



9TH KIIT NATIONAL MOOT COURT COMPETITION, 2023

3rd - 5th March

Organized by
KIIT School of Law,
KIIT (Deemed to be) University

MOOT PROPOSITION

1. Aryan is a leading company in the state of Konark and is listed on stock exchanges and registered under Konark Companies Act, 2013. Aryan is one of Konark's Leading Media and Entertainment companies, with a presence across several businesses including theatrical exhibition of films, film and media services and television content production and distribution, Dravidian is a leading conglomerate and a company listed on the stock exchanges. Aryan is a wholly-owned subsidiary of Dravidian.

2. On 4th April 2019, Aryan issued listed, rated redeemable, non-convertible debenture aggregating to not more than Rs. 1,00,00,000/- ("NCDs") vide a debenture trust deed ("DTD") executed between the Aryan and Debenture Trustee (acting on behalf of and for the benefit of Surya Limited ("Creditor")). On 3rd April 2019, under a share pledge agreement entered into with Debenture Trustee, Aryan pledged 3.3 lakh shares of Target Company held by the Aryan (equivalent to 33% of the share capital of the Target Company) for the benefit of Creditor ("Pledge"), to secure the aforesaid NCDs issued by the Aryan, Aryan holds 33% equity shared in the Target Company.

3. On 22nd October, 2020, one of the material subsidiary of Target Company (in which 88% of the equity is held by the Target Company) had filed registration documents for an Initial Public Offer ("IPO") to be listed on New York Stock Exchange. The material subsidiary is one of the world's leading visual effects, animation and stereo conversion companies for feature film and television, with studios around the world. The proposed IPO had been priced at USD 55 mn. The material subsidiary withdrew IPO at the last minute due to market uncertainties.

4. On 30th October 2020, the Debenture Trustee on behalf of Creditor communicated to the Aryan that (1) the NCD facility has been accelerated and is immediately due an account of default, and (u) at the direction of Creditor, the shares in Target Company held by the Aryan will be transferred to Debenture Trustee's account (for the sole benefit of Creditor), without any further notice.

5. On 4th December 2020, the Debenture Trustee acting on behalf of Creditor invoked the pledge on 2.3 lakh (23 %) shares of Target Company held by the Aryan. The Creditor continued to hold pledge over the balance 10% shares of Target Company held by Aryan. On 31st December 2021, a Share Purchase Agreement ("SPA") was executed between Debenture Trustee (acting upon instructions of Creditor) and Acquirer wherein the Acquirer agreed to acquire 3,30,000 equity shares of the Target Company, representing 33% of the Expanded Voting Share Capital of the Target Company from Debenture Trustee (acting on instructions of Creditor) at Rs. 50 per share. As per the Debenture Trustee, it could enter into the transaction where the Acquirer agreed to acquire 33% shareholding of Target Company by virtue of invocation of the pledge over 23% shares of Target Company held by the Aryan by the Debenture Trustee and rights as pledgee for 10% shares in Target Company held by the Aryan.

6. On 31st December 2021, the manager to the public offer issued a Public Announcement on behalf of Acquirer for open offer for acquisition of 26% of the Expanded Voting Share (as defined in the Public Announcement issued on 31st December 2021) of Target Company from the Public Shareholders by Acquirer. On 4th January 2022, by way of a representation letter, Aryan sought the intervention of Securities Commission requesting the Securities Commission to take immediate action by exercise of powers under the Securities Commission Act, 1992 on the ground that the valuable shares of the Target Company which pertinently were infrequently traded were sought to be sold at drastically undervalued price of Rs. 50 per share, when the intrinsic value of the shares of Target Company according to Aryan was nothing less than Rs. 150/- per share. Thus, Aryan was aggrieved by the alleged depressed valuation in the open offer. Among other things, Aryan highlighted that the valuation of the proposed IPO of the material subsidiary of the Target Company is at USD 55 million. According to Aryan, this itself would show that the embedded valuation of each of the target company's shares would be Rs. 150/-. Aryan argued that the Creditor had grossly undervalued the shares of the Target Company is at USD 55 million. According to Aryan, this itself would show that the embedded valuation of each of the target company's shares would be Rs. 150/- Aryan argued that the Creditor had grossly undervalued the shares of the Target Company to the grave prejudice of its public shareholders and its lenders.

