

**IV SURANA & SURANA AND UPES
SCHOOL OF LAW
NATIONAL 'INSOLVENCY LAW'
MOOT COURT COMPETITION,
2021-22**

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MOOT PROPOSITION¹

ORGANIZED BY:

UPES School of Law, Dehradun

in association with

Surana & Surana International Attorneys, Chennai

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1. Blenders Electronics Private Limited (“**BEPL**”) is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at New Delhi, India. Founded in the year 2007, BEPL is one of the leading manufacturers, distributors and certified retail providers of electronic appliances in India. BEPL has its footprint across metropolitan cities, major towns and cities through a distribution network comprising of 7,500 dealers and 700 exclusive outlets.
2. BEPL has three wholly owned subsidiaries in India and has common directors. Each subsidiary has a specific reason to exist separately, maintains its own business records and intercompany transactions are regularly documented.
3. For manufacturing of certain electronic appliances including but not limited to diodes, transistors, radio, television, integrated circuits etc; BEPL procures, semiconductors through one of its wholly owned subsidiaries, i.e., Blenders Technologies Private Limited (“**BTPL**”).
4. BTPL is a fabless semiconductor company incorporated under the Companies Act, 1956, having its registered office at Bangalore, Karnataka. As a fabless semiconductor company, BTPL does not own a semiconductor foundry but instead outsources the manufacturing of fabrication to a third-party manufacturing company named as ElectroChips Private Limited and SMA Private Limited in India. BTPL only participates in designing, producing and marketing semiconductors for industrial electronics, chip cards and security applications. While the advantage of such a business strategy was that BTPL could focus its time, effort and resources to develop new ideas, invest in research, and improve its marketing strategies to

drive its sales, it also allows them to maintain variability in production volume, efficiency, and velocity without overburdening their staff and resources.

5. Although BTPL supplies semiconductors mostly for its parent company; however, it also supplies its product to third parties. For procuring semiconductors, BTPL and BEPL entered into a Product Supply Agreement (“PSA”) dated 21.12.2007 wherein BTPL issues monthly invoices as set forth in the PSA. After receiving the revenue from BEPL and third parties, BTPL clears its invoice against Electro-Chips Private Limited and SMA Private Limited.
6. Due to the techno driven and cost-effective business model of BEPL, in the year 2009, the standalone net profit of BEPL increased 88.4 percent to Rs. 2,628.40 Crore in the financial year 2008-09. Total revenue was up by 8.4 percent to Rs. 30,012.2 Crore in the financial year 2008-09. Consequently, to meet market demand, BEPL was required to put all its personnel and resources into manufacturing the products. Thus, BEPL decided to incorporate another wholly owned subsidiary named as Blenders Marketing Private Limited (“**BMPL**”), which shall be responsible only for marketing, sales and promotion of BEPL products. For wide networking, BEPL incorporated this company in Mumbai, Maharashtra. BEPL periodically provided operating funds to BMPL for its smooth functioning.
7. In the year 2013, the advancement of technology led to discontinuance of bulky, high-voltage cathode ray tube (CRT) screen displays with compact, energy-efficient, flat-panel to alternative technologies such as Liquid Crystal Display (LCD), Plasma Display Panel (PDP), High-Definition (HD), Standard-Definition (SD) and variety of other multimedia related devices. For handling cutthroat competition in the market it became necessary for BEPL to make an investment in improvising its

technology and resources. The Board of Directors of BEPL passed a resolution dated 28.07.2013 to enter into a Loan Agreement with KKR Lenders Private Limited (“KKR”) through BTPL.

