TC-05

20TH SURANA & SURANA NATIONAL CORPORATE LAW MOOT COURT COMPETITION 2022 - 2023

BEFORE THE HON'BLE HIGH COURT OF KARNATAKA

AT BENGALURU

UNDER THE ARTICLE 226 IN THE MATTER OF

WP No.1001 to 1004 of 2023

Midas Online Games India Pvt. Ltd
Rep by its Resolution Professional
Bengaluru …Petitioner

Vs.

Directorate General of GST Inteligence
Bengaluru …Respondent

DATE : 08.04.2023

PLACE: BENGALURU

COUNSEL ON BEHALF OF THE RESPONDENT

MEMORANDUM ON BEHALF OF THE RESPONDENT

UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND OTHER HON'BLE JUSTICES OF THE HIGH COURT OF KARNATAKA.

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LIST OF ABBREVIATIONS

ABBREVIATIONS	EXPANSION
&	And
AIR	All India Reporter
Anr.	Another
Art.	Article
CGST	Central Goods and Services Tax
CIRP	Corporate Insolvency Resolution Process
COC	Committee of Creditors
FY	Financial Year
GST	Goods and Services Tax
HC	High Court
Hon'ble	Honorable
IBC	Insolvency and Bankruptcy Code
IRP	Interim Resolution Professional
Ltd.	Limited
NBI	National Bank of India
NCLT	National Company Law Tribunal
No.	Number
NPA	Non-Performing Assets
Ors.	Others
Pvt.	Private
RP	Resolution Professional
SC	Supreme Court
SCC	Supreme Court Case
SCN	Show Cause Notice
SCR	Supreme Court Reports
SGST	State Goods and Services Tax
V	Versus

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3. CGST & SGST Rules, 2017.
4. Insolvency & Bankruptcy Code, 2016.
5. Public Gaming Act, 1867.
6. Finance Act, 1994.

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2. M.P. Jain, Indian Constitutional Law, Vol. 1(LexisNexis, Haryana, 5th edition, 2003)
3. Dr. Vinod k Singhania & Dr. Monica Singhania Student's Guide to Income Tax Including GST (Taxmann's Flagship Publication, New Delhi, 26th edition, 2023)
4. R.P.Vats, Apoorv Sarvaria & Yashika Sarvaria,Law and Practice Of Insolvency And Bankruptcy (Taxmann's Flagship Publication, New Delhi, 1st edition, 2022)

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THE STATEMENT OF JURISDICTION

The Writ Petition has been filed invoking the writ jurisdiction of the High Court of Karnataka under Article 226 0f the Constitution of India.

The right to move High Court by appropriate proceedings for the enforcement of the rights conferred by part III is guaranteed.

Wherein, Article 226 reads as under:

226. Power of High Courts to issue certain writs

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 nature of habeas corpus, mandamus, prohibition, 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 favor 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 be, the expiry of the said next day, stand vacation.

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.

THE STATEMENT OF FACTS

BACKGROUND:

Midas Online Games India Pvt Ltd. is registered under companies Act, 2013 incorporated on 03.07.2017 and almost coincided with the introduction of the Goods and Services Tax Act, 2017. The company was a Goods and Services Tax registrant in the state of Karnataka. The company involved in the business of online betting games and one of the prominent leaders in this industry. Each participant has to make two kinds of payment such as the admission fee and pooing fee. Only the Admission fee will be the income of the company which was around 25% of the total consideration received from participants which includes the pooling fee and it will be transferred to an escrow account for the actionable claim of all the participants. The company wanted to have all India presence and aggressive promotion so therefore it reached out to National Bank of India for huge loans around INR 5000 crores. Meanwhile, the company was promptly filing its income-tax returns and was paying income taxes accordingly.

PROTECT THE INTEREST OF GOVERMENT REVENUE:

The company believed that it is liable to pay GST at the rate of 18% only on the 'admission fee' component. It was of the firm view that the remaining 75% did not belong to it since it was an 'actionable claim' of the participants. The office of the Director General of GST issued show cause notices and statements to the company why it should not be taxed at the rate of 28% on the entire amount received by company along with applicable interest and also an equivalent penalty of 28%. The company committed a default in making a payment of INR 10 crores to its software supplier company even after repeated reminders. The software service provider filed an application before NCLT under IBC code, declare the company as an insolvent and to initiate corporate insolvency resolution process. It was aware that the company already owed around INR 5,000 crores to the NBI and the claim of principal tax alone by the GST department was almost INR 5,000 crores for the four financial year.

PROCEEDING UNDER GST STATUTE:

The GST department passed separate orders under sections 74(9) & 73(9) respectively for the four years. The GST department demands the company to pay the entire demand of tax, interest and penalty of around INR 11,000 crores under section 78. If company fails to pay the tax department will initiate the recovery proceedings under section 79. Unfortunately for the company, it could not challenge the order because of High Court vacation sitting. Even before the company could recover from the shock of the orders the department direct the NBI to freeze all the bank accounts of the company under section 79(1) (c).

PREMATURE APPLICATION FILED BY THE PETITIONER:

On the other hand the NCLT admitting the application of the software company and direct the corporate insolvency resolution process by appointing the interim resolution professional to perform his duties as per the code. The GST department and NBI claim as a secured creditor in the resolution process of the company. The IRP took note of the financial position of the company and constituted the committees of creditors. Two important resolution were passed based on the financial strength of the company.

1. Appoint IRP as the Resolution Professional
2. File Writ petition before the Hon'ble High Court of Karnataka

THE STATEMENT OF ISSUES

ISSUE-1

1. Whether the writ petition filed by the Resolution Professional before the Hon'ble High Court of Karnataka is maintainable?

