10TH EDITION

INSOL India-NLIU

NATIONAL CORPORATE LAW MOOT

MOOT PROPOSITION

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1. Ever since the liberalization, globalization and privatization reforms of 1991, the Indian telecom sector has often been hailed as a shining success of these initiatives. From the early 90s when telecom was largely a state-run enterprise, to today when India has witnessed billions of private investments and boasts of one of the largest telecom market bases, the Indian telecom sector has come a long way. In the last 30 years, this sector has witnessed a lot of activity, with stakeholders having to deal with cut-throat competition between market players and learning to navigate regulatory and legal challenges. As a result, the sector witnessed a broad trend of consolidation among the market players, with market leaders either absorbing some players through mergers and/or acquisitions, or some players being forced into insolvencies and liquidations.

2. One such market player who has been operating in the telecom space since the last 15 years is Naboo Telecommunications Limited ("**Naboo**"). Naboo was started by Padme Amidala and Bail Organa in 1996, two childhood friends who aimed to provide world-class telecom services in the country. They started the company from their garage, and together built a multi-billion-dollar enterprise – all built on an idea that the telecom industry was central to transforming India into a global economic superpower.

3. Naboo immediately took off with the customers, who had for years no choice but to stick to the state-run telecom enterprise – Coruscant Sanchar Nigam Limited ("**Coruscant**"). Coruscant was plagued with operational inefficiencies, obsolete equipment and systems architecture, and could not keep pace with global developments in telecommunication technologies. Naboo took advantage of this consumer resentment with Coruscant, and quickly eclipsed Coruscant as the single largest telecom player in India.

4. Seeing Naboo's rise, many other telecom companies ("**TelCos**") propped up to take advantage of Coruscant's continuously shrinking market share and the competition intensified for attracting and retaining customers.Tatooine Telecom Limited ("**Tatooine**"), Dagobah Tech System Limited ("**Dagobah**"), MandaloreVoice Private Limited ("**Mandalore**") and Alderaan Exchange Limited ("**Alderaan**") were some of the prominent market players that emerged during this time.

5. During this period, the government and the industry kept on adopting new telecom standards every few years in order to keep pace with the technological development taking place in the world. As a result, Indian telecom customers obtained the benefit of 2G, 3G, and 4G technologies on their cellular devices within a few months of these technologies being rolled out in other parts of the world.Due to this regulatory and technological upheaval, several telecom players merged together to become stronger entities to be able to compete with others. Tatooine acquired Dagobah,Mandalore merged with Alderaan, but Naboo chose to continue solo throughout this time.

6. The Indian government then embarked on an ambitious initiative – to be able to launch the next generation technology – 5G communications – together with the rest of the world. To ensure this, a mega auction of 5G spectrum was conducted in January 2018. Several TelCosparticipated in this auction, and the entire 5G spectrumband was divided and awarded to largely 3 TelCos(*in descending order of the size of spectrum auction awarded to them*) – Naboo, Tatooine and the combined Mandalore-Alderaan.License Agreements in terms of provisions of Section 4 of Indian Telegraph Act, 1885 were entered into by the Government, through Department of Telecommunication ("**DoT**") (the Licensor) with TelCos (the Licensees), for license of the 5G spectrum to the Telcos ("**License Agreements**") such that the TelCos would have a 'right to use' the 5G spectrum. It was expected that 5G technology would roll out globally by December 2021, and the 4-year intervening period (from January 2018 – December 2021) would give enough time to these 3 TelCosto have the necessary IT capabilities and infrastructure in place for rolling out the 5G services, together with rest of the world.Under the terms of the License Agreement, the License fees for the 5G Spectrum was to be paid by the TelCosto the DoT in instalments, spread over 20 years.

7. Under the terms of the License Agreements, the TelCos were entitled to use the 5G Spectrum for a period of 25 years from the date of the allotment on the condition of timely payment of license fees to the DoT in accordance with the License Agreement. However, the Licensor i.e., DoT had the right to revoke such license if the TelCos breached any of the terms or conditions of the License Agreement. The License Agreement further required the TelCos to take a 'prior approval' of the DoT in case the TelCos decide to assign the License Agreement or trade or sell their respective spectrumto another TelCo. A change in control of TelCos was also considered as an indirect 'assignment' of the License Agreement, requiring prior approval of the DoT.Any such assignment or trade wassubject to:(a) clearance of all the

past dues of the DoT by the selling Telco till the date of assignment/transfer of the Spectrum; or (b) purchaser/assignee undertaking to pay all past dues towards DoT and all future dues of the DoT under the License Agreement.

