



20th Surana & Surana National Corporate Law
Moot Court Competition 2022-23
& National Judgement Writing Competition on
Corporate Law
JSS Law College, Mysuru
7 - 9 April, 2023



**BEFORE THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU
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 Intelligence
Bengaluru

... Respondent

-
1. Midas Online Games India Pvt Ltd (Midas Online Games or the Company) is a company registered under the Companies Act, 2013 having its registered office in Bengaluru. The company was incorporated on 03.07.2017 which almost coincided with the introduction of the Goods and Services Tax Act, 2017 (GST Act). The company is involved in the business of online betting games such as card games like rummy, poker, and the like; fantasy cricket; horse racing; lottery; etc. and is one of the prominent leaders in this industry. The model of the business was that each participant has to make two kinds of payments such as the admission fee and pooling fee. Only the admission fee will be the income of the company which was around 25% of the total consideration received from the participants which includes the pooling fee. The pooling fee will be transferred to an escrow account received from all the participants which will be the prize money or in other words the 'actionable claim' of all the participants. Based on the winning of the participants, the prize money will be distributed which will result in gain for few and loss for many, typically.
 2. The company wanted to have all India presence since its inception and wanted to aggressively promote its business and therefore, reached out to National Bank of India (NBI) for huge loans. Between July 2017 and August 2022, the company had borrowed huge

amounts from NBI for its business. Though the company had huge revenues over these five years due to its gargantuan success and aggressive promotions, it wanted to over-leverage its spending by excess borrowing rather than using its own funds. This led to frequent borrowings by the company. But the company was prompt in paying the interests to the bank which convinced the bank to lend more and more. As of August 31, 2022, the dues by the company to the bank was around INR 5,000 crores.

3. The revenue of the company, in these little over five years, was around whopping INR 5,000 crores for each financial year. Thanks to the online gambling bandwagon in India and the notion to make quick money which led to the mammoth growth of the company. Meanwhile, the company was promptly filing its income-tax returns and was paying income-taxes accordingly. It was compliant of all central and state laws with the help of its robust legal and accounting teams and challenged any government actions which came on its way and was in a juggernaut mode in doing its business. The company was a Goods and Services Tax (GST) registrant in the state of Karnataka. It was a prompt filer of all the 'n' number of GST returns in a year right from the beginning especially because it was incorporated at the same time of introduction of GST. For the purpose of payment of GST, the company believed that it is liable to pay GST at the rate of 18% only on the 'admission fee' component i.e. the 25% of the total fee collected from the participants and paid GST on it promptly. It was of the firm view that the remaining 75% did not belong to it since it was an 'actionable claim' of the participants who would win the prizes eventually.
4. Under such circumstances, on April 01, 2022, the Office of the Director General of GST Intelligence issued show cause notices (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 asking the company to show cause as to why it should not be taxed at the rate of 28% on the entire amount received by it (admission fee + pooling fee) as per Rule 31A(3) of the CGST & SGST Rules, 2017 from the FY 2017-18 to FY 2020-21 along with applicable interest and also an equivalent penalty of 28% tax on the entire amount for the said periods. From the notice 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'. The divergent views of the department and the company led to

classification issue, valuation issue and on whether the online games were games of chance or games of skill. The department gave sufficient time to reply and several patient hearings to the company on the SCNs for all the four years and reserved its order on 30.09.2022.

5. In the meanwhile, the company committed a default in making a payment of INR 10 crores to its software supplier company and did not clear the payment even after repeated reminders due to a dispute on the quality of the software upgradation. Therefore, the software service provider filed an application before the National Company Law Tribunal (NCLT or Adjudicating Authority) at Bengaluru under the Insolvency and Bankruptcy Code, 2016 (IBC of the Code) on 01.09.2022 as an operational creditor to declare the company, Midas Online Games India Pvt Ltd, as an insolvent and to initiate corporate insolvency resolution process (CIRP). The NCLT gave 15 days' time to the company to file its objections, if any, to the application of the software company and another 15 days' time to the applicant to file its rejoinder, if any, and posted the matter on 30.09.2022 finally for arguments of both the parties. The company filed its objections and argued that the application was not maintainable and that the company does not owe the entire amount of INR 10 crores but was much less than that like one or two crores only. On 30.09.2022, after hearing the arguments and after considering the pleadings of both the parties, the NCLT reserved its order and posted the case on 06.10.2022 'For Orders'.
6. On 01.10.2022, there were online and print media speculations that the application filed against the company, in strictly applying the law, could be admitted by the NCLT since it was a case of admitted liability to some extent. On reading this, the GST department was in jitters since 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 FYs and there was a genuine fear that the company could have only around INR 5,000 to 6,000 crores in its only bank account with NBI since the revenues earned over the years were aggressively spent on high-profile advertisements, extravagant salaries to its top and mid-level employees, swanky lease properties, investments in modern software and technologies and other administrative expenses as the company was swiftly expanding its presence in other states of the country in accordance with respective state laws. 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.