ISSUE-2

2. Whether GST is payable on the 'entire consideration' received from participants?

ISSUE-3

3. Whether the department could be treated as 'secured creditor' to have precedence over the company's bank accounts?

ISSUE-4

4. Whether the online games are actually 'game of skills' or 'game of chances'?

SUMMARY OF ARGUMENTS

1. Whether the writ petition filed by the Resolution Professional before the Hon'ble High Court of Karnataka is maintainable?

It is most humbly and respectively submitted before the Hon'ble High Court that the Directorate General of GST Intelligence raising several technical legal objections to the maintainability of the petition under Article 226 and refusing the allegations and submissions. The business involved in the company such as gambling is not trade and it is not protected by Article 19(1) (g). The GST department issued Show Cause Notices and statements to the company under sec 74(2), 73(2) & 73(3) respectively. The department gave sufficient time to reply and several patient hearings to the company on the SCN for all the four years. The petitioner does not have locus standi being contrary to law, without jurisdiction and not a violation of principles of natural justice.

2.Whether GST is payable on the 'entire consideration' received from participants?

It is most humbly and respectively submitted before the Hon'ble High Court that the petitioner is wrongly classifying its virtual online game under the wrong entry for GST and, therefore, petitioner deliberate attempt to evade the tax and violating Rule 31(A) (3) of the CGST Rules, 2018. The petitioner should be taxed at rate of 28% on the entire amount received by company along with the applicable interest and also an equivalent penalty of 28% tax on the entire amount.

3.Whether the department could be treated as 'secured creditor' to have precedence over the company's bank accounts?

It is most humbly and respectively submitted before the Hon'ble High Court that the department was of the view that it was in a better position since it had already created a 'charge' over the bank accounts of the company by attachments even before the NBI could treat the dues to it by the company as non-performing assets and take any measures which according to the department was sufficient to be treated as 'secured creditor'. Tax department and even statutory authorities are now on equal footing and shall ask for proportionate payment in the corporate insolvency resolution process. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority. Therefore the GST department is a secured creditor, it still has security interest to freeze all bank accounts of the company and it had already created a 'charge' over the bank accounts of the company.

4.Whether the online games are actually 'game of skills' or 'game of chances'?

It is most humbly and respectively submitted before the Hon'ble High Court that the Midas online game's nature is merely a game of chance or luck, which is totally dependent upon the luck of participants. According to petitioner, since these activities are nothing but 'gambling' or 'betting' even it was clear that the department was treating the entire amount received as 'consideration' and classified all the online games organized by the company as 'gambling' which involves substantially 'game of chance' rather than 'game of skill'.

ARGUMENTS ADVANCED

1. Whether the writ petition filed by the Resolution Professional before the Hon'ble High Court of Karnataka is maintainable?

It is most humbly submitted that the Writ Jurisdiction of the High Court flows from the Article 226, which confers wide powers enabling the Court to issue writs, directions, orders for the enforcement of fundamental or legal rights. The exercise of the writ jurisdiction of the High Court under the Article 226 is largely discretionary in nature. It is submitted that the writ petition is not maintainable primarily on three grounds: [1.1] That no Prima Facie case for breach of fundamental rights has been established, [1.2] That the writ petition is based on pure apprehension, [1.3] One statutory authority cannot file writ against another statutory authority.

[1.1] THAT NO *PRIMA-FACIE* CASE FOR BREACH OF FUNDAMENTAL RIGHTS HAS BEEN ESTABLISHED:

The petitioner company instituted writ proceedings under Article 226 of the Constitution before the High Court in order to challenge the order of GST department under section 79(1) (c) and the notice and statement which was issued under Section73(2), 74(2) of the CGST Act 2017.

There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the petitioner to the pursuit of the alternate statutory remedy under Section 107 of CGST, this Court makes no observation on the merits of the case of the petitioner.

Petitioners had not been able to show any provision of relevant laws mandating authority to give personal hearing. The section 75(4) of the GST Act simply says about hearing and not about personal hearing. Also, the petitioners had not asked for personal hearing and therefore, the question of violation of principles of natural justice did not arise. The authority, who had issued the show-cause notice and passed the adjudication order, was having inherent jurisdiction under the statute or it was authorised to exercise jurisdiction of adjudication in case of petitioner.[1] The forum for statutory alternative remedy would be already available to petitioner and thus it was held that the writ petition deserved to be dismissed.

Placing reliance on where there is an appellate remedy, this court does not entertain writ petitions unless the order impugned has been passed without jurisdiction or in violation of natural justice.[2]

[1] Ram Prasad Ganga Prasad v. Assistant Commissioner, State Tax, 2022 (9) TR 6408.

[2] Kolkata Municipal Corporation and Anr v. Union of India and Ors,

It is stated in the case of ***Whirlpool Corporation v Registrar of Trademarks, Mumbai,***[3] "Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

Harbanslal Sahnia v Indian Oil Corpn. Ltd,[4] "In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies:

(i) Where the writ petition seeks enforcement of any of the fundamental rights;

(ii) Where there is failure of principles of natural justice; or

(iii) Where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

The High Court had dismissed the writ petition instituted under Article 226 of the Constitution challenging orders of provisional attachment on the ground that a rule of alternate remedy is available. The appellant challenged the orders issued by the Joint Commissioner of State Taxes and Excise, The provisional attachment was ordered while invoking Section 83 of the Himachal Pradesh Goods and Service Tax Act, 20172 and Rule 159 of Himachal Pradesh Goods and Service Tax Rules, 2017. While dismissing the writ petition challenging orders of provisional attachment the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law.[5] Thereby, it is humbly submitted that the said writ petition was not maintainable before the High Court of Karnataka since no action had been taken to unreasonably detriment the legal rights of the people, if any.