8. Soon after the 5G Spectrum auction, all 3 market players went on a fund-raising spree forcapital expenditure and building the necessary 5G-ready infrastructure. All 3 players raised funds through equity and debt route, but it was Naboo that raised the maximum amount of funds from public and private sources. To finance this project, Naboo entered into a Tripartite Agreement with DoT and its lending banks. In accordance with the said Tripartite Agreement, if there was a default by Naboo in making timely payments to DoT or to the banks, the banks could cause the assignment or transferof the License Agreement (and attendant right to use the 5G Spectrum) to another TelCoof their choice, subject to an approval from DoT.

9. In addition to taking loans from the banks, from 2018 to 2020, Naboo also raised around INR 10,000 crore in public equity from institutional investors and retail shareholders through a QIP followed shortly thereafter by a rights issue.Naboo also raised over INR 30,000crore through public and private non-convertible debenture issuances, commercial papers and external commercial borrowings. One of the main reasons why Naboo had to undertake such large fund raises was that Naboo had not consolidated with any other TelCoplayer, and hence had to rely more on external fund sources than the other 2 TelCos.

10. As a result, by 2020 Naboo had taken a lot of debt and it had to agree with a strict repayment schedule with its lenders for interest and principal repayment over the next 10 years.Cash flows from its 3G/4G operations would be especially crucial for the next 5 years for Naboo to enable such repayment. As a result of this, until the financial year 2022-23 (i.e., until the complete launch of 5G services and mass adoption by its customer takes over) it could not afford to lose any significant customers/market share as the loss would impact its ability to service the debt.

11. Around this time, a new entrant came and took the telecom sector in India by storm.Trade Federation Industries ("**TFI**"), one of India's largest industrial houses began its foray in the Indian telecom sector by launching a 4Gservice through its telecom arm –Sith Technologies Limited ("**Sith**"). Buoyed by its strong balance sheet and hefty income from legacy industries like oil and petrochemicals, TFI chose an extremely aggressive strategy right from the

beginning and aimed for Sith to secure the largest market share by 2021-end. To ensure this, Sith virtually gave its services free to all customers for the entire first year since its launch in 2018. As a result, customers flocked to Sith's network – and all existing market players saw their market share decrease substantially. Within 2 years, Sith was able to corner almost 25% of the market share and was well on its way to achieve its target of becoming the largest telecom player by 2021-end. TFI's original long-term plan was to launch Sith by 2016 – with an aim to participate in the 5G auction in 2018 and eventually launch 5G operations by Sith along with the global 5G rollout. Since it had lost out on launching Sith at its original planned date, it sought to cover up for the lost time by its aggressive tactics, as it could stomach losses for the first few years until it reached the desired substantial scale.

12. While all market players were affected by Sith's entry, none saw its market share plummet as much as Naboo. A major chunk of customers that Sith attracted came at the cost of Naboo, especially its legacy 3G customers that were attracted by Sith's promise of free 4G services. By January 2020, Naboo started facing a liquidity crunch and had to undertake bridge loans from various banks and financial institutions to be able to run its day-to-day operations. When the COVID-19 pandemic struck in India in March 2020, it entered into a one-time settlement with its creditors, who agreed to a moratorium on Naboo's existing debt repayments – which were halted and would resume from June 2020. All through this while, Naboo continued to lose out on its customers to Sith, Tatooine and Mandalore-Alderaan.

13. Naboo's troubles took on a new turn when news broke that globally, the 5G rollout was being pushed to end of 2022 (instead of December 2021). Meanwhile, Naboo's existing debt servicing obligations continued to pile up, and it continued to lose customers to other market players.Since 31 January 2020, Naboo had not been making monthly salary payments to its employees – and had been promising them that the company's health was robust and it was only a matter of time when 5G rollout happens and employees will receive their missing salaries plus a handsome windfall. With no profitability from its 5G operations anytime soon and continued capital expenditure expenses to set up its 5G network such as towers, fiber optic cables, data centers etc. across the country, Naboo missed out on its quarterly repayment schedule for its commercial papers on 15 July 2020. When news broke of Naboo defaulting on its debt servicing obligations, Naboo's employees lost all hope of seeing any of their deserved salaries. 5500 employees of Naboo then came together and formed the Gungan Employee Union ("**Gungan**") and held several meetings with the management followed by various protests.