8. KKR and BTPL entered into a Loan Agreement dated 15.12.2013 wherein KKR agreed to grant a loan of INR 200 Crore /- to BTPL subject to the condition that BTPL shall pay an interest of 14 % on the principal amount which shall be exclusive of interest tax at the applicable rates. Such interest shall be payable quarterly each year on 31st March, 30th June, 30th September and 31st December. KKR agreed that BTPL shall be allowed a rebate in the interest rate of 0.50% subject to the condition that BTPL pays the dues before the due date. The loan together with the interest, interest tax, liquidated damages, front end fee premia on repayment or on redemption, costs, expenses, and other monies shall be secured by exclusive first charge by way of mortgage in favour of KKR on all BTPL immovable assets worth INR 250 Crores. BTPL and KKR further agreed that if during the subsistence of this Agreement, KKR is of the opinion that the security provided by BTPL becomes inadequate to cover the balance of the loan, then SAS Bank shall provide the bank guarantee for additional security to cover such deficiency. BTPL undertook to repay the principal amount along with interest by 31st March 2020.
9. BEPL set up an ambitious goal of reaching \$100 billion in annual revenue within next five years. To achieve this goal, the board of BEPL decided to further diversify their business. Entering into the new field would further reduce their dependency on a single business line and would help BEPL in sustaining growth across business cycles.

10. With this intent, BEPL realized a huge opportunity in the telecommunication equipment industry. The increasing popularity of internet became another prime factor that encouraged BEPL to further diversify its business into the manufacturing of multi-service telecommunication equipment like digital-subscriber-line-access-multiplexer, fax machines, mobile intelligent terminals etc.
11. The Board of BEPL on the basis of high demand for telecommunication equipment in United States of America, unanimously decided in the year 2014 to incorporate a wholly-owned subsidiary named as **Blenders US Inc** (“**BUI**”). BUI was incorporated in the United States, having its registered office situated in New York. This diversification was made from a strategic point of view and also ensured that if one business segment of BEPL slumps, its presence in other vertical would give stability to its earnings.
12. BUI focuses on designing, developing, producing, distributing, installing, and maintaining a wide range of telecom equipment. Required inputs for manufacturing such telecom equipment includes off shelf hardware, standard software modules, custom software and custom application-specific integrated circuits (ASIC). Electrical and electronic components like circuit boards and ASICs are the main raw materials that the firm uses to manufacture its products. On the basis of internal qualification and bidding procedures, BUI procures the required amount of raw materials and components from **DealTrade US Inc**.
13. BUI and DealTrade entered into a Purchase Framework Agreement dated 26th August 2014 that specifies product types, quantities and prices, quality specifications, delivery schedules, locations and modes of delivery and other contract details. For each specific raw material, BUI and Deal-Trade enters into a

specific Purchase Order as per the terms and conditions set forth in the Purchase Framework Agreement. All the invoices were raised quarterly against BUI.

14. BUI and DealTrade agreed that if BUI fails to make timely payment prescribed in Purchase Order, BUI shall pay a penalty to DealTrade for each week of delay amounting to 15% of the total charges for purchased equipment. If the delay is more than 8 weeks, DealTrade is entitled to forthwith terminate the Purchase Framework Agreement. Notwithstanding the foregoing, BUI shall still be responsible for the penalty set forth in applicable Purchase Orders.
15. Post one year of incorporation, **BUI** had diversified operational footprints across Australia, Cayman Island, Hong Kong, India, and New Zealand. BUI was operating in these jurisdictions through its branch offices. Moreover, the company had also acquired assets in both the United States and India, among other jurisdictions. **BUI** also has a branch office in India as the Board of Directors takes majority of the company's operation and management decisions from the Indian branch office. The company also carries its accounting and other administrative functions from the Indian branch only.
16. One of the major issues which BUI faced was short life span of its telecom products. As the business model of telecommunication equipment manufacture is highly technology driven, in order to compete in the market, it became necessary for BUI to coordinate, research, design and manufacture new products to ensure a sustainable product portfolio. New product creation would also help BUI with new opportunities to develop new services.
17. Accordingly, BUI decided to leverage its growth with a strong emphasis on Research & Development. It established five R&D centers in New York,

Manchester, Houston, Las Vegas, and Chennai, with over 700 research professionals employed out of which 200 employees were based in Chennai. For establishment of these R&D centers, BUI took a loan of US \$ 1 billion from a consortium of four banks led by the Bank of Miami. BUI also obtained a loan of INR 30 Crores from AZA Bank in India for which a corporate guarantee was provided by BEPL.

