



॥ वसुधैव कुटुम्बकम् ॥

SYMBIOSIS
LAW SCHOOL, NAGPUR



FRONTLINE
LAW PARTNERS



MCA
SLS NAGPUR

SYMBIOSIS LAW SCHOOL, NAGPUR

A Constituent of Symbiosis International (Deemed University), Pune

Established under section 3 of the UGC Act, 1956 | Re-accredited by NAAC with "A++" | Awarded Category- I by UGC

IN COLLABORATION WITH

FRONTLINE LAW PARTNERS, BENGALURU

PRESENTS

SLS NAGPUR-FLP ARBITRATION MOOT COURT COMPETITION-2025

21-23 FEBRUARY, 2025

MOOT PROPOSITION

SCC[®]
ONLINE

KNOWLEDGE PARTNERS

SCC[®]
ONLINE **TIMES**

MEDIA PARTNERS

MOOT PROPOSITION¹

1. Aurum X Resources Pvt. Ltd. (hereinafter “**AX**”), a Private Limited Company, duly registered under the provisions of the Companies Act, 2013 of the Republic of India, entered into a Master Service Agreement (hereinafter “**MSA**”), whereby, it was agreed between them that CramShop ABC Inc., (hereinafter “**CSABC**”) a company based in USA, through its duly operating wholly owned Indian subsidiary - FaceCram India X Pvt. Ltd. (hereinafter “**FCIX**”) shall serve them for Information Technology Enabled Services (hereinafter “**ITES**”), for the business operations of AX. The MSA was signed on 1 April 2020.
2. Under the MSA, multiple Statement of Work (hereinafter “**SOWs**”) were issued by AX upon FCIX. At any given time, there were at least 25 active SOW’s running simultaneously, apart from several expired SOW’s, and several proposed SOW’s, that had been signed by both parties.
3. The MSA is a single comprehensive document, with the SOWs intended to be incorporated into it. The agreement was made exclusively between FCIX and AX. While the document acknowledges that FCIX is a wholly owned subsidiary of CSABC, it specifically states that for compliance purposes, this should be treated as a contract between two Indian companies only.
4. The MSA included an arbitration clause that specified each party would appoint one arbitrator, and these two appointed arbitrators would then select a presiding arbitrator. Therefore, in accordance with Section 10(1) of the Arbitration and Conciliation Act, 1996 (hereinafter “**A and C Act**”), the total number of arbitrators was to be 3 (three).

¹ This Moot Proposition has been drafted by Mr. Deoul Pathak, Advocate, Bombay High Court, Nagpur Bench, Nagpur and Ph.D. Scholar at India International University of Legal Education and Research (IIULER), Goa. Any/all names, characters, places, events and incidents are used in a fictitious manner. Any resemblance to actual person, living or dead, or actual events is purely coincidental. All rights pertaining to the problem vest solely with Adv. Deoul Pathak should not be utilized for any other purpose without the prior permission of the above-named drafter.

5. CSABC / FCIX has numerous affiliated companies in various countries, including but not limited to subsidiaries in known tax heavens, such as Cayman Islands, and others. Alpha X LLP, BetaBioPharm Inc., GammaCureChem PEEC, DeltaDeca Pte. Ltd., PhiMeds SH P.K., Rho GmbH, et cetera are some of the known sister concerns / subsidiaries / affiliate companies (having similar holding pattern), of CSABC.
6. To meet specific legal requirements and demonstrate its financial reliability - including addressing the financing needs of CSABC/FCIX and their sister concerns - AX provided CSABC/FCIX with a Bank Guarantee of ₹30,00,00,000/- (Rupees Thirty Crores only). This guarantee was intended to assure CSABC/FCIX of AX's ability to settle invoices for services rendered, thereby alleviating trust concerns and confirming the availability of funds to honour its financial obligations.
7. Disagreement emerged between the parties regarding unpaid invoices under the SOW no. X/24/7/203/301. An attempt was made to resolve this through a credit note issued against a different SOW (no. AX/19/0703). The parties then decided to internally mediate and settle the issue involving senior management of the companies, but these mediation efforts were unsuccessful.
8. On 11 November 2023, FCIX sent out a notice via email, which was the communication method specified in the MSA, stating that a "dispute" had arisen and as a result invoked the arbitration clause mentioned in the MSA. In the same notice, FCIX also named its arbitrator, Mr. Prodigy, as its nominee for the prospective arbitral tribunal.
9. The notice issued by FCIX was received by AX. In its reply dated 3 December 2023, AX emphasized that the SOWs form part of the overarching MSA, which is a single, integrated contract between the parties. Consequently, AX labelled the dispute claimed by FCIX as "absolutely imaginary, false, fabricated, and frivolous," arguing that any financial discrepancies should be resolved within the broader framework of the MSA - allowing for inter-settlement across multiple SOWs. AX further alleged that FCIX's actions appeared calculated to unlawfully invoke the bank guarantee.
10. Around that time, without FCIX's knowledge, proceedings came to be initiated by National Internet Exchange of Indishia (hereinafter "NIXI") against AX, following a

complaint by some third party claiming that AX had infringed upon their domain name. As a result, NIXI suspended all services associated with AX’s domain as of 1 January 2024. Since AX’s email service depended on its domain-based addresses, the suspension caused their email system to fail.

