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II SURANA & SURANA AND UPES SCHOOL OF LAW

NATIONAL INSOLVENCY LAW MOOT COURT COMPETITION, 2019

27th - 29th SEPTEMBER 2019

MOOT PROPOSITION¹

1. ‘The Weeknd Airlines’ Pvt. Ltd. (Weeknd) is a reputed private airline in India. The company was incorporated under Companies Act of 1956, having its registered office situated in New Delhi, India. The company connects 78 destinations all around the globe, mainly covering destinations in and around south Asia New York (both JFK and Newark), Hong Kong, Singapore, Kuala Lumpur, Bangkok, Kathmandu, Colombo, Dhaka, Abu Dhabi and Dubai. The Airline carries around 1/5th of the total passengers carried by the whole airline industry in the Indian sub- continent. The company is successful in creating such market dominance for itself because of punctuality as well as outstanding and luxurious on board services. Currently, it operates with a fleet of 128 Aircrafts, which includes, 12 Airbus 330-200; 11 Boeing 737-700; 20 ATR 72-500 aircraft; 2 Boeing 737-900 42; Boeing 737-800 and 10 Boeing 777-300 ER. The company is looking forward to developing its own maintenance hangars and pilot training centres and is looking for viable plans.
2. Mr. Abel Tesfaye Hooda, (Mr. Hooda) who was born and brought up in India, founded the company. He and his ancestors are known for living a lavish and luxurious life. There are reports on various social networking sites that Mr. Hooda, in the early years of the 21st century, was involved in crimes like money laundering in South Asia and illegal movement of arms and ammunition. However, there has been no criminal action against him on mere social networking reports. His mother was a corporate raider on the Wall Street, prior to her marriage. Mr. Hooda started Weeknd by sparing time from his family business of manufacturing powdered spices in India, on the basis of his understanding of developing studies of air traffic patterns, route structures, operational economics and flight scheduling. After three and a half decades of monopoly by Air India and Indian Airlines, the Indian government opened the domestic aviation market to private carriers in April 2010. This provided him with an opportunity to establish the company by 2011. The company at that time turned out to be successful as it was the only privately owned airline earning profit in India. Purportedly, to cover up high operating costs and to pay its top-level employees, the company took financial assistance of INR 309 Cr. from Manchester Clothing Pvt. Ltd. Though there was no pressing requirement of the money then, however it was speculated that Mr. Hooda used the money to purchase high-end luxury cars and a yacht for himself.
3. In the year 2013, it was evident that the relationship between Mr. Hooda and his family had turned sour, allegedly because of alcohol and excessive consumption of drugs, eventually leading to ill treatment of family members.
4. In the year 2014, after reviewing the market conditions and in order to expand its business, the Weeknd Airlines Pvt. Ltd. established a wholly owned subsidiary i.e. Air Hotels SDN

¹Drafted by **Mr. Samriddh Bindal**, 5th Year Student and **Mr. Sahil Bhatia**, 5th Year Student of School of Law, UPES under the supervision of faculties. If any participant tries to contact the problem framer shall be disqualified from the competition.

BHD (AHSB). AHSB was incorporated under the laws of Malaysia, having its registered office also situated in IPHO Malaysia, though it carried a minimal amount of operation in that jurisdiction.