18. As BEPL was gradually expanding its business, the board considered it necessary to strengthen sales and marketing group. Subsequently, BMPL took a loan of INR 10 Crores from the Bank of Dehradun (“**BOD**”) for commencing digital marketing and social media marketing.
19. In 2018, the board of BEPL anticipated that innovations powered by Artificial Intelligence technology would drive the future electronic industry. Thus, BEPL planned to significantly expand its research capabilities, AI researcher and also decided to invest in advanced markets for 5G chipsets and related devices and equipment. BEPL aimed towards becoming a leader in electronic components for future cars such as systems on chips for autonomous vehicles, utilizing its dominance in semiconductors and telecommunication and television technologies.
20. Consequently, BEPL decided to invest INR 13000 Crores for incorporating another wholly owned subsidiary in Pune, Maharashtra named as Blender Automated Machine Private Limited (“**BAMPL**”). Out of these INR 1300 Crores, BEPL took a loan of 800 Crores from IZBI Bank. BEPL and IZBI Bank entered into a Loan Agreement dated 01st January 2019 and agreed that BEPL shall make payment in three installments as per the below given schedule:

S.No.	Amount	Due Date
1.	100 Crore	1 May 2019
2.	100 Crore	1 September 2019
3.	200 Crore	1 January 2020
4.	400 Crore	1 May 2020

Final interest payment to be calculated as of final payment and due immediately thereto. As a collateral to the loan amount, BEPL agreed to put forth its assets worth Rs. 900 Crores to IZBI Bank. BEPL was also to be made liable to a penalty of 8% for any late payment computed upon the amount of any principal and accrued interest whose payment to IZBI Bank became overdue under the Loan Agreement and for which IZBI Bank has delivered a notice of default to BEPL.

21. BAMPL used INR 1300 Crores for the following purposes given below:

S.No.	Particular	Amount (In Crores)
1.	Plant & Machinery	INR 250
2.	Land and Building	INR 600
3.	Intangible Assets	INR 200
4.	Inventory	INR 50
5.	Business Reserves	INR 200

22. During the year 2020, there was a formidable outbreak of novel Coronavirus disease (COVID-19) in many cities and countries and soon it expanded globally. This negatively affected most of the industries, including the electronics industry. On 23rd March 2020, the Government of India declared a nation-wide lockdown due to the sudden outburst of COVID-19 due to which BEPL, BMPL, and BTPL faced severe financial difficulties. On 1st May 2020, BEPL failed to honour its quarterly interest-payment to the IZBI Bank and other lenders. The company broke-down to the extent that it was unable to clear the invoices raised by BTPL and BMPL.

23. On 2nd April 2021, the IZBI Bank filed an application under Section 7 of the Insolvency and Bankruptcy Code (“**I&B Code**”) for initiation of the Corporate Insolvency Resolution Process (“**CIRP**”) against BEPL. The Bank proposed the name of Mr. Rakesh Vishwas with registration no. IBBI/IPA-00000/054 for appointment as IRP. NCLT Delhi after ascertaining the existence of debt and default vide order dated 15th May 2021, initiated the CIRP against BEPL. The Tribunal also went ahead with the appointment of Mr. Rakesh Vishwas as IRP to administer the insolvency proceedings.
24. Alongside, on 22nd April 2021, BOD approached the NCLT, Mumbai under Section 7 read with Rule 4, Form 1 and 2, for initiation of CIRP against BMPL. BOD proposed the name of Mr. Vishwajeet Iyer with registration no. IBBI/IPA-00000/1023 for appointment as IRP. The NCLT after scrutinizing the requirements provided under Section 7(4) and 7(5) of the I&B Code, vide order dated 20th May 2021, directed for the commencement of CIRP against BMPL. The Tribunal also appointed Mr. Vishwajeet Iyer as IRP to administer the insolvency proceedings.
25. On 8th May 2021, the employees of BTPL served a demand notice to BTPL under Section 8 of the I&B Code demanding their unpaid salary due since March 2020. After the expiry of ten days and on a failure of BTPL to respond to the impugned demand notice, the employees approached the NCLT, Bengaluru under Section 9 of the I&B Code seeking initiation of CIRP against BTPL. The employees also proposed the name of **Ms. Debolina Prasad** with registration no. IBBI/IPA-00000/111 for appointment as IRP.
26. The NCLT, Bengaluru after scrutinizing the requirements of Section 9(2) and 9(3) vide order dated 28th May 2021, admitted the application and ordered the CIRP

against BTPL and appointed Ms. Debolina Prasad as IRP to administer the insolvency proceedings. Further, the tribunal also declared moratorium and ordered that the IRP appointed shall take further steps as are required under the law.