11. In response to AX’s reply, FCIX filed an application under Section 11(6) of the Arbitration and Conciliation Act before the Nagpur Bench of the Hon’ble Bombay High Court on 5 January 2024, seeking appointment of an arbitrator. The complete Master Service Agreement (MSA) was attached as one of the annexures to this application.
12. The Hon’ble High Court issued a notice via email on 1 March 2024 for the Section 11(6) application. However, due to AX’s email service being suspended, the notice was not delivered to AX. Additionally, there was no mailer daemon to generate a non-delivery notification. Since AX did not appear before the High Court, the Court proceeded ex-parte and passed an order on 7 July 2024. Through this order, the Court appointed Mr. Prodigy as the Sole Arbitrator to resolve all disputes between the parties.
13. On 29 March 2024, NIXI concluded its investigation into the alleged domain name infringement by AX. The investigation found that AX was not responsible for any infringement. Consequently, NIXI restored AX’s domain name along with all associated services, including the email services that had previously been suspended.
14. Being aggrieved by the High Court’s order dated 7 July 2024, AX filed a Special Leave Petition (SLP) before the Hon’ble Supreme Court of India (hereinafter “**H-SCI**”). The SLP was filed within the prescribed time limits. The Supreme Court issued notices on 30 July 2024 but declined to stay the arbitration proceedings initiated by FCIX before the Sole Arbitrator. However, the Court granted AX the liberty to file an Application under Section 16 of the A and C Act before the arbitrator in the said proceedings.
15. Accordingly, an application under Section 16 of the A and C Act was filed (hereinafter “**Application 1**”) by AX before the Hon’ble Sole Arbitrator – Mr. Prodigy, on 14 August 2024, which was the first date of the arbitration proceedings.

-
16. During the pendency of the said Application 1 before the Sole Arbitrator, GammaCureChem PEEC (hereinafter “GCC”) filed an application as an “operational creditor” before the National Company Law Tribunal, Bombay (“hereinafter “NCLT”). GCC has claimed that out of the total dues of Rs. 45,55,65,750/- (Rupees Forty-Five Crores, Fifty-Five Lakhs, Sixty-Five Thousand, Seven Hundred and Fifty only) owed by AX to FCIX, FCIX had assigned them a portion of AX’s dues worth Rs. 11,11,11,111/- (Rupees Eleven Crores Eleven Lakhs Eleven Thousand One Hundred and Eleven only).
 17. The NCLT admitted the debt and appointed Mr. Tom Marvolo Riddle as the Interim Resolution Professional (IRP) vide its order dated 21 September 2024.
 18. On 2 October 2024, during the third hearing of arbitration proceedings, AX filed another application under Section 16 of the A and C Act (referred “**Application 2**”) before the Hon’ble Sole Arbitrator - Mr. Prodigy. Through this application, AX contended that due to the moratorium, the arbitration proceedings could not continue and needed to be adjourned for a period of six months.
 19. Through a common order dated 15 October 2024, the Hon’ble Sole Arbitrator - Mr. Prodigy ruled on both applications. He dismissed Application 1, holding that the order of the HC appointing him was binding unless set aside by the H-SCI. Regarding Application 2, while the Arbitrator made an observation that moratorium applies to an ‘arbitration panel’ and not to a ‘sole arbitrator’, he nevertheless deferred the proceedings for six months in the interest of justice.
 20. AX filed an appeal under Section 37 of the A and C Act before the Nagpur Bench of the Hon’ble Bombay High Court challenging the Hon’ble Sole Arbitrator’s common order dated 15 October 2024, specifically against the rejection of Application 1.
 21. Similarly, FCIX filed an appeal under Section 37 before the same HC challenging the common order dated 15 October 2024, but specifically against the allowance of Application 2, alleging that the six-month deferral frustrated both the spirit of the A and C Act and violated its mandatory timelines, thereby frustrating the mandate of the Arbitrator.

-
22. By a peculiar twist of fate, both the appeals came to be listed before the same Single Judge, who had passed the order dated 7 July 2024, based on the current roster system at the Kagpur Bench of the Hon’ble High Court of Judicature at Bombay.
23. AX immediately approached the H-SCI through a Miscellaneous Civil Application, seeking for a transfer, on the ground that having the same judge hear the appeals under Section 37 before the HC violated judicial propriety, as it would amount to an appeal from Caesar to Caesar’s wife. FCIX opposed this Application arguing that since the appeals ought to be heard by a Division Bench and not a Single Bench, there was no need for transfer.
24. The H-SCI, while keeping FCIX’s objection regarding bench composition open, transferred the appeals to itself and tagged them with the pending SLPs. For administrative convenience, since AX had filed the Miscellaneous Civil Application, the Registrar General of the H-SCI styled the cause title as ‘**AX v. FCIX**’, though both parties retained their right to raise and argue their respective contentions.
25. The parties were directed to raise all issues at the time of final hearing.

NOTES FOR PARTICIPANTS:

- a. The legal system applicable to India, with all its legislation (including subordinate legislation like rules, orders, and schemes), and judgments, applies as it is to the Republic of India.
- b. For the purpose of Moot Proposition, National Company Law Tribunal, Bombay must be construed as equivalent to National Company Law Tribunal, specifically at Mumbai.
- c. Participants are free to raise and argue all issues, including issues under the substantial law and procedural laws of India.