



SVKM'S
NMIMS
Deemed to be UNIVERSITY

NAVI MUMBAI

M/s. CRAWFORD BAYLEY & CO.
Advocates and Solicitors

Presents

THE THIRD NATIONAL MOOT COURT COMPETITION, 2024



30th - 31st March, 2024

MOOT PROPOSITION

MOOT PROPOSITION

1. Vishwas Housing Projects Limited (“**VHPL**”) is a company engaged in the business of building residential housing projects. The company was incorporated in the year 2001 under the provisions of Companies Act, 1956 and has its registered office in Mumbai, India. The company has had a proven track record of undertaking large-scale housing projects and has earned substantial profits from the same in the past. The company has also assisted the government in undertaking rehabilitation housing projects and has also provided services to corporate houses in constructing state-of-the-art residential apartments for its employees.
2. The company follows a model of borrowing funds from banks and financial institutions each time a new project comes up and using the said funds for purposes of construction. The money earned from the sale of units is utilized towards the repayment of debt outstanding to the lenders.
3. In January 2017, with no other projects ongoing, the company won a contract from a major steel manufacturing company, Legacy Steel Mills Limited (“**LSML**”), for the purposes of constructing a large residential township for its workmen and employees, in and around the plant premises of LSML in Jharkhand. The entire planning, execution and handover of the project was scheduled to be completed within 5 years. LSML is also a company incorporated under the provisions of Companies Act, 1956 and has its registered office in Mumbai, India.
4. After winning the contract, VHPL and LSML entered into definitive agreements for purposes of execution of the project awarded to VHPL. Parallely, VHPL also entered into several agreements with a consortium of banks, to avail the necessary finance for proceeding with the project. Considering the sheer size of the project, VHPL also decided to invest a substantial sum of money from its own funds as well to speed up the commencement of construction work and not just await the disbursement of loan amounts by the banks. The entire project, along with several other assets of the company were hypothecated to the banks as a security against the loan taken.

5. As per the contract, LSML was obligated to pay the entire consideration in 4 tranches i.e., 1st tranche before commencement of work, 2nd tranche after completion of half-work, 3rd tranche after completion of remaining construction work and 4th tranche after obtaining the occupancy certificate from the concerned municipal authorities. The construction work was scheduled to be completed in December 2022 and thereafter a timeline of 6 months was permitted to obtain the requisite certificate from municipal authorities.
6. VHPL swiftly moved to obtain necessary permits and licenses to commence the construction work and by August of 2017, the construction work had already commenced at the selected site. The directors, employees, sub-contractors of VHPL gave in their full time and effort into the project. The completion and successful delivery of the project was going to prove to be a major milestone in the history of the company.
7. In due compliance with the obligations under the contract, LSML had dutifully paid the 1st tranche to VHPL. Utilizing the said funds, VHPL proceeded to procure the material required to proceed with the construction work. VHPL swiftly carried out the construction work and reached the second milestone i.e., completion of half work by December 2019. Therefore, the payment for 2nd tranche became due by January 2020.
8. However, on account of looming price fluctuations in the steel sector and the overall industry related troubles, LSML was fast approaching the situation of becoming insolvent. To add to its troubles, Covid-19 hit the world and the overall demand in the steel sector underwent a spiral. This further added to the problems faced by LSML and being in a weak financial position, it was unable to pay the 2nd tranche of payment to VHPL in addition to being unable to repay the debts to its existing lenders. The lenders of LSML, having considered several options of resolution of debt, filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking admission of LSML into corporate insolvency resolution process (“CIRP”).
9. While the Government of India was still evaluating the risks involved in the Covid-19 pandemic and how to deal with it, the company petition filed against LSML was admitted by the Ld. National Company Law Tribunal, Mumbai on 20.03.2020 and the company was admitted into insolvency, and Mr. Om Prakash Sharma was appointed as the Resolution

Professional (“**RP**”). However, immediately thereafter on 25.03.2020, the Government of India imposed a nationwide lockdown, halting all business activities, unless qualifying to be essential.