[1.2] THAT THE WRIT PETITION IS BASED ON PURE APPREHENSION:

Legislation enacted for the levy of goods and services tax confers a power on the taxation authorities to impose a provisional attachment on the properties of the assesse, including bank accounts. The legislation in Himachal Pradesh, which comes up for interpretation in the present case, has conferred the power on the Commissioner to order provisional attachment

[3] Whirlpool Corporation v. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1.

[4] Harbanslal Sahni v. Indian Oil Corpn. Ltd, (2003) 2 SCC 107.

[5] Radha Krishna Industries v. State of Himachal Pradesh, 2021 SCC Online SC 334.

of the property of the assesse, subject to the formation of an opinion that such attachment is necessary in the interest of protecting the government revenue.[6]

In interpreting the law, the court has to chart a course which will ensure a fair exercise of statutory powers. The legitimate concerns of citizens over arbitrary exercises of power have to be protected while ensuring that the legislative purpose in entrusting the authority to order a provisional attachment is fulfilled. The rule of law in a constitutional framework is fulfilled when law is substantively fair, procedurally fair and applied in a fair manner.

A writ petition may be liable to be dismissed if it is premature.[7] Ordinarily, a Court confines itself to the facts at hand and does not delve into assumptions.[8] In ***HMT Ltd v. Mudappa,***[9] it was held that a writ petition against a notification for the proposed acquisition of land under the Karnataka Industrial Areas Development Act, 1966 was premature.[10] Similarly, in the present case the writ petition should be dismissed as the petitioner has an alternate and efficacious remedy of an appeal under Section 107 of the GST Act. Moreover, the writ petition has been rendered infructuous against the order dated 03.10.2022 under Section 74(9) and sec 73(9) of the GST Act and the consequent appeal can be filed by the petitioner against this order before the appellate authority;

In paragraph 4 of the impugned judgment, it has been noted that the appellant had admitted that it had an alternative remedy by way of an appeal under Section 107 of the HPGST Act;

(iii) The delegation of powers under Section 83 of the HPGST Act by the second respondent to the third respondent does not imply that there was an irregular or illegal exercise of jurisdiction by the second respondent

The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in ***Assistant Commissioner (CT) LTU, Kakinada and others v Glaxo Smith Kline Consumer Health Care Limited***,[11] the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law.

However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are

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[6] Id.

[7] Kapan v. Jagmohan, AIR 1981 SC 126.

[8] Chanan Singh v. Registrar. Co-op Societies, AIR 1976 SC 1821.

[9] HMT Ltd v. Mudappa, AIR 2007 SC 1106.

[10] Id.

[11] Assistant Commissioner (CT) LTU, Kakinada and Ors. v.Glaxo Smith Kline Consumer Health Care Ltd, AIR 2020 SC 2819.

repealed or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

These rule of alternative remedy principles have been consistently upheld by this Court in ***Seth Chand Ratan v Pandit Durga Prasad,[12] Babubhai Muljibhai Patel v Nandlal Khodidas Barot[13]*** and ***Rajasthan SEB v. Union of India,[14]*** among other decisions.

[1.3] ONE STATUTORY AUTHORITIES CANNOT FILE WRIT AGAINST ANOTHER STATUTORY AUTHORITY:

We will advert to relevant precedents outlining the contours of the power of provisional attachment and specifically, in the context of provisions worded similarly to Section 83 of the GST Act.

The decision of this Court in ***Raman Tech Process Engg Co and Anr v Solanki Traders,[15]*** was concerned with the power of a civil court under Order 38 Rule 5 of the CPC to order an attachment before judgment. In that case, proceedings had been instituted by the respondent, for the recovery of moneys due for the supply of material to the appellant. The plaintiff moved an application under Order 38 Rule 5, for a direction to the defendants to furnish security for the suit claim and if they failed to do so, for attachment before judgment.

A body of precedent has emerged in the High Courts on the exercise of the power under Sec83 of the CGST Act, 2017. The shared learning which emerges from these decisions of the High Court needs recognition. In Valerius Industries v Union of India, the Gujarat High Court laid down the principles for the construction of Section 83 of the SGST/CGST Act. The High Court noted that a provisional attachment on the basis of a subjective satisfaction, absent any cogent or credible material, constitutes malice in law.

[12] Seth Chand Ratan v. Pandit Durga Prasad, (2003) 5 SCC 399.

[13] Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706.

[14] Rajasthan SEB v. Union of India, (2008) 5 SCC 632.

[15] Raman Tech Process Engineering Corpn. And Anr v. Solanki Traders, 2008 (1) R.C.R. (Civil) 195.

In the same vein, in ***Jai Ambey Filament Pvt Ltd v Union of India***[16] the Gujarat High Court reiterated that the subjective satisfaction as to the need for provisional attachment must be based on credible information that the attachment is necessary. This opinion cannot be formed based on "imaginary grounds, wishful thinking, howsoever laudable that may be." The High Court further held, that on his opinion being challenged, the competent officer must be able to show the material on the basis of which the belief is formed.

In ***Patran Steel Rolling Mill v Assistant Commissioner of State Tax Unit 2,***[17] the Gujarat High Court cited two instances in which provisional attachment would be apposite, these being where the assessee is a 'fly by night operator' and if the assessee will not be able to pay its dues after assessment.

Similar to the decisions of the Gujarat High Court, other High Courts have recognized the restrictive nature of the power of provisional attachment under Section 83 of the SGST Act and the need for it to be based on adequate substantive material. The High Courts have also underscored the extraordinary nature of this power, necessitating due caution in its exercise.The Delhi High Court, in ***Proex Fashion Private Limited v Government of India,***[18] outlined the following statutorily stipulated conditions for the invocation of Section 83 of the SGST Act:

i) Order should be passed by Commissioner;

ii) Proceeding under Section 62 or 63 or 64 or 67 or 73 or 74 should be pending

iii) Commissioner must form an opinion;

iv) Order should be passed to protect interest of revenue;

v) It must be necessary to attach property."