5. AHSB had sought financial assistance from several banks located both in USA as well as in India, for setting up and running its business. In the year 2015, the lenders under a consortium of four US banks, led by Calfia Bank, granted AHSB term loan to the tune of 5 billion USD, in order to expand its business in USA. However, with the need to expand its business in other jurisdictions also, it took a loan to the tune of INR 300 Cr. from consortium of Indian Banks namely Bank of Maharaj, Lenden Bank and Chronicle Bank, for which the Corporate Guarantee was provided by Weeknd Airlines Pvt. Ltd.
6. Subsequently, in the year 2015, seeing the growing market, many other privately owned airlines entered the market making it a highly competitive one. Two new main entrants were BestFly Pvt. Ltd. (BestFly) and Sky High Pvt. Ltd. (Sky High). They advertised themselves as ‘budget airlines’ and offered all services at economical costs. Despite the adverse effect on the profits of Weeknd, due to the new companies, Mr. Hooda was adamant with his pricing policies and emphasized that that the hallmark of Weeknd is ‘quality’ over ‘quantity’.
7. Mr. Hooda’s strategy has always been to incur liabilities than to invest more equity in the company or to lose his equity over the company. He held 90% of the company’s equity shares and his father’s company, Thikhha Masalas Pvt. Ltd., owned the rest. The auditors of the company have repeatedly raised questions about company’s accounting strategies. However, owing to Mr. Hooda’s inflexible approach the techniques remained the same.
8. In the year 2017, Weeknd could not deliver any profit even though according to analysts, the sector experienced its best returns in the quarter ending December 2017. The competitors of Weeknd, BestFly and SkyHigh had earned a profit of around 8.57 Cr. and 57 Cr., respectively, on a stand-alone basis. This was also because, of Weeknd’s policy of giving their customers premium costumer services, despite higher interest cost and higher operating costs, that resulted in the company’s top level management losing faith in the company’s policy in the Asian market specifically, on the basis of their belief that though Indians are cost conscious, but not brand conscious.
9. Mr. Hooda had long desire to take the company across the globe and for this; he wanted to enter the markets of Europe and Russia. The company in 2018 flew for the first time to Russia. Mr. Hooda gave an extravagant party at his house from the funds of the company. However, to obtain international licence and to pay operating costs at the airport the company had to take loan of INR 3200 Cr. from FIT Bank, wherein the majority shares were held by the Government of India for. This money was used to purchase more aircrafts, with the permission of the bank. However, the bank had taken over charge of all the aircrafts that company owned. The company gradually started flying to other parts of Russia and was planning to enter the European market as well.

10. Weeknd was not incurring sufficient profits from its ventures in Russia; but the company still started its venture of flying to Europe. Thus, the company took another loan of INR 100 Cr. from the Bank of Dehradun. As per the terms and conditions of sanction of loan, an additional condition was imposed on Weeknd, requiring a person other than a promoter of the company to furnish a Personal Guarantee, which is co-extensive with of the amount of loan, i.e. 100 Cr. On the request of the company, Mr. Vikas Sharma, a person of fine repute and a friend of Mr. Hooda's father gave a personal guarantee to secure the loan amount.
11. This loan was taken by Weeknd in order to start its business in Europe and to maintain the goodwill. However in order to maintain quality of the customer services the company had to manage expensive and lucrative inventory base, that compelled the company to take an additional loan of INR189 Cr. from Kailash Bank, by furnishing the registered office in New Delhi and the corporate office in Mumbai as security. The company had already defaulted in payment of tax and dues of the Airports Authority of India.
12. In 2017, as the company was facing shortage of employees, the company entered into a contract with 'Wing Institute', one of the leading institutions in aviation and hospitality industry, to recruit around 3500 graduates in their company. However, the company was able to recruit only 500 graduates by August 2018 because the company could not launch the number of flights as planned. Wing Institute filed a claim of INR 38 Cr. with the Arbitrator, as per the contract.
13. Later in 2017, Mr. Hooda was all over the news, as he purchased a hockey team, in his personal capacity, in the hockey premier league happening in India then and was seen hanging out with many Bollywood stars. He was also seen purchasing in luxury auctions purchasing elite paintings, cars, pent- houses, etc. The auditing company which was handled by his father, time and again repeatedly requested him to cut down his expenses as the company was not earning profits. Later, it was in public that Mr. Hooda had defaulted on his loans and the banks had taken over all his assets. Despite that, the loan of INR 240 Cr. was outstanding (Kailash Bank INR 100 Cr. and Bank of Dehradun INR140Cr.). However, Mr. Hooda still managed to live an extravagant life as he had taken luxury cars, houses, boats, etc. in the name of Weeknd- assets that none of the banks had charge on. He also owned flats in the name of the company, at various locations around the world, including London and Perth.
14. In June 2018, another wholly owned subsidiary of Weeknd- Weeknd United Productions Pvt. Ltd. (Weeknd Productions) was incorporated with its registered office at Lucknow. The composition of board of directors of both the companies was same. The company was incorporated with the objective of aircraft manufacture majorly as per the needs and demands of Weeknd. Soon after the incorporation, the production commenced and the products were available for the whole aviation industry. The company yielded high profits initially. However, after 3 profitable months, the company had to deal with severe losses due to shortage in supply of raw materials. Banks were not in favour of providing another loan of INR 150 Cr. to Weeknd Production. However, after a personal request of Mr. Hooda

and furnishing of Weeknd's current assets as security, RSJ Bank agreed to provide financial assistance of INR 150 Cr. to Weeknd Productions. On a personal request made by Mr. Hooda, to his friend at a senior position in RSJ Bank, the bank agreed to the payment of its first EMI by Weeknd Production on or before 1st January 2020.

