



THE 2nd KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2014

05TH – 07TH SEPTEMBER 2014

MOOT PROBLEM: II

Arno Real Estate Corporation Limited & Others -- Petitioner

Vs

Securities and Exchange Board of Trasilta & Others -- Respondent

The Union of Trasilta is a federal democratic republic country situated in Asia. Arno Real Estate Corporation Limited (“**ARECL**”) is an unlisted public limited company incorporated in Trasilta. The currency of Union of Trasilta is Rupees (Rs.) and it is equivalent to Indian Rupees, in value. The paid up capital of ARECL is Rs.1,000,000. Mr. Arno is the promoter of ARECL. Securities and Exchange Board of Trasilta (“**SEBTT**”) is a statutory body which has been setup to protect the interests of investors and regulate the securities market in Trasilta. The laws of Trasilta are similar to that of India. The brief facts of the case are set out below:

ARECL, in an extraordinary General Meeting, resolved through a special resolution to raise funds through nontransferable unsecured optionally fully convertible debentures (“**OFCDs**”) by way of ‘private placement’ to friends, associates, group companies, workers/employees and other individuals associated/affiliated or connected in any manner with ARECL and/or Mr. Arno (defined as “**Arno Group**” in the resolution) without giving any advertisement to general public. With respect to the same, a Red Herring Prospectus (“**RHP**”) was filed with the Registrar of Companies (“**RoC**”). RHP indicated that the the purpose of the fund raising was to complete of existing infrastructure projects undertaken by ARECL and that the company had no intention of listing its shares on the stock exchange. The RoC sought clarifications on the contents of the RHP filed by ARECL. ARECL furnished the requisite information and the RoC took on record the RHP filed by ARECL.

ARECL, after filing the RHP with the RoC, circulated an information memorandum (“**IM**”) on as on June 31, 2000 along with necessary application forms to the Arno Group for subscribing to the OFCDs. However, no debenture trust deed had been executed, nor any debenture trustee appointed in respect of the OFCDs. The IM carried a recital that it was private and confidential and not for



circulation. ARECL received a total collection of Rs.1,700,000,000 from about 20,000,000 subscribers.

SEBT *prima facie* felt that ARECL was carrying out various transactions in securities in a manner detrimental to the interests of the investors or to the securities market and, therefore, issued summons to Mr. Arno. Also, during the inquiry ARECL could only provide the partial information relating to names, numbers and amount invested by the investors. On considering the matter, SEBT took the view that the issuance of OFCDs by ARECL to the Arno Group was a “public issue” of securities under the Companies Act and the OFCDs should have been listed on a recognized stock exchange. SEBT concluded that ARECL ought to have followed the procedural compliances, disclosure requirement and other investors' protection norms with respect to a public issue. Consequently, ARECL was directed to return the amount with 15% interest.

ARCEL filed a petition before the Hon’ble Supreme Court of Trasilta challenging the order of SEBT. Supreme Court admitted the petition and notice was issued to SEBT. The following issues have been framed for the final arguments:

1. Whether the petition filed before the Hon’ble Supreme Court is maintainable?
2. Whether SEBT has the power to investigate and adjudicate in this matter or is it the Ministry of Corporate Affairs (MCA) which has the jurisdiction?
3. Whether the hybrid OFCDs fall within the definition of "Securities" within the meaning of Companies Act, SEBT Act and SCRA?
4. Whether the issue of OFCDs is a Public Issue under Section 73 read with Section 60B and allied provisions of the Companies Act?
5. Whether the penalty imposed is appropriate?



NOTE TO PARTICIPANTS:

- 1. For the purposes of this moot, Sahara case as decided by the Supreme Court of India cannot be used as a binding precedent. Please use it only for reference of arguments.**
- 2. All participants must assume that the (Indian) Companies Act, 1956 is entirely in force. Other than above, the laws of Trasilta are *in pari materia* with the Laws of the Union of India.**