27. In compliance with Section 13 and 15 of the I&B Code, the appointed IRPs caused a public announcement and invited claims from their respective creditors. The following claims were accepted by the IRPs:

a. Claims against BEPL –

(Amount in Crores)

S.no.	Name of Creditors	Principle Amount along with Interest	Amount Due
1.	IZBI Bank	670	250
2.	Private Lenders	180	95
3.	Operational Creditors	--	70
4.	Employees and Workmen	--	24
5.	RP of BTPL	--	48
6.	BAMPL	--	18

Claims against BMPL –

(Amount in Crores)

S.no.	Name of Creditors	Principle Amount along with Interest	Amount Due
1.	Bank of Dehradun	126	75
2.	Infotel Ltd.	--	26
3.	Other Operational Creditors	--	20

b. Claims against BTPL –

(Amount in Crores)

S.no.	Name of Creditors	Principle Amount along with Interest	Amount Due
1.	BOD Bank	240	150
2.	IRP of BEPL	44	36

3.	ElectroChips Private Limited	--	44
4.	SMA Private Limited	--	28
5.	Other Operational Creditores	--	24

28. Soon after the collation of claims and after determining the financial position of the Corporate Debtors, the IRPs constituted the Committee of Creditors (“**COC**”). The COC of each entity (BEPL, BMPL, and BTPL), in their first meeting, decided to nominate their respective IRPs as Resolution Professional (“**RP**”) for the administration of insolvency proceedings.
29. During March 2021, the tax authorities also conducted an audit of BTPL & BEPL books wherein it was concluded that the invoices pertaining to FY 2018-19 of INR 70 crores on which input tax credit was availed by BEPL were not reported in the GSTR-1 of BTPL. After considering the representation of BTPL & BEPL on 1st May 2021, the proper officer issued a demand order under section 74(9) of CGST Act, 2017 against BEPL directing the reversal of input tax credit along with payment of penalty and interest.
30. Aggrieved by the order of proper officer, BEPL decided to file an appeal under section 107 of the CGST Act, 2017 but could not proceed since the CIRP started with effect from 15th May 2021. The tax authority submitted their claims as operational creditor before the RP of BEPL, but RP denied the claim since the claim was still disputed and can’t be classified as “debt” under I&B Code. Aggrieved by the decision of RP, the tax authority filed an application under 60(5) of the I&B Code. NCLT, Delhi vide order dated 12th July 2021, directed the RP to consider the claim of tax department referring **Circular No.134/04/2020-GST**. Aggrieved by

the order of NCLT Delhi, RP filed an appeal before the National Company Law Appellate Tribunal (“NCLAT”). **[COMPANY APPEAL (AT) (INSOLVENCY NO. 101/2021)]**

31. KKR approached the SAS Bank for invocation of bank guarantee. SAS Bank honoured its obligation under the said guarantee and approached the RP for its right to subrogation in respect of the said amount. RP rejected the claim of SAS Bank on the ground that every contractual right can't be protected under the I&B Code. Aggrieved by the decision, SAS Bank filed an application under Section 60(5) of the I&B Code. NCLT Delhi vide order dated 28th July 2021, directed the RP to accept the claim of SAS Bank as an operational creditor. Aggrieved by the same, RP filed an appeal before NCLAT. **[COMPANY APPEAL (AT) (INSOLVENCY NO. 102/2021)]**