14. However, the last straw for Naboo proved to be an action initiated against it under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC/Code**") by one M/s R2D2 Ltd. ("**R2D2**"), who had been engaged by Naboo for laying down for the fiber optic cables. Naboo had been availing services from R2D2 since 2016under a Master Services Agreement ("**MSA**") and both parties shared a good commercial relationship.Until December 2019, both the parties had done business of over Rs. 2,500 crores with each other. Pursuant to the services rendered by it to Naboo under the MSA, R2D2raised invoices from time-to-time on Naboo. As per the 'General Business Terms' attached to the MSA, the invoices were to be paid by Naboo within 15 days of its submission and Naboo was required to raise any disputes in respect of the invoices within 3 days of submission of the invoices.

15. As of 31 December, 2019, an amount of Rs. 3,51,99,44,675/- was due and payable by Naboo to R2D2 under the MSA. However, when no payments were received within contractually stipulated time frame, R2D2 sent a reminder to Naboo on 26 January 2020. Pursuant thereto on 31 January 2020, Naboo sent an email to R2D2, assuring R2D2 of timely payment of the outstanding dues. Naboo also mentioned the history both parties have had and how Naboo has always kept its word.

16. However, after three weeks of the above assurance, Naboo, on 22 February 2020*volte faced* and informed R2D2 that during the vetting of invoices raised by R2D2, its audit department has noticed serious deficiencies and as a result, it will not be able to clear the above dues until such issues are resolved. It was informed that R2D2 had failed to attachrequisite supportingdocuments to corroborate the services actually rendered and the amounts payable for the same in the invoices, and therefore, any prior acknowledgment/admission/assurance by Naboo ought to be considered as null and void.On 24 February 2020, R2D2 replied to the said email stating that it had submitted the invoices in the same manner as it had been doing all along and had never received any objection from Naboo.R2D2 further stated that Naboo could not have raised this issue belatedly and in complete ignorance of clear instructions in the 'General Business Terms' in the MSA. Interestingly, this was the first time both parties were at odds with each other as till now, Naboo and R2D2 had shared a cordial commercial relationship spanning over several years.

17. Meanwhile, Padme (*promoter of Naboo*) addressed an email to R2D2 on 25 February 2020, suggesting parties to enter into a settlement agreement whereby, Naboo would be required to

clearall outstanding dues to R2D2 by end ofMarch 2020in three equal instalments along with interest on such amounts.

18. Puzzled by the proposal, R2D2immediately wrote to Naboo on 26 February 2020 to clarify its stance and requested it to not put forth two contradictory positions i.e., raising allegations regarding unsupported invoices and at the same time suggesting a settlement agreement which implied acknowledgement of the liability. Naboo failed to reply to this, however, a settlement agreement was shared by Padme on 1 March2020 incorporating the repayment schedule. The same was executed on 2 March 2020 by Naboo and R2D2, with the intention that the settlement agreement would henceforth govern the relationship between the two parties.

19. In accordance with the settlement agreement, Naboo paid the 1st instalment along with interest to R2D2 on 3 March 2020, but thereafter failed to make good on 2nd and 3rd instalments falling due on 15 March and 31 March 2020. Upon query by R2D2, Padme informed R2D2 on 15 April 2020 that due to COVID related disruptions/ some sudden disruption in its financial planning, Naboo will not be able to pay the 2nd and 3rd instalments under the settlement agreement and requested Naboo to rework the repayment schedule. Perturbed by dilatory tactics of Naboo, R2D2, on 30 April 2020, sent a demand notice to Naboo under Section 8 of the IBC to pay the balance amount under the invoices along with interest thereon. In response to this, Naboo replied on 7May 2020, stating that the parties had an existing dispute as R2D2's invoices lacked necessary supporting. Naboo stated that even at time of settlement agreement on 2 March 2020, it was always implied that R2D2 would furnish the necessary supporting for the invoices. Naboo further alleged that in absence of necessary supporting, the invoices are not merely misrepresentations but may amount to a fraud. In its reply, Naboo also stated that since the debt arises out of the settlement agreement, it did not tantamount to operational debt under Section 5(21) of the Code.