In ***UFV India Global Education v Union of India,***[19] the Punjab and Haryana High Court held that pendency of proceedings under the sections mentioned in Section 83 viz. Sections 62 or 63 or 64 or 67 or 73 or 74 is the sine qua non for an order of provisional attachment to be issued under Section 83.Midas Online Games had a pendency of proceedings under Sec 73 &74 of CGST Act. So GST department can enforce the Sec 83 or the order of the provisional attachment under the Act.

In light of the issues raised, arguments advanced and authorities cited, it is humbly requested that this Honourable Court may be pleased declare that the writ petition filed by Resolution Professional is not maintainable before the High Court of Karnataka.

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[16] Jai Ambey Filament Pvt. Ltd v. Union of India, 2021 (44) GSTL 41 (Gujarat).

[17]Patran Steel Rolling Mill v. Assistant Commissioner of State Tax Unit 2, 2019 (20) GSTL 732 (Gujarat).

[18] Proex Fashion Private Ltd v. Government of India, WP(C) 11245 0f 2020.

[19] UFV India Global Education v. Union of India, 2020 (43) GSTL 472.

2.Whether GST is payable on the 'entire consideration' received from participants?

It is mostly humbly submitted before Hon'ble High Court of Karnataka that the game of chance is "res extra commercium" and no right under Article 19(1) (g)[20] and Article 301[21] can be claimed by the petitioner with regard to lottery. The transaction of game of chance cannot be raised to the status of trade, commerce or intercourse. There is no right with the petitioner which can be enforced by writ petition filed under article 226[22] of the Constitution.

However, the question comes for such games in an online platform and distinction has to be drawn between a game of skill and a game of chance. In order to determine if it is skill that governs a gameplay, various courts have rendered decisions that surround around the following parameters:

a) Strategy in gameplay

b) Learned or developed ability

c) Knowledge

d) Technical expertise

e) Physical co-ordination

Though the view of courts towards these games has changed over time and online games which are predominantly governed by skill have been declared to games of skill and are thus not liable to penalized as an offence. Keeping these opinions, the courts had said that as far as online gaming is concerned, the courts could not be compared to real or physical games until they pass the 'skill' test within them.

The CGST Act, Section 7 provides that certain activities as mentioned under Schedule III of the Act shall not be treated as a supply of good or of services and hence would be exempt from the levy of GST. Schedule III set out that "actionable claims, other than lottery, betting and gambling" as one such activity for being out of the scope of applicability of GST. Rule 31A of the CGST Rules releases the method of calculation of tax by determining the method of calculation of value of supply in cases of lottery, betting, gambling and horse racing. According to this rule the value of supply of such actionable claims in the form of chance of winning is 100% of the face value of the bet amount or the amount paid in total. Hence, the petitioner contended that the entire amount pooled in by the participants should be taxed. The rate of such taxes is 28%. The petitioners claimed that:

Fantasy games are means to attract and lure people into betting and gambling. It asks people to put their money by taking a chance for easy money and quick earning. It involves chance taking

[20] Constitution of India, art 19(1) (g).

[21] Id., art. 301.

[22] Id., art. 226.

and most of the participants end up losing their money in this entire process and hence it is nothing but a different form of gambling, betting, and wagering as being different species of a general genesis of gambling.

These nature of activities carry the characteristics of 'gambling' or 'betting', no matter what. Hence these activities should be taxed and treated as per Section 7, Schedule III of the CGST Act, 2017 and Rule 31A(3) of the CGST Rules, 2018.

These games are no different from the game of horse racing and hence should be treated in a similar way. GST should be applicable at 28% on the entire amount put in by the participants on the 100% amount collected by Dream11 irrespective of whether the amount is retained by Dream11 or not, and not just for its service of providing the platform as its service. Moreover, it should not be charged the current rate of 18%, which is also just paid on the amount retained by Dream11 for the service of providing the online platform.

It further submits that the laws relating to economic activity need to be viewed with greater latitude than laws touching civil rights. He further submits that courts are loath to interfere with taxing policies of the States. The fact of not levying tax on other actionable claims apart from lottery, betting and gambling cannot be said to be discriminatory. It is submitted that Constitution Bench of this court in Sunrise Associates has held that an actionable claim is a movable property and goods in the wider sense.

The definition of goods given in Section 2(52)[23] of Act 2017 is in accord with the Constitution Bench judgment of this court in Sunrise Associates case[24] and the argument that definition of goods given in Section 2(52) is contrary to above Constitution Bench judgment in Sunrise Associates case is misplaced.

The definition of goods given under Article 366(12)[25] of the Constitution is an inclusive definition. Article 366(12A)[26] defines goods and services tax to mean tax on supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption.

Lottery having been judicially held to be an actionable claim is covered within the meaning of term goods under section 2(52).[27] The Union Parliament has the competence to levy GST on lotteries under article 246A of the Constitution. Under Article 279A[28] the GST Council has

[23] CGST Act, 2017 (Act 12 of 2017), Sec 2(52).

[24] Sunrise Associates v. Govt. of NCT of Delhi, (2006) 5 SCC 603.

[25] Supra note 20, art. 366(12).

[26] Id., art. 366(12A).

[27] Supra note 23.

[28] Supra note 20, art. 279A.

approved the levy of GST on lottery tickets, hence, the inclusion of actionable claims in the definition of goods under section 2(52)[29] is in keeping with the legislative and taxing policy.

It is well settled that courts would not review the wisdom or advisability or expediency of a tax. The levy on face value is authorised by section 15(1)[30] read with section 15(5) of the Act, 2017 and Rule 31(A)[31] of the Central Goods and Services Tax Rules, 2017. The levy of 28% tax on face value is neither discriminatory nor beyond the taxing policy/powers of the State.

