S*tate of Andhra Pradesh v. K Satyanarayana*[3] held that the game of **rummy is not entirely based on the game of chance, it involves a substantial degree of skill.** The Supreme Court has based this conclusion on the fact that the game of rummy involves memorizing the fall of cards and building up of rummy requires skill in holding a discarding card. Therefore, what constitutes game of skill was decided, wherein the game of rummy was determined to be a game of skill, **involving memorization and judgement abilities**. The court had said that 'rummy is a primarily and preponderantly

[1] *All India Gaming Federation and others versus State of Karnataka and others 2022 SCC OnLine Kar 435: (2022) 1 KCCR 513 : (2022) 2 AIR Kant R 422*

[2] *RMD Chamarbaugwalla v. Union of India MANU/SC/0020/1957*

[3] *State of Andhra Pradesh v. K Satyanarayana; MANU/SC/0081/1967*

a game of skill'. The Supreme Court in Satyanarayana case said that the game of rummy is game of skill and it also stated that it is also settled law that the character of rummy being a skill based game does not change when it is played online.

The issue was again addressed in *KR Lakshmana v. state of Tamil Nadu*[4] which held that the horse racing is primarily a skill-based game. Where the court again relied upon the 'dominant factor test' or 'preponderant factor test' to determine whether horse riding was game of skill or game of chance.

Likewise with regard to fantasy sports the High court of various states has held that it is a game of skill. Hon'ble Bombay High Court in the case of Gurdeep *Singh Sachar v Union of India*[5] held that amounts pooled in an escrow account operating an online fantasy game constitutes an actionable claim as the amount is distributed among winning participants. The Punjab and Haryana High Court in the case of *Varun Gumber v. Union Territory of Chandigarh*[6] while dealing with fantasy sport Dream 11, after elaborate discussion, had declared fantasy sports as a skill-based game, in view of the fact that the result of the fantasy game contest is not at all dependent on winning or losing of any particular team in the real world game. Therefore it is humbly submitted that game of fantasy sport does not become betting or gambling.

The legal position on whether the business of online poker with stakes in compliance with Indian laws is uncertain. However, Indian courts have typically held that poker is prominently a game of skill irrespective of the element of chance. Therefore, in conclusion it is most respectfully brought to the notice of court that the games hosted

[4] *KR Lakshmana v. state of Tamil Nadu 1996 AIR 1153*

[5] *Gurdeep Singh Sachar v Union of India 2019 SCC OnLine Bom 13059*

[6] *Varun Gumber v. Union Territory of Chandigarh 2017 SCC OnLine P&H 5372*

by Midas like rummy, horse racing, fantasy cricket, poker, etc. are all games of skill and do not amount to betting and gambling. Hence, the respondents claim to pay GST on entire consideration is completely baseless.

III. The Show Cause Notices and demand order passed by the GST department are outrightly arbitrary, egregious and illegal.

As per the facts of the case, on 01.04.2022, the office of Directorate General of GST Intelligence issued Show Cause Notices and statements to the company for the financial years FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21 under section 74(2) of the CGST ACT 2017 for FY 2017-18 and under section 73(2) under section CGST ACT ,2017 for FY 2018-19 and statements under section 73(3) of CGST ACT,2017for FY 2019-20 and FY 2020-21 respectively. However close reading of section 73 and 74 of CGST Act, 2017 brings out a stark difference between the two sections. Section 73 of the CGST ACT- "*Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for* ***any reason other than fraud*** *or any wilful-misstatement or suppression of facts."* Section 74- "*Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by* ***reason of fraud*** *or any wilful- misstatement or suppression of facts."* Section 73 of the CGST ACT,2017 on one hand recognises failure of payment of tax due to any other reasons than fraud, whereas section 74 recognises fraud as the reason. Applying provisions of law to the factual scenario, it can be understood that since the department asked for the statements of financial year 2017-18 under section 74, and under section 73 for financial years 2018-10, 2019-20 and 2020-21. There is no reason for the Department to send issue demand notices to the company for the same cause under two different and contradictory provisions of the Act. While it is undisputed that the manner and mode of carrying out the business affairs, the method of carrying it the transactions, the nature of services and the way of hosting games has remained same throughout the years. Thus, it is

humbly submitted that the demand notices issued by the department are vague for issuing notices under two contradictory provisions of the same Act, which consequently leads to the vagueness of the Show Cause Notices issued.

