



**Surana & Surana National Corporate Law
Moot Court Competition
JSS Law College, Mysuru**



9 – 11 February 2018

CLARIFICATIONS

1. My query is, are we supposed to draft our arguments on the same lines that the 'Bank' or the 'Company' has roughly outlined in the issues? Or can we formulate our own solutions to the problem which addresses the questions but may not follow the already provided contentions.

Yes. Existing issues have to be addressed. New issues can be raised. Clubbing of issues is permitted.

2. Whether the current suit is in appeal stage as there is contradiction in the institution of suit?

There is no 'suit' referred in the problem. The facts are clear enough on this query.

3. Whether other Statues other than tort law can be included from the point of argument and memo preparation?

Yes

4. Has the Bank acquired physical or symbolic possession of the property under the SARFAESI Act?

This is an arguable point and the difference between the two has to be explained to the judges and its relevance to the facts, if any.

5. Has the Bank approached the Magistrate under Section 14 of the SARFAESI Act to acquire physical possession of the property?

The facts are silent on this issue. Have to be logically assumed.

6. Have the proceedings against the guarantors before the DRT proceeded? At what stage are they exactly?

The facts are silent on this aspect and have to be assumed which makes sense.

7. On pg 7 issue IV the company's defense, is there any typographical error in the last line where the company argues for shifting proceedings of DRT to NCLT?

No.

8. For how long could the company pay the interest? Para 6

Rely on the facts.

9. Was all requirements necessary in section 7, mostly procedural, fulfilled?

Facts are silent. Has to be assumed accordingly.

10. In what durations was the company required to pay interest?

Facts make a mention about it.

11. Was the penal interest (24%) over and above the rate of interest (12%)?

Facts are clear.

12. Has the company contested the amount due in DRT proceedings?

Have to be assumed accordingly.

13. What all documents have been filed before NCLT under section 7 when the application is made?

The facts are silent.

14. Was there any Unconditional Cancellation Clause in the loan agreement?

The facts are silent.

15. As per the agreement how was the yearly interest to be paid (annually, quarterly or monthly)?

As per usual commercial terms.

16. What amount of money was paid back by QFPL to GBI during second year of moratorium period?

Rely on facts please.

17. What all terms of moratorium period were breached by Company during second year?

Rely on facts please.

18. Was there any specific breach on part of bank with regards to releasing of funds under Letter of Credit limit?

The facts are clear.

19. Other than asking bank to release remaining funds number of times, did the company at any stage consider going to civil court contesting the non-release?

Rely on the facts please.

20. How much interest was to be paid during the extension of moratorium period to third year?

Rely on the facts please.

21. When was the first default of payment made by company?

The facts are clear.

22. Kindly provide us with the bifurcation of the loan amount disbursed in terms of LC and CC.

Rely on the facts please.

23. Kindly provide us with the action taken by the bank after 13 (4) of the SARFAESI act in Para 12. Also, what is the value of the assets taken in possession?

Rely on the facts please.

24. What is the first date of default?

Rely on the facts please.

25. Whether any clause related to penal interest was given in the contract?

Rely on the facts please.

26. Whether restructuring is done with or without the aid of the CDR Cell.

The facts are silent. Assume accordingly.

27. Whether the acceptance for grant of extension in Para 11 was with the common consensus of all the banks?

Rely on the facts please.

28. Whether it is simple or compound interest on the loan?

Rely on the facts please.

29. Whether the loan agreement contained any clause to refuse disbursement at the bank's discretion?

The facts are silent. Assume accordingly.

30. Do we need to base our arguments on the ones mentioned under each issue in the problem?

Yes. But there can be additional arguments.

31. What does the term 'moratorium of loan demand' on Page 3 mean? Does it mean that the company does not have to pay any interest for the next two years even if it is getting accumulated or does it still have to keep making previous interest payments?

The facts are clear.

32. Does 'moratorium of loan demand' mean that the bank cannot demand payment of loan for two years?

The facts are clear.

33. When the company asked for an extension of 1 year, did the terms of the 'Debt Restructuring' apply (i.e. the moratorium, etc.,) or was it back to the original terms of the loan agreement?

The facts are silent. Assume accordingly.

34. When the company agreed to the debt restructuring, did it supersede the original loan agreement and the bank was not obliged to comply with the latter anymore?

Rely on the facts please.

35. Was the restructuring done as per the RBI guidelines? Was there an ICA and a DCA?

Rely on the facts please.

36. How much property of Lady Midas, group companies of QFPL and the directors of QFPL was given as collateral?

Rely on the facts please.

37. The company under Issue V on page 7 states that if the bank had released the sum when the 5/20 Rule was relaxed then the request for the restructuring scheme wouldn't have arisen. However the Rule was relaxed only after the company had agreed to the scheme. There seems to be some issue with the timeline.

It means that had the amounts been released at the time of Rule 5/20, the company would not have been in a position to restructure the loans.

38. How has the bank arrived on the total sum as Rs 12000 Cr? How much has the company paid back?

Rely on the facts please.

39. The fourth issue as framed in the proposition shouldn't have been like "Whether filing of application in NCLT and the moratorium applied therein have any application on the proceedings on personal guarantor in DRT?"

The query came in question because the recent development of law in cases like **Sanjeev Shriya**, the issue in question was the above one.

It is an advancement of a thought. Not a clarification on facts.

40. What citation style is to be followed?

Not a query relating to facts. The answer is available.

41. What is the UID of QFPL? (For the purpose of annexures)

Make the query clearer.

42. What is the name of the IRP proposed by the bank in the application?

Irrelevant question.

43. How is the calculation Rs.12000 Cr. is to be made?

Rely on the facts.

44. What are the major terms and the conditions of the loan agreement?

Rely on the facts.

45. Whether we have to make the loan agreement, Debtor Creditor Agreement, Inter Creditor Agreement, Section 7 Application and all the other necessary documents in annexures?

The problem does not suggest so.

46. Which team will make the annexures like the DCA and ICA or the loan agreement? Is it to be made only by the bank side or the company side as well?

There is no requirement for it.

THERE WILL BE NO FURTHER CLARIFICATIONS ISSUED

ADMINISTRATOR
17 January 2018