In the case of ***Skill Lotto Solutions v. Union of India,***[32] The value of taxable supply is a matter of statutory regulation and when the value is to be transaction value which is to be determined as per Section 15 it is not permissible to compute the value of taxable supply by excluding prize which has been contemplated in the statutory scheme. When prize paid by the distributor/agent is not contemplated to be excluded from the value of taxable supply, we are not persuaded to accept the submission of the petitioner that prize money should be excluded for computing the taxable value of supply the prize money should be excluded. We, thus, conclude that while determining the taxable value of supply the prize money is not to be excluded for the purpose of levy of GST. The levy of GST has been attacked as discriminatory. It is also submitted that there is a hostile discrimination in taxing only lottery, betting and gambling whereas leaving all other actionable claims from the taxing net as is evident by entry 6 of Schedule III of Act, 2017.

In the case of ***Union of India v. Martin Lottery Agencies Limited,***[33] this Court had occasion to consider levy of service tax on the lottery tickets. This Court had held that law as it stands today recognises lottery to be gambling, which is res extra commercium. The law, as it stands today recognises lottery to be gambling. Gambling is res extra commercium as has been held by this Court in ***State of Bombay v. R.M.D. Chamarbaugwala,***[34] and ***B.R. Enterprises v. State of U.P.***[35]

It is a duty of the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The Constitution Bench in ***State of Bombay v. R.M.D. Chamarbaugwala,***[36] has clearly stated that Constitution makers who set up an ideal

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[29] Supra note 23.

[30] Id., s. 15(1).

[31] GST Rules, 2017 (Rule 31A).

[32] Skill Lotto Solutions Pvt Ltd v. Union of India, (2020) SCC Online SC 990.

[33] Union of India v. Martin Lottery Agencies Limited, (2009) 12 SCC 209.

[34] State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699.

[35] B.R. Enterprises v. State of U.P., (1999) 9 SCC 700.

[36] Supra note 34.

welfare State have never intended to elevate betting and gambling on the level of country's trade or business or commerce. In this country, the aforesaid were never accorded recognition of trade, business or commerce and were always regulated and taxing the lottery, gambling and betting was with the objective as noted by the Constitution Bench in the case of ***State of Bombay v. R.M.D. Chamarbaugwala,***[37] we, thus, do not accept the submission of the petitioner that there is any hostile discrimination in taxing the lottery, betting and gambling and not taxing other actionable claims. The rationale to tax the aforesaid is easily comprehensible as noted above. Hence, we do not find any violation of Article 14.

Lottery, betting and gambling are well known concepts and have been in practice in this country since before independence and were regulated and taxed by different legislations. When Act, 2017 defines the goods to include actionable claims and included only three categories of actionable claims, i.e., lottery, betting and gambling for purposes of levy of GST, it cannot be said that there was no rationale for including these three actionable claims for tax purposes. Regulation including taxation in one or other form on the activities namely lottery, betting and gambling has been in existence since last several decades.

In light of the issues raised, arguments advanced and authorities cited, it is humbly requested that this Honourable Court may be pleased that the parliament has included above three for purpose of imposing GST and not taxed other actionable claims, it cannot be said that there is no rationale or reason for taxing above three and leaving others.

[37] Id.

3.Whether the department could be treated as 'secured creditor' to have precedence over the company's bank accounts?

It is most humbly submitted before the Hon'ble High Court that the GST department was up in arms to defend its orders and attachments especially because it was armoured by the recent decision of the Supreme Court which upheld that claims of the tax departments should be treated at par with the secured creditors and should not be sent empty handed during insolvency of liquidation process. The department was of the view that it was in a better position since it had already created a 'Charge' over the bank accounts of the company by attachments even before the NBI could treat the dues to it by the company as non-performing assets and take any measures which according to the department was sufficient to be treated as 'Secured Creditor'.

The GST department has further relied on section 52(1) of the IBC, which is reproduced hereunder: "Secured Creditor in liquidation proceedings.[38]

(a) Relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) Realise its security interest in the manner specified in this section." To settle all legal proceedings and other contingent liabilities, irrevocably and unconditionally other than those explicitly covered in the Resolution Plan, no other person shall be eligible to receive any amount from the Corporate Debtor, either on account of unverified claims, legal proceedings, etc."

The Office of the Director General of GST Intelligence issued SCN 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) for FY 2017-18 and under section 73(2) for FY 2018-19 and statements under section 73(3) for FY 2019-20 and FY 2020-21 respectively

Therefore, in the morning of 03.10.2022, the GST department passed separate orders under sections 74(9) and 73(9) respectively for the four years and served them on the company by 12 o'clock noon on the same day through physical and email mode.

On receipt of the orders for the four years, the company was shell-shocked not only because the department confirmed the demands as per the SCNs but also because it asked the company to pay the entire demand of tax, interest and penalty of around INR 11,000 crores.

When a financial default occurs, either the borrower (Corporate Debtor under Sec 10 read with Sec 11 of the IBC) or the lender (Creditors-Financial creditor under Sec 7 or Operational creditor under Sec 9 of the IBC) can approach the NCLT for initiating the resolution process. Operational creditors need to give a notice of 10 days to the Corporate Debtor before approaching the NCLT. If the Corporate Debtor fails to repay dues to the Operation Creditor, or fails to show any existing dispute or arbitration, then the Operational Creditor can approach the NCLT.

In the case of ***Government of India through Office of the Assistant Commissioner, GST & Central Excise, Balasore Division, Bhubaneswar GST Commissionerate v. Bhuvan Madan,***

[38] Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 52(1).