7. Aryan also sought the intervention of Securities Commission in the matter in order to protect the interest of public shareholders of Target Company inter alia requesting the Securities Commission to take immediate action by exercise of powers under the Securities Commission Act, 1992 contending that:

"Pending such investigation Securities Commission needs to take immediate action to:

a. Prevent/restrain Creditor from selling the Shares of Target Company or taking any further step in pursuance of the SPA

b. Direct the appointment of independent valuers to carry out fair valuation of Shares of Target Company,

c. Require the Promoters of Target Company to revise the Open Offer Price as per the fair valuation arrived at by the independent valuers;"

8. Despite the aforesaid complaint, a Detailed public statement was issued with respect to the aforesaid transaction in the leading newspaper on 5th January, 2022. On 12th January, 2022, manager of the offer on behalf of acquirer announced on stock exchanges that they have filed the Draft Letter of Offer of the Target Company with Securities Commission on the same day in terms of Regulation 16(1) of Securities Commission Substantial Acquisition of Shares and Takeover Regulations. ("Securities Commission SAST Regulations")

9. The Securities Commission reverted to the Representation Letters of Aryan only on 21st January, 2022 forwarding a copy of the responses of the Creditor, Manager to offer and the Acquirer along with three valuation reports provided by them, to the Aryan. The said Valuers who prepared valuation reports on behalf of Creditor, Manager and Acquirer valued share of the Target Company at Rs. 45, 47 and 50 respectively and the highest value i.e. Rs. 50/- was taken for the purpose of the offer. In response provided by the Creditor, Manager and Acquirer, they had argued that intrinsic value of the shares of a listed company are irrelevant and should not be considered from a legal and regulatory perspective to support their contention that the value of the shares arrived by their appointed valuer was the correct valuation. They also stated that the Valuation Reports set out in detail the methodology adopted by the valuers in arriving at the fair value of equity shares of the Target Company and reasons that the same has been arrived at on the basis of a fair equity valuation for the Target Company based on various methodologies and qualitative factors relevant to each company, business dynamics and growth potentials of the business of the Target Company having regard to the information base, key understanding assumptions and limitations.

10. On 3rd February, 2022, after receiving the reply from Securities Commission, Aryan again addressed a letter to Securities Commission replying to the letters of Creditor, Manager to offer and the Acquirer, as well as reiterating its request for taking immediate action in exercise of powers under the Securities Commission Act including by appointing an independent valuer

11. The manager to the offer vide its letter dated 18th February, 2022 informed the stock exchanges that it would be forwarding the Letter of Offer to all the shareholders of the Target Company, which was attached to the letter. Further, the manager to the offer also informed stock exchanges that the date of opening the offer is scheduled on 2nd March, 2022 and the date of closing of offer is 10th March, 2022. The offer price as per the said Letter of Offer is Rs. 50/- per fully paid up equity shares. The relevant documents for the open offer were provided for inspection at the office of the Manager but the three valuation reports were not included as documents to be provided for inspection.

12. In the meantime, around 11th February 2022, Aryan appointed a valuer for seeking valuation of the shares of the Target Company. The valuer a category 1 Merchant Banker, shared their report on 21st February, 2022, which stated that the fair valuation of the each share of Target Company is Rs. 150/-. Aryan vide its email dated 21st February, 2022 addressed to the Securities Commission, forwarded the aforesaid valuation report to Securities Commission along with its letter dated 21st February, 2022 for Securities Commission's consideration and necessary action in the interest of all shareholders of the Target Company reiterating its request for an independent valuer to be appointed.

13. However, the Letter of Offer was issued at the rate of Rs. 50/- per fully paid up equity shares on 21st February 2022.