20. Despite the response to the demand notice, R2D2 filed a petition against Naboo under Section 9 of IBC before the National Company Law Tribunal, Delhi ("**NCLT**") on 1 July 2020. The Ld. NCLT heard the parties, examined the application and admitted the same on 7 August 2020, and appointed one Mr. Jar JarBinks as the interim resolution professional under the relevant provisions of the IBC. Hence, Naboo's Corporate Insolvency Resolution Process ("**CIRP**") commenced on 7 August 2020.This order was challenged by Padme and

Bail before the National Company Law Appellate Tribunal, New Delhi ("**NCLAT**")on 25 August 2020 *inter alia* on the ground that in view of existing dispute between Naboo and R2D2, Ld. NCLT erred in admitting R2D2's petition.

21. However, this appeal was rejected by theLd. NCLAT on 1 January 2021*inter-alia* on the ground that the dispute raised by Naboo was nothing but a moonshine. Thereafter on 15 January 2021, Padme and Bail preferred an appeal against the NCLAT order before the Hon'ble Supreme Court of India (*bearing Civil Appeal No. 161 of 2021*), however the same is pending till date. The Hon'ble Supreme Court refused to pass any interim order and directed Mr. Binks to continue with the CIRP.However, the same was made subject to the outcome of the Supreme Court appeal preferred by Naboo's promoters.

22. Meanwhile, Mr. Binks convened the first meeting of the Committee of Creditors ("**CoC**") of Naboo, whereby he was confirmed as the Resolution Professional ("**RP**") of Naboo. Considering the complex nature of telecom industry and the vast number of claims filed by the creditors, Mr. Binkswas constrained to seek an extension of time-period prescribed under Section 12 of the IBC for completion of CIRP, and the same was allowed by the Ld. NCLT, New Delhi. Mr. Binks alsoundertook all the necessary actions mandated under the CIRP including preparationof the Information Memorandum of Naboo, issued the Invitation for Expression of Interest ("**EoI**") on 15 August 2021 and accordingly thereafter, issued the Request for Resolution Plan ("**RFRP**") on 15 September 2021inviting prospective Resolution Applicants("**PRAs**") to submit resolution plans for Naboo.On15 October 2021 (prescribed as the deadline for submitting resolution plans under the RFRP), 5 PRAs had submitted resolution plans for the CIRP of Naboo. One of the PRAs was Sith – which was widely speculated in the media as being the favorite to emerge as the successful resolution applicant out of the CIRP of Naboo.

23. All 5 resolution plans submitted by the various PRAs were examined by the RP for compliance with the provisions of the Code and thereafter presented before the CoC. The CoC examined the plans and negotiated with the PRAs and thereafter, all 5 resolution plans were put for voting. On 15 November 2021, Sith was declared as the successful resolution applicant by the CoC – receiving 67% voting of the CoC. No other resolution plan was able to cross the minimum CoC voting threshold prescribed under the IBC, and even Sith's resolution plan barely met the required threshold. The CoC found the overall 90% haircut

proposed by Sith on Naboo's total admitted debt exposure of approx. INR 38,000 crores as commercially acceptable to themdespite being only marginally higher than the liquidation value of Naboo.Notably, under the Resolution Plan, the employees were being paid 50% of their admitted debt while the operational creditors were being paid 20% of their admitted debt. Despite such high haircut,media reports welcomed this development, since the demise of a large telecom player like Naboo was expected to send the wrong signal about India's desire to be seen as a global business destination.

24. Accordingly, Mr. Binks, in his capacity as the RP, filed an application under Section 30(6) read with Section 31 of the IBC before the Ld. NCLT on 20 November 2021, which ultimately approved it on 15 January 2022. In its order, Ld. NCLT, however, noted a disturbing trend of CoCs accepting such heavy haircuts. The Ld.NCLT went to recommend the Insolvency & Bankruptcy Board of India to undertake a thorough investigation of Naboo's CIRP for confidentiality compliances considering that Sith's Resolution Plan i.e., INR 3,800 was barely higher than Naboo's liquidation value which was INR 3,700 crores.