Resolution Professional in the matter of M/s Ferro Alloys Corporation Ltd,[39] the Resolution Professional delayed in admittance of the claim and wrongful classification after the date of deadline hence the applicant is seriously affected and dues to the Government revenue is also jeopardized. The applicant further submits that unless the claims are updated and made available in Information Memorandum before the potential Resolution Applicants, the proposed Resolution Plan is likely to contain incorrect and inadequate statement as to how it would deal with the interest of all stakeholders including, and the amount to be paid to the secured Financial Creditors, unsecured Financial Creditors and Operational Creditors. The applicant submits that how much to be paid to the Operational Creditors are not in compliance with Section 30(1) (b) of the Insolvency and Bankruptcy Code, 2016. Such Resolution Plan ought to be rejected. Regulation 38 provides for "Mandatory contents of the Resolution Plan", which are as follows:

"(1) The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditors.

(1A) A Resolution Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor."

A similar situation arose in the recent case of ***State Tax Officer v. Rainbow Papers Limited,***[40] wherein the Hon'ble Supreme Court dealt with the question as to whether the provisions of the IBC, 2016, specially section 53, overrides section 48 of the GVAT, 2003. Section 48 of GVAT is a non-obstante clause and creates a statutory first charge on the property of the dealer in favour of tax authorities against any amount payable by the dealer on account of tax, interest or penalty for which he is liable to pay to the Government.

There have been instances in the past where SC was faced with a similar question in the context of income-tax law, customs law, etc. In all such cases, SC has upheld the precedence of secured creditor dues over tax dues. For instance, in ***Sundaresh Bhatt v. Central Board of Indirect Taxes and Customs,***[41] the Court had held that IBC has an overriding effect on Customs Act (which too, creates statutory charge in favour of customs authorities).

However, the authors have already discussed how tax dues have always been held to be subservient to dues of secured creditors. Each of the competing creditors is entitled to a share of payments under resolution plan on the basis of liquidation value ascribable to such creditor.

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[39] Government of India through Office of the Assistant Commissioner, GST & Central Excise, Balasore Division, Bhubaneswar GST Commissionerate v. Bhuvan Madan, Resolution Professional in the matter of M/s Ferro Alloys Corporation Ltd, 2020 SCC Online NCLT 11468.

[40] State Tax Officer v. Rainbow Papers Ltd, 2022 SCC Online SC 1162.

[41] Sundaresh Bhatt v. Central Board of Indirect Taxes and Customs, 2022 (8) TMI 1161.

This is evident from a reading of section 30(4) of IBC, and an array of rulings like ***COC of Essar Steel India Ltd through Authorised Signatory v. Satish Kumar Gupta and Ors,[42] K. Sashidhar v. Indian Overseas Bank,[43]*** and ***India Resurgence Arc Pvt Ltd v. M/S Amit Metaliks Ltd & Anr,[44]*** As such, saying that the tax dues must be paid-off under resolution plan without considering liquidation value and section 53 would be counter-intuitive. Consequently, the authors are of the humble view that a resolution plan cannot be rendered invalid, solely because it does not provide for payment of tax dues For instance, in ***Sundaresh Bhatt v. Central Board of Indirect Taxes and Customs,[45]*** the Court had held that IBC has an overriding effect on Customs Act (which too, creates statutory charge in favour of customs authorities).

It is further held in the ***Rainbow Papers case*** that,[46] If the Resolution Plan ignores the statutory demands payable to any State Government or a Legal authority, altogether, the Adjudicating Authority is bound to reject the resolution plan .It is further held that if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a faced manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Sec 53 of the IBC.

Different treatment to secured creditors and Government dues:

In the case of ***Leo Edibles & Fats Ltd v. Tax Recovery Officer,[47]*** The construct of IBC in terms of payment waterfall is quite clear. Section 53 puts secured creditors in second position in order of priority along with workmen's dues, while dues to the Government are ranked fifth. If the intent of the lawmakers was to treat the tax authorities at the same pedestal as secured creditors, then the purpose of having a separate rank for Government dues is not clear. And to say that tax dues will not form part of government dues is completely counter-intuitive and defies logic. In this respect, the Andhra Pradesh High Court had rightly observed, "…tax dues, being an input to the Consolidated Fund of India and of the States, clearly come within the ambit of section 53(1) (e) of the Code. If the Legislature, in its wisdom, assigned the fifth position in the order of priority to such dues, it is not for this Court to delve into or belittle the rationale underlying the same

On the basis of grounds as discussed above, If a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional

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[42] COC of Essar Steel India Ltd through Authorised Signatory v. Satish Kumar Gupta and Ors, (2020) 8 SCC 531.

[43] K. Sashidhar v. Indian Overseas Bank & Ors, 2019 SCC Online SC 257.

[44] India Resurgence Arc Pvt Ltd v. M/S Amit Metaliks Ltd & Anr, 2021 SCC Online SC 409.

[45] Supra note 41.

[46] Supra note 40.

[47] Leo Edibles & Fats Ltd v. Tax Recovery Officer, (2018) 407 ITR 369.

reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC."

In light of the issues raised, arguments advanced and authorities cited, it is humbly requested that this Honourable Court observed that the COC, which might include financial institutions and other financial creditors, cannot secure their own dues while ignoring the statutory dues owed to Government authorities. So department was sufficient to be treated as secured creditor.

4.Whether the online games are actually 'game of skills' or 'game of chances'?