7. 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 before 5 PM in the evening of 05.10.2022 relying on the proviso to section 78 of the GST Act, failing which, the orders informed that recovery proceedings will be initiated under section 79 forthwith. Unfortunately, for the company, it could not challenge the orders for the next two days and the earliest next available date to challenge the orders was only 06.10.2022 during the High Court vacation sitting. The company had planned and prepared to challenge the orders on 06.10.2022.
8. Even before the company could recover from the shock of the orders, on 06.10.2022, at around 10 AM, the department initiated recovery proceedings under section 79(1)(c) of the GST Act by directing the NBI to freeze all the bank accounts of the company and thereby, created a 'charge' on the accounts so that the department could appropriate the amounts lying in the bank accounts to the tune of INR 6,000 approximately towards the demands raised in the said four orders. Therefore, the bank accounts of the company with NBI were 'attached' in the morning of 06.10.2022 at around 10 AM.
9. On the other hand, the NCLT pronounced its orders at around 10.30 AM on 06.10.2022 on the application filed against the company in admitting the application of the software company and directed that the corporate insolvency resolution process under section 14 of IBC be initiated forthwith by appointing the interim resolution professional (IRP) named in the application to take control of the affairs of the company on the same day itself. Moratorium was also ordered as per section 14 of the Code. The newly appointed IRP started to perform his duties as per the Code and on the next day (07.10.2022) made public announcement calling for 'claims' from the respective creditors.
10. On looking at the public announcement, the GST department on 10.10.2022 filed its claim as secured creditor in Form B as per the Code and relevant Regulations with the proof of the orders dated 03.10.2022 and attachment orders dated 06.10.2022 passed against the company that it owes around INR 11,000 crores to the department. The NBI also filed its claim on the same day as secured creditor in Form B that the company owes INR 5,000 crores to it. Among all the financial creditors of the company, NBI was the largest financial creditor and had majority claim of at least 90% on the entire 'financial debt' of the company before

taking into account of the dues to the GST department since NBI believed that GST department was obviously not a 'secured/ financial creditor' as per the Code. Both the claims were well in advance of the timeline stipulated in the Code and therefore, were proper.

11. The IRP collated all the claims and took note of the financial position of the company and constituted the Committee of Creditors (COC) on 20.10.2022. The first meeting of the COC was convened on 26.10.2022 and the COC and IRP were of the view that the claim filed by the GST department was unsustainable under IBC especially because the demand orders itself were against the GST laws. Therefore, two important resolutions were passed on that day after much deliberations. After taking into account the financial strength of the company, the provisions of the Code and its allied Regulations and the interest of NBI and the public, it was resolved, one, to appoint the IRP as the Resolution Professional (RP) and, two, to immediately file writ petitions before the Hon'ble Karnataka High Court challenging the orders passed by the GST department dated on 03.10.2022 under sections 74(9) and 73(9) and recovery proceedings initiated on 06.10.2022 under section 79(1)(c) of the GST Act which were in a hurried and desperate manner.
12. After carefully reading the orders of the department, after understanding the provisions of the GST Act/Rules and various rulings of the Hon'ble Supreme Court of India and different High Courts, the RP filed four writ petitions before the Karnataka High Court as the representative of the company challenging the orders and the recovery proceedings initiated by the GST department broadly on two counts:
 - The main prayer being, that the demand of the GST department is absolutely unsustainable in law since the company is not at all required to pay GST on the entire consideration received by it since all the games operated by it online are only 'games of skill' and not 'games of chance'. The manner in which the demand orders were passed and the haphazard attachments made by the department were outrightly arbitrary, egregious and illegal.
 - The alternate prayer being, that even assuming the demands had any legs to stand, the department can by no stretch be treated as 'secured creditor' but at best only as

‘operational creditor’ and so, it has to wait in the queue as per the IBC provisions to receive its dues, if any resolution plan submitted during the process unravels.

13. The GST department too 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 or 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 (NPA) and take any measures which according to the department was sufficient to be treated as ‘secured creditor’, and that, to be treated as secured creditor, the ‘charge’ need not always be over immovable properties if the relevant laws are read closely.

14. The writ petitions are coming up for hearing before the Karnataka High Court and the pleadings of both the sides are complete. Both the parties are being represented by the best legal teams. The court has to decide mainly on the above two issues; on whether GST is payable on the ‘entire consideration’ and whether the department could be treated as ‘secured creditor’ to have precedence over the company’s bank accounts. The parties are expected to confine mainly to these two issues including on maintainability, if relevant, and to raise any other issues only if they are strictly relevant to these two issues. The writ petitions have now been taken up for final hearing to decide whether the online games are actually ‘game of skills’ or ‘game of chances’ as claimed by the rival parties which by itself has become a fierce ‘Game of Thrones!’.