25. Just when Naboo appeared to be getting back on its feet, the DoT, on 30 January 2022,threw a spanner in its resolution process by challenging NCLT order approving Sith's resolution plan before the Ld. NCLAT. The Appeal was filed on the ground that theLd. NCLT, while approving Sith's resolution plan, erred in allowing change in control of Naboo from its promoters to Sith in absence of clearance of entire 5G Spectrum dues owed to DoT by Naboo for the period prior to insolvency commencement date and without the same being taken over by the Resolution Applicant in entirety.Notably, in order to ensure that Naboo continues as going concern during CIRP period, Mr. Binkshad ensured that Naboo paid all the instalment of 5G Spectrum License Fees that became payable during the CIRP period.

26. During the CIRP of Naboo, the DoT had filed its dues under 'Form - B' under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") and the same were verified and admitted by Mr. Binks.

27. By its interim order dated 10 February 2022, the Ld. NCLAT stayed the implementation of the resolution plan.Ld. NCLAT also acknowledged the various discrepancies that plagued the CIRP of Naboo, as were remarked by the Ld. NCLT.

28. Meanwhile, on 23 February 2022the CoC received a settlement proposal from Tatooine (**Settlement Proposal / SP**) – whereby Tatooine sought to purchase all of Naboo's 5G spectrum and the accompany infrastructure assets by way of a slump sale. Tatooine did not wish to submit a resolution plan for entire business and assets of Naboo, rather only sought to get the prized right to use 5G spectrum and related infrastructure. Their strategy had been to wait for the entire CIRP to take place, evaluate the commercial proposals from the media coverage and then decide on an optimum bid amount under the SP. Their proposal to pay for the 5G spectrum and assets at full price was an especially enticing option for the CoC as well the DoT, since the financial creditors stood to receive a larger chunk of their debt and that too faster, as compared to their recoveries under Sith's resolution plan.

29. TheSP only covered for the amount being paid off to Naboo as consideration for the slump sale of the 5G spectrum and assets, with the *inter-se* distribution of the amount between creditors being left to the discretion of the CoC. The SP would have helped CoC to make quicker recoveries before any recoveries under Sith's plan, which was now expected to be embroiled in various rounds in litigation.However, the future of the remaining business and operations of Naboo stood in peril since there would not be much value left in the company (being only the remaining legacy 3G and 4G business) once the global 5G rollout takes place. As a result, some of the operational creditors, especially Gungan were not keen on giving the SP any serious thought.

30. While the SP was tendered to the CoC under a sealed cover, and the CoC was yet to open the SP and consider it on merits, the details of the SP ended up being leaked in the media. On 25 February 2022, the successful resolution applicant i.e., Sith also emailed a formal complaint to the RP and CoC threatening legal action in case the SP contents were opened and considered; since they had officially been declared as the successful resolution applicant and since their plan had been approved by the Ld. NCLT and was now pending in Ld. NCLAT.

31. Sith also alleged that the erstwhile promoters of Naboo i.e., Padme Amidala and Bail Organa had colluded with Tatooine to make the SP. It was alleged that when the downfall of Naboo became imminent in 2019, both Padme and Bail made various direct and indirect investments through their sister concerns and family offices in Tatooine. Thereby, making it clear that Tatooine's SP was nothing but a last-ditch attempt by Padme and Bail to wrest control of their prized 5G spectrum assets. Accordingly, Sith alleged that the SP would never

pass the muster of Section 29A of IBC. The slump-sale of the 5G Spectrum and accompanying assets was also being questioned on the ground of the ongoing moratorium imposed during Naboo's CIRP.

32. Amidst this, on 23 March 2022, the Hon'ble Supreme Court of India (**SC**), in Writ Petition No. 1008 of 2018,gave its long-awaited judgment on treatment of Adjusted Gross Revenue (**AGR**) dues applicable on the TelCos. This judgment was seen as a turning point for the sector, especially for long standing players like Naboo, Tatooine and Mandalore-Alderaan who had been operating since over a decade and whose AGR dues towards DOT– as calculated by the Supreme Court – ran into thousands of crores. During the pendency of this matter before the Hon'ble SC in July 2021 had already ordered (under Article 142 of the Constitution of India) that TelCos undergoing insolvency will have to acknowledge the AGR dues if theHon'ble SC decides the matter against them in the future and the same will not stand extinguished by any order passed by Ld. NCLT approving the resolution plan on the ground of it being an uncrystallized liability or on the ground of belated submission of the claim to the RP.