It is most humbly submitted before the Hon'ble High Court of Karnataka that it is nothing but 'betting' or 'gambling', the same according to the petitioner shall be governed by Rule 31A(3) of CGST Rules, 2018. Online betting games in the form of chance the said Rule shall apply even in such fantasy games amounting to gambling or betting or wagering. Gambling and wagers have always enthralled people ever since the beginning of civilisation. Instances of gambling can be found in the Mahabharata, Quran and other religious texts. The law and the judiciary, in modern times, have looked at card games as a pernicious and immoral activity. In the last two centuries, sophisticated online betting games involving a great degree of chance have become highly popular among the masses.[48]

Even today, pre-independence statutes like the Public Gambling Act, 1867 prohibit any game based on chance or probability except lotteries. The Seventh Schedule of the Constitution of India has differentiated between lotteries and other games of chance as there are different entries concerning the regulation of lotteries and gambling and betting. Entry number 40 of List-I of the Seventh Schedule empowers the Central Government to legislate on regulation of lotteries. List-II of the seventh schedule of the Constitution, [Constitution of India, List-II, Entry 34 and Entry 62].[49]

Black's Law Dictionary defines gambling or gaming as "the act of risking something of value for a chance to win a prize",[50] while a wager is defined as "money or other consideration risked to an uncertain activity".[51]

Public Gambling Act exempts games of skill from the penal provisions against gambling. Public Gaming Act, 1867, "Act not to apply to certain games: Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played".[52]

After Independence, discretion to regulate gambling was given to states pursuant to List II Entry 34 of the Seventh Schedule. [Indian Const., List II Entry 34 of Seventh Schedule.]

[48] Legality of Poker and Other Games of Skill: A Critical Analysis of India's Gaming Laws, (2012) 5 NUJSL Rev 93 at p.no. 93

[49] Id. , p.no.94

[50] Black's Law Dictionary 701 (2004).

[51] Black's Law Dictionary 1610 (2004).

[52] Public Gaming Act, 1867

However, in the absence of a state-specific law, the central Public Gambling Act still continues to govern gambling in some of the states.[53]

Discrepancies in regulation of gambling arise out of different state laws or state amendments made to the central Public Gambling Act. For example, states such as Karnataka,[54] Kerala[55] and Odisha[56] are governed by respective state laws, while Himachal Pradesh on the other hand, has passed a Public Gambling (Amendment) Act, 1976 making the requisite modifications to the central law according to its needs while this degree of independence given to the states to customize the gambling laws appears to be a liberal policy adopted by the centre, it raises several questions pertinent to distribution of power, uniform national policy, and whether gambling is a fundamental right.

It thus becomes clear that playing games where luck has little or no role to play and the winner is entirely determined by the player's intellect and skill would be permissible as there is no other statute that criminalises or punishes playing of such games of skill .Midas online betting purely on the basis of the game of chance.

While betting has not been specifically mentioned under the Public Gambling Act, gambling is the broader word that has been used to encompass betting. Betting, in the true sense, implies placing stakes on an uncertain future event whereas gambling involves the player staking money on a game in which he himself participates. Since both gambling and betting refer to games of chance, which the Act intends to prohibit, the legislature has not differentiated between them. Both, gambling and betting also fall under the term "wagering", which is as prohibited by section 30 of the Indian Contract Act, 1872. Wagering is considered as the staking of money on an unforeseen event.

A skill game is a game which is totally based on skill and ability of the person and not otherwise. Any game which depends partly on skill and partly on luck or chance cannot be termed as skill game.

Midas online gaming is not a skill game as it is involved partly skill and partly luck or chance." However, the SC has expressly stated that an element of chance cannot be eliminated even from a game of skill. The excluded mixed games of skill and chance from exemption, even if skill fails to dominates, thereby disregarding the dominant factor test in its entirety.[57]

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[53] A Gamble of Laws: Reconciling the Conflicting Jurisprudence on Gambling Laws in India, (2019) 13.1 NSLR 27 at p.no 28

[54] Karnataka Police Act, (Act 4 of 1964) Ch. VII (1964).

[55] Kerala Gambling Act, (Act 20 of 1960).

[56] The Odisha (Prevention of) Gambling Act, (Act 17 of 1955).

[57] Dr. K.R. Lakshmanan v. State of Tamil Nadu and Anr, (1996) 2 SCC 226.

Resting under its shadows, the Karnataka Police Act, 1963 stipulates that games of chance would include mixed game of skill and chance. Thus, Midas online gaming platform even if skill were to be the dominant element in a game, there is iota of chance in several games in Midas platform would preclude the game from being exempted.[58]

Appropriateness of the Dominant Factor Test

Before we discuss the deviation of the Telangana and Karnataka laws from the dominant factor test, it is essential to explore if this test is the appropriate stance for India to determine what constitutes gambling. The dominant factor test is the interpretation provided by the SC of the term "mere skill" found in Public Gambling Act.[59] The SC has allowed[60] and disallowed[61] betting on certain games through interpretation of this clause. The function of the exemption clause has been to make a clear distinction between games of skill and games of chance, in essence, determining gambling. It is determined through the employment of skill by the participants of a particular game. This provision allows states to undertake independent evaluation and set their own criteria to exempt a game from the application of gambling laws.

To determine the degree of skill and chance in any game, it is essential to first understand the interpretation of the words skill and chance. A game of skill is one in which nothing is left to chance and in which superior knowledge and attention or superior strength, ability and practice, gain victory. On the other hand, a game determined entirely or in part by draw of lots or mere luck, and in which judgment, practice, skill or adroitness have honestly.[62]

The Overshadowed and Ignored Game-changing Facets of the Law:

The SC, however, added another dimension to the interpretation of 'mere skill' in the ***M.J. Sivani case***[63] while determining the fate of video games in the backdrop of the Mysore Police Act, 1963 (now known as the Karnataka Police Act, 1963),[64] the Court unambiguously stated that no game could be a game of skill alone.[65] It also expressed that when chance preponderated over a game, then it must not be designated as one of mere skill. It may be inferred from the case that the Court believed that there could be only two categories under gaming; a game of

[58] Supra note 54, s. 2(7).

[59] Supra note 52.

[60] Supra note 57.