If the department intends to submit that the sending of demand notice to the company under two different and contradictory provisions of law are valid, then that would mean that the company was or is involved in fraud. The department through its notices also intends to make allegation against the company of having being involved in wilful misstatement and suppression of facts. However, it is submitted that the allegations of the department are baseless. There is no evidence to support these false claims of the respondents and the respondent has formed opinion without considering relevant material, against the petitioner. The SCN must be issued clearly stating the allegations and the contraventions leading to issuance of the SCN. It should not be suffered with vagueness and arbitrariness. SCN cannot be based on mere assumptions. The reasons specified in SCN must be specific and not vague. In the case of *CCE v. Brindavan Beverages (P.) Ltd* [7]*.,* Hon'ble SC in its paragraph 10 the order observed that- "*The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the notices was not given proper opportunity to meet the allegations indicated in the show cause notice.*" Since, the GST Department has failed to abide by these basic requirements in the present case the demand notices and SCNs are submitted to be arbitrary.

Moreover, in the morning of 03.10.2022, the GST department passed separate orders under section 74(9) and section 73(9) of the CGST ACT,2017 for the four years at 12 in the noon confirming the demands as per the SCNs and asked company to pay the entire demand of tax, interest and penalty of around 11,000 crore rupees before 5 PM on 05.10.2022, relying on

[7]*CCE v. Brindavan Beverages (P.) 2007 taxmann.com 728 (SC),*

section 78 of the CGST Act,2017-"*Initiation of recovery proceedings.— Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated: Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.*"

Hence, it understood that the time provided by respondent should have been of three months from the date of service before initiating of any recovery proceedings and if the proper officer considers to have some reason to make such period less than the prescribed period of three months, then reasons must be recorded in writing. In the present case however no reasons have been recorded in writing. This sets out clear that the department has arbitrarily disregarded the provisions, requirements and conditions of law. It is very unreasonable on part of the respondent to demand for such a hefty amount of Rs.11,000 crores from the company within such a short time period of less than 48 hours.

Therefore, it is submitted that, issuing demand notices for the same cause under two different contradictory sections, making allegations of fraud wilful mis-statement, suppression of facts and arbitrarily violating the provisions of section 78 of CGST ACT,2017 point towards non application of mind of the department at multiple stages. The department has exercised power without satisfaction of requirements and conditions of law and has blatantly disregarded the statutory requirement of law. The department has made fake allegations against the company with no-material on record and has based its opinion on speculation. The respondent has passed its order in haste and urgency. All of these things conclude to submit that the department has failed to apply its mind, violating the most vital principal of administrative law.

Therefore, in conclusion, it is said and submitted that the demand orders passed by the Department are outrightly arbitrary and illegal.

WHETHER THE DEPARTMENT BE TREATED AS 'SECURED CREDITOR' TO HAVE PRESECEDENCE OVER COMPANY'S BANK ACCOUNT?

I. The GST Department is an 'operational creditor' under Insolvency and Bankruptcy Code, 2016.

Operational creditor as defined under section 5(20) of the IBC,2016 -"*a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred*;". In order to understand whether a person or a organisation fall under the definition of the operational creditor, the debt must fall within the definition of of operation debt defined under section 5(21) of the IBC,2016 as- *"a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the* ***Central Government****, any State Government or any local authority*". As per *Col. Vinod Awasthy v. AMR Infrastructure Ltd.*[8].the Hon'ble NCLT observed that the framers of insolvency and bankruptcy code had not intended to include within the expression of operational debt a other debt than financial debt. Therefore, operational debt only be confined to 4 categories specified under section 5(21) of the IBC viz. goods, services, employment, and government dues.

The payment by Midas Company to GST department arises as a tax due which is payable under a statute to the central government body (i.e., GST department). The amount not paid by Midas can therefore, be considered as a duty or drawback that is to be recovered with interest and penalty payable, supposed to be paid as per the provisions of CGST act, which is not being paid. Therefore, since, the amount recoverable of amount of unpaid tax, and adjudged penalty,

[8] *Col. Vinod Awasthy v. AMR Infrastructure Ltd 201) ibclaw.in 28 NCLT*

and the amount of the interest, are unpaid qualify to be falling under the category of government dues. Therefore, it submitted that the GST department are to be treated as operational creditors.