33. These developments around the SC judgment on AGR dues sent shockwaves in the telecom sector. All market players scrambled to revisit their growth prospects and future projections. Since the AGR dues were calculated for a period of 15 yearsfrom 2004 to 2018, the three older players: Naboo, Tatooine and Mandalore-Alderaan faced heavy payment obligations for these AGR dues of INR 8,000 crore, INR 6,300 crore and INR 5,000 crorerespectively. On the contrary, the new incumbent Sith had an obligation to pay a meagre sum of INR 300 crores – for which it gave a press release that it would fulfil immediately.

34. To add to Naboo's woes, the Hon'ble Supreme Court also raised concern about whether the AGR dues of the TelCos undergoing CIRP will get wiped-off and accordingly, in *Suo-motu Transfer Petition (Civil) 2 of 2022* ordered to transfer to itself, the pending appeal of DoT before Ld. NCLAT and framed the following question:

- Whether the License to use Spectrum can be*directly or indirectly assigned/* transferred to a Resolution Applicant / any other buyer under IBC unless the entire dues owed by the Corporate Debtor to DoT, including the AGR and the Spectrum dues, are cleared or until the assignee/ transferee furnishes binding assurances to the DoT in the form of bank guarantees/ support letters/ comfort letters to the effect that it shall honor and fulfil the relevant payment obligations to DoT?

35. This development before the Hon'ble SC became a major worry for the creditors of Naboo because of the reason that if the Corporate Debtors are saddled with governmental dues and if these dues have to be mandatorily cleared before transfer of 5G Spectrum, then the creditors will hardly be able to recover any of their dues.

36. The government's intervention in the CIRP had raised alarming concern at the highest levels in Sith. After having won the bidding war for Naboo and devoting countless hours to formulating, in its opinion a well-thought out and reasoned proposal under the resolution plan – the government's actions threatened to upset its plans. The massive bill for the AGR dues in the future had thrown all their careful financial calculations out of the window. The prized 5G spectrum allotment and the supporting infrastructure that Naboo had developed over the years was one the main reasons why Sith had bid for Naboo in the first place. Since TFI (*Sith's holding company*) did not have telecom operations at the time of the 5G spectrum auction, Sith could not bid for the spectrum then. Naboo's insolvency presented Sith an opportunity to get the extremely valuable 5G spectrum along with the accompanying infrastructure in an almost ready-made manner in one go. However, in light of these developments, even if Sith were to obtain Naboo's 5G spectrum as a result of the CIRP (and presuming that the Hon'ble Supreme Court were to accept DoT's prayers), Sith ran the risk of getting saddled with massive dues owed to DoT for a large part of the next decade/ few decades.

37. Sith was further concerned by Tatooine's SP as there were several reports which were doing rounds in the market that CoC might seriously consider the SP especially now when Sith's resolution was marred by various controversies including adverse remarks by the Ld. NCLT and a stay on its plan by the Ld. NCLAT.

38. Post the SC judgment in Writ Petition No. 1008 of 2018, Tatooine submitted a revised settlement proposal (**Revised SP**) to the CoC under sealed cover on 3 April2022. Under the Revised SP, Tatooine reiterated on their earlier proposal to pay the CoC for the 5G spectrum and accompanying assets in entirety andagreed to undertake 25% portion of the AGR dues levied on Naboo. As per the Revised SP, the remaining 75% AGR dues, and the remaining

legacy 3G and 4G businesses were to continue in Naboo, and Tatooine did not intend to undertake the same. While the CoC had not yet opened and considered the SP and this Revised SP, media reports indicate that several large CoC members are strongly inclined towards the same. The CoC was also considering approaching the Hon'ble Supreme Court to pass necessary directions to allow and directthe CoC to open, consider and vote upon the SP and the Revised SP.