15. By the end of year 2018, AHSB was known for its High Class Hotel services. It had offices and assets across the world including Singapore, USA, England, Brussels etc. It operated in these jurisdictions through its representative offices. The company commenced its operation in India and acquired certain assets too. In addition, with the presence of the directors majorly in the representative office in India, the Board of Directors took all major decisions for the company from the Indian location.
16. AHSB was also known for its timely payment of Debts. However due to a major downturn in Weeknd's business, the business of AHSB was also affected. It was anticipated by its management that it will not be able to pay its debts to its creditors, as and when it is due. Hence, the management decided that the company should be restructured. Hence, for this purpose the management of AHSB shifted their registered office from Malaysia to USA as the law governing Insolvency in USA provides for an expedited restructuring process, with majority of the creditors also situated there.
17. Surprisingly, two senior pilots of Weeknd were terminated amidst these developments. The e-mail for termination was a mere single statement, citing no reasons. Every top level employee got worried apprehending lack of job security. However, the pilots formed a union and registered it as per the provisions of the law to protect themselves from whims of the management.
18. Meanwhile, Weeknd was not able to pay its dues to Bank of Dehradun with regard to its 100 Crore loan. The Bank invoked Personal Guarantee against Mr. Vikas. He paid the entire amount accordingly to Bank of Dehradun, looking forward to be indemnified by Weeknd.
19. On 17th September, 2018, on Mr. Hooda's birthday, he announced that all the pilots will be given 2 BHK flats by the company at 50% of the market price. Around 175 pilots accepted the deal. The company promised possession by 15th March, 2019. However, even after paying the amount i.e., 50% of the market price as asked by Mr. Hooda and several reminders in writing, there was no communication from the company about the promised flats. On the request of the pilots, the trade union instituted an application under Insolvency and Bankruptcy Code, 2016 (Code) in the NCLT on 1st July, 2019 for initiating Corporate Insolvency Resolution Process.
20. The Respondents vehemently opposed to the application as malicious because the company has been going through tough times and the flats were agreed to be given on a discounted price. Therefore, the respondents alleged that it was unjust for the union to take such a coercive action to acquire the possession of the flats.

21. The Tribunal initiated the Corporate Insolvency Resolution Process (CIRP) and appointed Mr. Suresh Nath as Interim Resolution Professional (IRP). The IRP took charge of Weeknd's assets to discharge his duties as per the provisions of the Insolvency and Bankruptcy Code (Code). The IRP invited the claims of the creditors, thereafter. He was eventually appointed as the Resolution Professional (RP) in pursuance of the meeting of the Committee of Creditors (CoC). The RP prepared the list of claims in accordance with the powers vested in him under the Code:

Creditors	Claim (In Cr.)
1. FIT Bank	3200
2. Manchester Clothing Pvt. Ltd.	309
3. Kailash Bank	189
4. Pilots of Weeknd	105
5. Income Tax Authority	7.5
6. Airport Authority	1.5