10. In the meanwhile, on account of default in payment of contractual dues by LSML, VHPL also defaulted in couple of its loan installments payable to its lenders. The lenders of VHPL started pressuring it to repay the outstanding amounts. On account of the nationwide lockdown imposed by the Government of India, the construction work undertaken by VHPL for LSML was halted. However, since the country was also faced with a complete stop on the transportation services, the laborers working at the site were forced to remain therein until any further clarification issued by the Government.
11. With almost 1,000 laborers stuck at the construction site, it became a moral duty of LSML to continue to provide them with basic necessities. Further, certain cyclonic rains and thunderstorms faced at the construction site led to commencement of deterioration in the construction material stored therein. Even certain already constructed structures were faced with considerable damage.
12. Considering the situation, the representatives of VHPL wrote a letter to **RP** of LSML demanding clearance of the 2nd tranche of payment, being long overdue since January 2020 and also requested the **RP** to take into account the delays in construction, being attributable to Covid - 19, and therefore to provide suitable extension of time in the overall schedule of construction. It was also requested to treat the expenses incurred by VHPL on or after commencement of CIRP of LSML as CIRP cost, thereby giving suitable priority in payment. The **RP** of LSML responded to the said letter and instead of providing any clarity on any of the requests made by VHPL sought a virtual tour of the entire construction site to be able to evaluate the stage of the project. In doing so the **RP** engaged a technical expert to provide assistance in assessing the project stage.
13. The representatives of VHPL duly facilitated the entire virtual tour and dutifully assisted the **RP** and the technical expert. Having undertaken the entire assessment, the **RP** deemed it fit to write a letter to VHPL whereby it sought to terminate the contract between VHPL and LSML and initiated arbitration proceedings against VHPL. The reasons provided by the **RP**

- included: (a) an unsubstantiated demand for 2nd tranche payment since the construction had not reached halfway milestone as stipulated in the contract, (b) the quality of construction being unsatisfactory. Consequently, the RP of LSML sought compensation from VHPL on account of delays and poor quality in construction, being in breach of the terms of contract. In the said letter the RP of LSML nominated Mr. Steve as the Ld. Sole arbitrator and requested VHPL to express its agreement to the same, or to name some other individual as an arbitrator, subject to its acceptance.
14. The representatives of VHPL responded to that letter and vehemently objected to the baseless termination of the contract. In fact, VHPL initiated a commercial suit before the Bombay High Court seeking recovery of the outstanding amounts from LSML and also seeking compensatory damages for the overall losses suffered by VHPL.
 15. The RP of LSML appeared before the Bombay High Court and opposed the proceedings in the commercial suit and highlighted that the said proceedings cannot go on in view of subsisting and valid arbitration agreement and on account of moratorium imposed under the provisions of Section 14 of Insolvency and Bankruptcy Code, 2016. Further, given the fact that RP of LSML has certain claims against VHPL which are subject matter of a valid arbitration agreement, the parties ought to be referred to an arbitration. However, the said relief of referral to arbitration was rejected by the Bombay High Court.
 16. In challenge to the said order, the RP of LSML preferred an appeal under Section 37 of the Arbitration and Conciliation Act 1996 before the Bombay High Court. The said appeal was allowed and the order passed by the Ld. Single Judge, rejecting referral to arbitration, was set aside. Mr. Smith was appointed the Ld. Sole Arbitrator. However, the Bombay High Court, being constrained to look into only specific aspect of rejection under Section 8, merely expressed its doubts as to whether the arbitral proceedings can proceed in the first place, given the nature of claims by either party and the present position of parties. Nevertheless, the determination of said question was left to the wisdom of the Ld. Sole Arbitrator.
 17. Meanwhile, the promoters of LSML, being aggrieved by the admission of LSML into insolvency, challenged the order passed by the Ld. NCLT, Mumbai before the Bombay High Court under Article 226 and 227 of the Constitution of India, and sought a stay on the

ongoing CIRP. The Bombay High Court dismissed the said appeal on the grounds of equal and efficacious remedy being available before NCLAT, under the provisions of IBC. Aggrieved by the said order of dismissal, the promoters preferred an appeal before the Supreme Court of India and sought to challenge the admission of LSML into CIRP, on account of completely external factors leading to the present state of affairs of LSML and the *bona fide* intention on the part of LSML to repay its debt. Accordingly, a prayer was made before the Supreme Court, seeking a direction to the lenders of LSML to enter into settlement talks and to try and come to an amicable resolution. In reply to the said appeal, the lenders of LSML vehemently objected to the reliefs sought by promoters of LSML and sought dismissal of the appeal.

18. On the other side, VHPL being aggrieved by the order passed by the Bombay High Court under Section 37, filed a special leave petition before the Supreme Court, seeking setting aside of the order passed by the Bombay High Court. In the said SLP, the lenders of LSML have filed an intervention application, seeking dismissal of the SLP and continuation of the arbitration on account of potential receivables of compensation from VHPL.
19. Both the proceedings are pending before the Supreme Court and the matters have been ordered to be tagged to be heard together.¹

SCHOOL OF LAW, NMIMS, NAVI MUMBAI

¹ Participants are free to frame issues in either of the proceedings pending before the Supreme Court.