14. Thereafter, Aryan filed an appeal before the Appellate Tribunal against the reply received by them from Securities Commission on 21st January, 2022 treating it as an appealable order under Section 15T of the Securities Commission Act and claimed for following reliefs:-

- a. That the Order dated 21st January 2022 be quashed and set aside;
- b. To direct Securities Commission to exercise its powers and appoint at the expense of the Acquirer an independent merchant banker other than the manager to the open offer or an independent chartered accountant in practice having at minimum experience of ten years, for valuation of the shares of Target Company;
- c. To direct Securities Commission to direct the manager of the offer to provide inspection of the valuation reports.

15. At the outset, a preliminary objection was taken by Securities Commission before the Appellate Tribunal that the letter dated 21st January 2022 was not an appealable order and just a forwarding letter. On the other hand, Aryan argued that the letter was an appealable order as it affected its right and being aggrieved an appeal under 15T was maintainable. It was submitted by Aryan that Securities Commission forwarded responses without applying its mind to the serious issues raised by the Aryan and therefore it was aggrieved and an appeal was maintainable. It was further contended by Aryan that Securities Commission has failed to appreciate that the price arrived at by the manager in the Public Announcement for open offer and the Letter of Offer is violative of the requirements of Regulations 8, 8(1) and 8(2), 8(16) of the Securities Commission SAST Regulations and that Securities Commission has failed to invoke its powers under Regulation 32(1)(f) of Securities Commission SAST Regulations to direct the Acquirer to make an open offer for acquiring shares of Target Company at such offer price as determined by the Board by appointing an independent valuer in accordance with these regulations. In response to the same, Securities Commission argued that the procedure as per Securities Commission SAST has been duly followed and that the Securities Commission has not only considered the valuation report but has duly applied their mind and concluded that the letter of offer was in order. During the hearing Securities Commission raised another preliminary objection that Aryan had no locus to file this appeal as they are not aggrieved persons as Aryan has no shares to offer in the open offer, since all the shares held by them in the Target Company were pledged in favour of the Creditor. Thus, it was submitted that Aryan did not have locus to file appeal and therefore is not an aggrieved party. In response to the same, Aryan argued that it continues to hold 10% of the shareholding of Target Company and though the said shares have been pledged with Debenture Trustee for the benefit of Creditor, they can still redeem the pledge and participate.

16. During the hearing Aryan also pointed out that the value of share as quantified in valuation opinion by merchant banker appointed by Aryan is substantially more than the value offered by Acquirer under the Open Offer. The invoked shares are being sold at a valuation of Rs. 50 per share as against at least Rs. 150/- per share as per the valuation report, which would amount to a value loss for the public shareholders of the Target Company. Aryan also complained that copies of valuation reports were not provided for inspection.

17. After hearing the parties, the Hon'ble SAT dismissed the appeal inter alia on the ground that Aryan did not have the locus to file an appeal under the Securities Commission Act while accepting the submissions of Securities Commission.

18. The said Order passed by Hon'ble SAT was appealed by Aryan before the Hon'ble Supreme Court of Konark. Thereafter, all the pleadings were filed by the Parties before the Hon'ble Supreme Court and the Hon'ble Supreme Court framed the following questions of law: -

a. Whether the communication dated 21 January 2022 from Securities Commission to Aryan is an appealable order under the Section 15T of Securities Commission Act and whether an appeal is maintainable?

b. Whether Aryan having pledged their shares do not qualify as "shareholders" under the Securities Commission SAST and hence, does not have locus to invoke the jurisdiction of the Hon'ble Tribunal under the Securities Commission Act?

c. Whether it is mandatory to provide the valuation report for inspection?

d. Whether the Securities Commission failed to exercise its power under Regulation 8(16) along with Regulation 32(1)(f) of the Securities Commission SAST Regulations by falling to appoint an independent valuer for the valuation of the infrequently traded shares?

Dated this 7th day of October 2022

- Parties to file their Memorandum by 18th February (soft copy) and 22nd February (hard copy).
- List for hearing from 3rd to 5th March.