32. On 26th June 2021, the RP of BEPL, after looking at the intermingling of assets, bank guarantees, simultaneous insolvency proceedings against the members of the group (including the foreign entity BUI), and to provide for a larger estate pool filed an application under Section 60(5) of the I&B Code before the NCLT Delhi for Group Insolvency of the Blenders Group. In particular, the RP prayed for substantive consolidation and procedural coordination of the group insolvency proceedings. Several Operational Creditors opposed this application of the RP as they were of the opinion that Group Insolvency may prejudice their individual interests. The NCLT Delhi after hearing both the RP and operational creditors of BEPL, vide order dated 17th August 2021, rejected this application for Group Insolvency. Aggrieved by the decision of NCLT Delhi, the RP has filed an appeal

before the NCLAT for group insolvency. **[COMPANY APPEAL (AT) (INSOLVENCY NO. 103/2021)]**

33. Further, with an intent to maximize the estate pool, the IZBI Bank also filed an application before the NCLT Delhi, praying for the inclusion of BAMPL in the insolvency of Blenders group. BAMPL opposed this application by contending that such inclusion may hamper their rights as a Separate Legal Entity. The NCLT Delhi vide order dated 17th August 2021 rejected the application for inclusion of BAMPL on the ground that the inclusion of a solvent member in the group of insolvents would be against the provisions of the I&B Code. Aggrieved by this decision of NCLT Delhi, the YBI Bank has filed an appeal before the NCLAT for the inclusion of BAMPL. **[COMPANY APPEAL (AT) (INSOLVENCY NO. 104/2021)]**
34. Meanwhile, in November 2020, several newspapers and business reports showed a significant decline in revenue and Earnings Before Interest, Taxes, Depreciation, and Amortization (“**EBITDA**”) of **BUI** due to the economic downturn in its parent’s business. The report estimated a decline in company’s operating income by 26%. Consequently, **BUI** missed an interest payment for the first time, triggering a default of approximately US \$ 0.6 billion, a debt held by the bank and other investors. The company also defaulted in payment obligations of both Indian and other operational creditors.
35. Shortly after the default, **BUI** began negotiation with its creditors and submitted few proposals for reorganizations, all of which were summarily rejected. The Indian Creditors filed an application under Section 19 of the Recovery of Debt Due to Bank and Financial Institutions Act, 1993 (“**RDDBI Act**”) for recovery of their debt amount.

36. In September 2021, the consortium led by Bank of Miami also filed an involuntary bankruptcy proceeding against BUI under Chapter 11 of the US Bankruptcy Code for re-organization. As per Section 303 of the US Bankruptcy Code, the Bankruptcy Court appointed Ms. Wilson as an interim trustee. At the time of involuntary bankruptcy proceedings although, BUI had its principal assets in the US; however, it also had significant assets in India.
37. Ms. Wilson after knowing that **BUI** has certain assets in India, applied to the NCLT Delhi under clause 12 of the Draft Part Z on Cross-Border Insolvency (“**Draft Part Z**”) for recognition of US Proceedings as “Foreign Main Proceeding” or “Foreign Non-Main Proceeding”. However, Indian Creditors opposed this application contending that the relief sought is “unnecessary” and the Centre of Main Interest lies in India. Thus, they would like to adjudicate their debt in accordance with Indian laws.
38. After hearing both the parties, the NCLT Delhi vide order dated 25th November 2021 declared that:
- a. Ms. Wilson is a foreign representative pursuant to Clause 2(h) of the Draft Part Z;
 - b. The US proceedings are foreign proceedings with the meaning of Clause 2(g) of the Draft Part Z;
 - c. The US proceedings cannot be recognized as foreign main proceedings;
 - d. The US proceedings can be recognized as foreign non-main proceedings.

39. Aggrieved by the decision of NCLT Delhi, the foreign representative has filed an appeal before the NCLAT for recognition of foreign proceedings. **[COMPANY APPEAL (AT) (INSOLVENCY NO. 105/2021)]**
40. The NCLAT decided to hear all the appeals together and listed them for hearing on 4th February, 2022.

ASSUMPTIONS

1. It shall be assumed for the purpose of this Moot Proposition that India has adopted the Draft part Z on Cross Border Insolvency.
2. It shall be assumed that IBC proceedings had not been suspended vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 for the purpose of this Moot Proposition.