[61] State of Andhra Pradesh v. K. Satyanarayana, AIR 1968 SC 825.

[62] Rex v. Fortier, 13 Q.B.308.

[63] M.J. Sivani and Ors v. State of Karnataka, 1995 (3) SCR 329.

[64] Supra note.54.

[65] Supra note 63.

mere chance[66] or a mixed game of skill and chance.[67] According to this interpretation, there was no scope for a game of mere skill, as chance would inevitably creep in. A mixed game of skill and chance was, therefore, merely resting under the garb of mere skill.

While the SC in the M.J. Sivani case had taken a novel approach in accounting for the element of luck and risk from strategizing that even games of pure skill (such as chess) possessed, it muddled the boundaries between what the legislatures and even future judicial decisions would continue to term as chance.

Therefore, the test of preponderance since the M.J. Sivani case is unequivocally functioning on the premise that chance is an inseparable element from any game. In the quest for mere application of the test to games to determine their nature, the logical inconsistencies in the test have been left unquestioned. The result of this sudden shift in jurisprudence is that in overanalysing the elements in games of skill and games of chance, the SC has been unable to create a consistent approach for the state assemblies to adopt. While the effect of this confusion has been expanded upon in the subsequent section, recent examples of this conundrum are the Telangana Ordinances which prohibit mixed games of skill and chance and only permit games of mere skill. Since all games possess an element of chance as per the M.J. Sivani case, the Ordinance cannot be practically implemented.

Since,Midas games such as chess and betting on horse racing do not possess an element of chance, the term ‘accident’ could be used to define the element of uncertainty that exists in their gameplay. Then, in that case, the Telangana Ordinances could be practically implemented by accounting for this element of ‘accident’ and permit the playing of video games, chess and betting on horse racing. Therefore, it becomes imperative to understand the difference between ‘accident’ and chance in Indian jurisprudence.

To put this in context, in a game of chess when the skills of two players are pitted against each other, result is procured through domination of one player's skill over the other player. According to the Indian conception, with each game involving an element of ‘chance’ and not ‘accident’, such loss of the player would be attributed to chance, as the result is uncertain, even though the game was largely governed by skill. However, if the element of ‘chance’ is to be replaced with ‘accident’, the result could be rationally attributed to an accidental move or a series of accidental moves by losing player which led to his loss. Implying that even though he lost due to incorrect moves, his exercise of skill is not subdued by chance. Correspondingly, the winning player's skill thwarted the losing player's skill, leading to an element of accidental uncertainty.[68]

In any game, there is a possibility that some oversight or unexpected incident may affect the result and if these incidents are sufficient to make a game in which it may occur, one of chance,

[66] Supra note 61.

[67] Supra note 63.

[68] Supra note 53, at p.no. 34

then there is no such thing as a game of skill.[69] If the test of character of any game is through the element that determines the result of the game,[70] then according to the Indian conception there is no game of mere skill.

It might be concluded that two essential elements of the dominant factor test have not been considered by the Indian Courts. In the absence of consideration of the element of 'accident', the Courts are paving a path for higher degree of judicial interpretation while compromising upon the desired legislative clarity sought to exist. Additionally, due to non-consideration of element of 'accident', the uncertainty in the result of the game would be attributed to 'chance'. Upon complete adoption of the test of preponderance, if chance determines the result of the game, then a game can never be deemed one of 'mere skill'. Therefore, there can be no game according to the Indian conception of the test where skill would be the dominant factor. The only solution left is for laws which ban mixed games of skill and chance, to differentiate between the terms 'chance' and 'accident', such that they permit games of pure skill wherein chance does not play a part but accidents may occur.

Additionally the current process of deeming a game as that of skill through judicial process, is inefficient as the respective High Court's adjudication is bound to be appealed. If the High Court is to determine the degree of skill in a particular game, the question is not one of law. It is not restricted to the statute in question. It may not be a preferable situation wherein two High Courts have a different idea of degree of skill in a game. Even if it were to happen, such difference would anyway be resolved before the SC, effectively nullifying the High Court's opinion.

Due to aforementioned law, cases and arguments, the Counsel humbly submits that the most, come in as an aid to interpret the game. However, it would have very little significance in terms of finality. This could be evinced through the previous cases of Chamarbaugwala, Satyanarayana, M.J. Sivani and Lakshmanan, wherein all of them were finally settled by the SC. Even the validity of the Telangana Ordinance and the Dominance Games Pvt. Ltd. case, dealing with the aspect of skill in poker, which were recently decided by the Telangana and AP High Court and Gujarat High Court respectively, are speculated to be in the process of being appealed.

[69] Engel v. State, 53 Ariz 458 (1939).

[70] Joker Club v. Hardin, 643 SE2d 626 (NC Ct. App 2007).

PRAYER

Wherefore in the light of the issues raised, arguments advanced and authorities cited, it is humbly requested that this Honourable Court may be pleased to adjudge and declare:

1. The forum of Statutory alternative remedy is available to the petitioner it was not appropriate for the High Court to entertain a writ petition. The writ petition is purely a premature application.
2. The game of chance is "res extra commercium" and no right under Article 19(1) (g) can be claimed by the petitioner with regard to lottery. The transaction of game of chance cannot be raised to the status of trade, commerce or intercourse.
3. The tax department and even statutory authorities are now on equal footing and shall ask for proportionate payment in corporate insolvency resolution process, so department is sufficient to be treated as a secured creditor.
4. The element of chance cannot eliminate even from the game of skill, there is iota of chance in several games in Midas platform nor game of chance

And/Or,

To grant any other order in favour of the respondent which the Hon'ble Court may deem fit in the eyes of Justice, Equity and Good Conscience.

All of which is respectfully submitted and for such act of kindness the respondent shall be duty bound as ever pray.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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COUNSEL FOR THE APPELLANTS