22. The RP forwarded the claim to the CoC and the CoC rejected the claims of Kailash Bank of INR 100 Cr. and Bank of Dehradun of INR 140 Cr., respectively, that was due against Mr. Hooda. However, the banks are contending that they are not different entities therefore; they must include the claims against Mr. Hooda as well. Kailash Bank and Bank of Dehradun approached NCLT for settling the irrespective claims.
23. The second claim that the CoC rejected was of RSJ Bank, who contended that they have charge over their assets. However, it is a matter of fact that till date there has been no default by Weeknd United of the loan provided. Hence, as per the CoC, RSJ Bank has no claim against the securities. RSJ Bank approached the NCLT, contending that it has a right over the properties and must represent itself in the CoC. The RP further filed an avoidance application that the directors of the company must be held personally liable.
24. At the time of filing of claim, Mr. Vikas also made an application to RP for enforcing his right, in order to recover money. However, the CoC rejected his claim on ground that not every contractual right can be protected under IBC proceedings. Aggrieved by the decision, he made an application before the adjudicating authority in order to recover his money.
25. Soon after shifting of registered office in USA, AHSB filed a voluntary bankruptcy petition under Chapter 11 of the US bankruptcy Code in the US Bankruptcy Court for the purpose of re-organization. As per section 1104(a) of the US Bankruptcy Code, the Bankruptcy Court appointed Ms. Olivia as Interim Trustee. Ms. Olivia, soon after her appointment and after knowing that AHSB has certain assets in India, applied to the adjudicatory authority in India under Clause 12 of Draft Part Z on Cross Border Insolvency (Draft Part Z) for

recognition of US Proceeding. However, Indian Creditors of AHSB opposed this application, as they were of the opinion that two concurrent proceedings are possible under the present Cross-Border Insolvency regime. The matter is also pending before Adjudicating Authority for hearing along with other applications of Weeknd Airlines Pvt Ltd.

26. The RP, as per the provisions of the Code, prepared information memorandum and invited Expressions of Interest from the prospective Resolution Applicants. Three Resolution Applicants came forward, out of which, one was the director of Weeknd, Mr. Naresh Singhvi. However, his expression of interest indicated highest bid when compared to other Resolution Applicant. The RP rejected the bid of Mr. Naresh Singhvi contending that he is barred under Section 29A of the Code. Mr Singhvi approached the Tribunal to allow him to present his Resolution Plan in the presence of the CoC, as he is providing the highest value to the creditors, which is in furtherance of the objective of the Code.

The participants are requested to address the following issues only:

1. Whether the application filed under Insolvency and Bankruptcy Code, 2016 is admissible?
2. Whether the claims of Kailash Bank and Bank of Dehradun can be admitted by the RP/COC?
3. Whether the RP/COC is rightful in denying financial debt of RSJ Bank?
4. Whether the directors must be held personally liable for furnishing current assets of Weeknd as security?
5. Whether Mr. Vikas can enforce his contractual right?
6. Whether Ms. Olivia's application for Recognition of US Voluntary Bankruptcy Proceeding be accepted?
7. Whether there can be two concurrent Insolvency Proceedings in different jurisdiction?
8. Whether upon admission of CIRP the invocation of Personal Guarantee by Bank of Dehradun is liable to be set aside?
9. Whether Mr. Naresh Singhvi can be allowed to present the plan as a Scheme, in case the Corporate Debtor goes into liquidation?

Note: For this moot, the teams are expected to prepare the memorials in the format given below, even if the actual Applicants have to be represented by the Respondent team of the moot.

<u>Applicant/ Petitioner</u>	<u>Respondent</u>
1. Trade Union	The Weeknd Airlines' Pvt. Ltd.
2. Kailash Bank and Bank of Dehradun	Resolution Professional/ CoC
3. RSJ Bank	Resolution Professional/ CoC
4. Directors of Weeknd	Resolution Professional/ CoC
5. Mr. Vikas	Resolution Professional/ CoC
6. Indian Creditors	Ms. Olivia
7. Naresh Singhvi	Resolution Professional

ASSUMPTIONS:

- a) *For the purpose of this moot, all the applications are pending with the adjudicating authority.*
- b) *It shall be assumed that for the purpose of this Moot Proposition, that 'Draft Part Z on Cross Border Insolvency'; is law as per Article 13 of the Constitution of India, 1950.*
- c) *That the concerned US proceeding is a 'Foreign Proceeding' within the meaning of Clause 2(g) of Draft Part Z.*
- d) *That Ms. Olivia is a foreign representative within the meaning of Clause 2(h) of Draft Part Z.*
- e) *The link to the 'Draft Part Z':*
https://drive.google.com/open?id=1Dnuct58FeqMdARArD6mr_Chy2Yir9xYH
- f) *Any amendments in the Insolvency and Bankruptcy Code, 2016 after 1st June 2019, shall not be considered for this moot.*