II. **GST department is not a secured creditor under IBC, 2016.**

Secured creditor as per its definition under section 5(30) of the IBC,2016 is "*a creditor in favour of whom **security interest** is created*" and security interest as per section 5(31) of the IBC,2016 -"*right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a **transaction** which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person.*". The transaction under section 5(33) of the IBC 2016"*a agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;"* Therefore, a business affair to qualifies as a transaction, if the arrangement or agreement is in writing. The charge that was created by the department does not fall under the ambit of transaction since there was no agreement or arrangement in writing for the transfer of assets or funds, goods or services, from or through the corporate debtor. In the present case, the GST department has created 'charge' on bank account of company so that it could appropriate the amount lying in. Therefore, the bank account of the company which NBI were attached in morning of 06.10.2022 around 10 AM. Thereby, the department believe themselves to be secured creditors by creating the 'charge'. This charge is defined under section 3(4)-"*an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage*". In the present case, the charge created by the department, however is observed to be creating a statutory charge on the bank account of company by attachment of bank account under section 79(1)(c) CGST act, which comes under operation by law. The charge created in the present case has not arisen in by

transaction, which is essential component to fall within the ambit of security interest, absence of which makes it a statutory charges. Therefore, applying principles to the facts makes it clear that is no security was created by GST department and hence it is submitted that the department cannot be called secured creditor.

The immediate question that arises would be that a how does the government or statutory dues is included or excluded as per the definition under section 3(30) and section 3(31) defining secured creditors and secured interest. And as it is, statutory due cannot be said to have arisen out of any 'transaction', rather they arise due to operation of law that is in a present case is CGST act. At this juncture, it is submitted that, we must understand the motive of legislation well drafting IBC to interpret these ambiguous sections. Section 53 of IBC provides for mode and manner for distribution of the proceeds of the sale of assets of corporate debtors. The order of priority specify, what is purpose commonly termed as '**waterfall mechanism**' determines the sequence of various stakeholders, including secured and unsecured creditors, central and state government, etc. The bench of the Hon'ble Supreme Court in case of *Ghanshyam Mishra and sons pvt. Ltd. V Edelweiss Asset Reconstruction Company*[9] had emphasised on the importance of 'waterfall mechanism' under section 53 of IBC in paragraph 59 of the judgement. Section 53 of the IBC clearly demarcates the priorities of payment during the procedure of insolvency. If the GST department is considered to be a secured creditor to have precedence over NBI, it will lead to clear violation of Section 53 as well as the judicial precedent cited above.

Under section 60 of CGST act, amount of GST is transferred to consolidated fund of India as it includes revenue from indirect taxes, as well. Ssection 53, which is recognized to be the heart of IBC, clearly shows the intent of legislation by drafting IBC under section 53(1)(b) and

[9] *Ghanshyam Mishra and sons pvt. Ltd. V Edelweiss Asset Reconstruction Company (2021) 9 SCC 657*

section 53(1)(e), while treating debts owed to secured creditors and tax dues to statutory authorities to be received on account of consolidated fund of India, are kept separate. Hence, it is pertinent to observe, that the legislation had no intent to include statutory dues under the category of secured creditors. Under this section, in the priority, sequence, debts owed to secured creditors are given second priority, whereas amount due to central and state government is given fifth priority. The views and consistent with the view of Bankruptcy Law Reforms Committee (BLRC)[10] in its report given in November 2015. Therefore, keeping in mind that the objectives and provisions of this code and particularly to section 53, it is submitted to be understood that there is intention of the legislators to place dues of central and state government below financial creditors.

Therefore, the tax department only by restoring recovery proceedings by attachment of bank account of company cannot be considered to be secured creditors without actually having created any security interest in its favour. Therefore, it is humbly submitted, that the department cannot be treated as 'secured creditor' to have precedence over company's bank account.

[10] *"The Report of the Bankruptcy Law Reforms Committee." Ibbi.gov.in, Nov. 2015, ibbi.gov.in/BLRCReportVol1_04112015.pdf.*

PRAYER

Wherefore in light of the facts stated, issues raised, arguments advanced and authorities cited, the counsel for Midas Inline Games India Pvt. Ltd. Represented by it Resolution Professional Bengaluru, most respectfully prays before the Hon'ble Karnataka High Court that it may be pleased to adjudge and declare that:

I. That the demand order and show cause notices are vague, arbitrary and illegal.

II. That the games hosted by petitioner are games of skill.

III. That the company is exempted from paying tax on entire consideration.

IV. That the GST department does not have precedence over company's bank account as secured creditor.

AND/OR

Pass any other order, direction, or relief that this Hon'ble Court may deem fit in the interest of justice, equity and god conscience.

And for this act of kindness, the petitioner shall forever to duty bound.

Sd/-

Counsel of behalf of petitioner.