MOOT PROBLEM
AGRA ICSI Moot Court Competition 2018

Moot Problem Before Judicial Authority – HON'BLE CHIEF JUDGE, CIVIL COURT, AGRA

Case number - O.S. NO. 1 OF 2018

Plaintiff :- M/s. RST projects limited (RPL)

Defendant :- Promoter Directors of PQR infra Limited

Back Ground :

1. M/s PQR Infra Public Limited (PQRIL) is a BSE listed company Incorporated on 16.03.2004, in the state of Uttar Pradesh having its Registered Office in Agra. The authorized capital of PQRIL is Rs. 50,00,00,000 divided into 5,00,00,000 equity shares of Rs. 10/- each and the paid up capital is Rs. 25,00,00,000 divided into 2,50,00000 equity shares of Rs. 10/- each. The PQRIL has 2 divisions namely Construction division and Electrical equipment division. PQRIL is presently carrying on the business of Construction, EPC Contractors, Engineers, and Builders and manufacture of electrical fittings etc. and has executed several prestigious projects and has earned a reputation in the construction and infrastructure industry.

2. The Board of PQRIL consist 8 directors out of which 4 directors are the promoters. As per the audited balance sheet as on 31.03.2016, the turnover of PQRIL is Rs. 250 Crores and the networth of the company is Rs. 120 Crores.

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3. M/s. RST projects limited (RPL) is a SUBSIDIARY of PQR Infra Limited (PQRIL) which was incorporated on 25.02.2005. PQRIL is holding 45% of the share capital of RPL and 6% is held by the 4 promoter directors of PQRIL while the balance 49 % is held by 4 individuals who are not related to the PQRIL or its promoters or its other Directors.

4. RPL is in the business of Real Estate, development construction and promotion of residential townships, housing, commercial complexes etc,. The authorized capital of RPL is Rs. 30,00,00,000 divided into 3,00,00,000 equity shares of Rs. 10/- each and the paid up capital is Rs. 25,00,00,000 divided into 2,50,00000 equity shares of Rs. 10/- each.

5. The Board of RPL comprises 4 (Four) directors, who are also the promoter directors of PQRIL. As per the audited balance sheet as on 31.03.2016, the turnover of RPL is Rs. 390 Crores and the networth of the company is Rs. 210 Crores.

6. EFG private limited (EFGPL) is a private limited company which was incorporated on 02.09.2005, carrying on the business of Real Estate, development construction and promotion of residential townships, housing, commercial complexes etc.. The authorized capital of EFGPL is Rs. 50,00,00,000 divided into 5,00,00,000 equity shares of Rs. 10/- each and the paid up capital is Rs. 25,00,00,000 divided into 2,50,00000 equity shares of Rs. 10/- each. The Board of

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Directors of EFGPL has 4 directors and there are no common directors between EFGPL and PQRIL and also between EFGPL and PPL.

Sequence of events

1. On 07.08.2016, RPL, acquired a parcel of land comprising 500 acres in the outskirts of Bangalore for developing a huge residential township, commercial complex, multiplex, etc.,

2. On 20.12.2016, RPL entered into an agreement with PQRIL appointing PQRIL as the contractor for undertaking and executing the entire civil construction of phase – I of the project worth Rs. 120 Crores. On 28.12.2016 a contract has been entered between PQRIL and RPL for supply of Electrical Equipments. The contract value is Rs. 55 Crores.

3. On 15.05.2017, EFG private limited (EFGPL) acquired 74% of RPL by way of transfers from the PQRIL and fresh allotment of shares and consequent upon the acquisition of majority stake in RPL by EFGPL, the existing directors on the Board of RPL resigned and the nominees of EFGPL were appointed on the Board of RPL. The entire Management of RPL was taken over by EFGPL. After the takeover of management of RPL by EFGPL, on verification of the books of accounts for earlier years, EFGPL formed an opinion that quite a few impugned transactions were entered between PQRIL and RPL and in so far as the contract for civil

construction is concerned the rates that have been agreed were at a much higher rates in comparison to the market rates.

4. On 29.09.2017 the management of RPL citing the provisions of section 188 terminated the contract for civil construction with PQRIL and issued a notice to the promoter directors of PQRIL for recovery of an amount of Rs. 45 Crores for the loss sustained by RPL on account of the excess and unusual payments.

5. Two days later RPL terminated the contract for supply of electrical fittings with PQRIL citing once again the provisions of section 188 and issued notice to the Promoter directors for recovery of amount of Rs. 15 Crores paid to PQRIL under the contract.

6. PQRIL issued legal notices to RPL for terminating the contracts on untenable grounds while the directors of PQRIL sent reply notices contesting the very basis of the claim for recovery of amounts from them and denied any liability on their part for the amounts claimed by RPL in its notice. RPPIL immediately thereafter filed a suit before the Chief Judge, Civil Court, Agra, against the promoter directors of the PQRIL for recovery of the amounts paid to PQRIL.

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THE CONTENTIONS OF PLAINTIFF ARE AS UNDER:

1. The contract for civil construction and the contract for supply electrical equipments entered between the PQRIL and RPL are related party transactions under section 188 of the Companies Act, 2013 and necessary approvals were not obtained.

2. The erstwhile directors of RPL who are also the directors of PQRIL did not comply with the provisions of sections 188 of the Companies Act, 2013 and rules made thereunder.

3. The terms and conditions of the agreement were one sided, and payments made under the contracts were unusual and at a price / rate much higher to the market prices/rates.

4. The requisite special resolution under the act was deliberately not passed or was rather avoided since the directors of RPL (who are also promoter directors of PQRIL) were apprehensive that they may not be able to obtain the requisite nod of the shareholders for the special resolution in terms of section 188 as PQRIL was holding only 51 % of RPL.

THE CONTENTIONS OF DEFENDANTS ARE AS UNDER:

1. The Civil construction contract and the contract for supply electrical equipments entered between the PQRIL and RPL cannot be construed as related party transactions under

section 188 of the Companies Act, 2013, since the RPL is a Subsidiary Company of PQRIL.

2. Both the contracts have been entered in the ordinary course of business and that too at arm's length price therefore, the provisions of section 188 are not attracted.

3. The terms were mutually discussed and agreed between the parties, and the Rates have been quoted by PQRIL keeping in view the specific requirements and other specifications of RPL, as the requirement is not for "off –the-shelf" products.

4. Corporate veil should not be lifted as the Contract is entered by the Company and they were acting merely in the representative capacity.

5. The defendants denied the contention that RPL suffered any loss in the transactions and challenged the very basis of institution of the recovery suit.