39. The Hon'ble Supreme Court,*vide* its interim order dated 13 April2022, clubbed all the matters and formulated below issues for its consideration:

Issue No.1–Padme Amidala &Anr. v. M/s R2D2 Ltd. &Anr.,*Civil Appeal No. 161 of 2021*– *"Whether NCLT and NCLAT had erred in admitting the Section 9 petition filed by R2D2 against Naboo?"*

Issue No.2–**Department of Telecommunication, through its secretary v. JarJarBinks, CoC of Naboo and M/s Sith Technology,*Suo-motu Transfer Petition (Civil) No. 2 of 2022***–

"Whether the License to use 5G Spectrum can be directly or indirectly assigned/transferred to a Resolution Applicant / any other buyer under IBC unless the entire dues owed by the Corporate Debtor to DoT, including the AGR and the Spectrum dues, are cleared or until the assignee/transferee furnishes binding assurances in the form of bank guarantees/ support letters/ comfort letters to the effect that it shall honor and fulfil the relevant payment obligations to DoT?"

Issue No.3 –**CoC of Naboo v. M/s Sith Technology,*Miscellaneous Application No. 536 of 2022-***

40. While being apprehensive about the recoveries from the 5G spectrum License assignment owing to theuncertainty attached to the outcome of Issue No.2,the CoC decided to review its decision regarding the price at which it wanted to transfer Naboo's assets other than 5G Spectrum License. DOT's stance on clearing of 5G Spectrum License and AGRdues prior to transfer of 5G Spectrum Licensewas worrying for the CoC members as the same could result into denial of any recovery by the CoC. Therefore, CoC decided hive off 5G Spectrum License of Naboo in a separate bucket to deal with the eventuality that Issue No.2 was decided in favour of DoT and against the CoC. This was being done with an intent to safeguard other assets of Naboo apart from 5G Spectrum License from being embroiled in the controversy pertaining to clearance of 5G Spectrum License and AGR dues.Even Sith's

resolution plan, which was duly approved by CoC, was structured in a manner to deal with the eventuality arising out of DOT's objection on assignment of 5G Spectrum License and it contemplated an option whereby Naboo's assets other than 5G Spectrum License could be separately transferred to Sith.

41. However, uponhiving off the assets other than the 5G Spectrum License, the CoC realized that it was not getting a fair price for such assets under Naboo's resolution plan. Certain members of the CoC were of the view that given the low recoveries under Sith's resolution plan, CoC was dutybound to reconsider its approval in larger public interest.The CoC requested Sith to revise its offer under the resolution plan but Sith denied, which led the CoC to approach the Hon'ble Supreme Court to seek its permission to invite fresh EoI for Naboo. Sith opposed this application on the ground that once the CoC has given its approval to a plan, it does not have the right to reconsider such decision.

In light of this issue, the CoC filed a Miscellaneous Application before Hon'ble SC seeking clarity on the issue. Accordingly, the following issue was framed for Hon'ble SC's consideration:

"*Assuming Issue 2 isdecided in favour of DoT, whether, prior to approval of a resolution plan by the Adjudicating Authority,CoC has the right to 'reconsider / review' its approval in order to protect larger public interest?*"

Issue No. 4 - CoC of Naboo and Tatooine Telecom Ltd. v. M/s Sith Technology, *Miscellaneous Application No.598 of 2022*

42. Amidst the allegations of breach of confidentiality during approval of Sith's resolution plan and further stay of NCLT order approving Sith's plan by NCLAT, CoC of Naboo came to the conclusion that it ought to consider Tatooine's SP as the same offered higher recovery and thus, was in best interest of all the stakeholders. Sith negated the allegations and contended that the allegations were unfounded and therefore, CoC cannot wriggle out of resolution process especially when Sith's plan had already been approved by CoC members.In light of this, CoC filed a Miscellaneous Application before the Hon'ble SC seeking clarity on the issue. Accordingly, the following issue was framed for Hon'ble SC's consideration:

    a) *Whether CoC can consider Tatooine's SP/Revised SP after approving Sith's resolution plan, whose approval has been stayed by NCLAT amidst confidentiality breaches?*

b) *Assuming Issue 4(a) is decided in affirmative, whether CoC has the right to sell assets of Corporate Debtor in piecemeal fashion during CIRP when a moratorium has been imposed?*

c) *Assuming Issue 4(a) and 4(b) are decided in affirmative, whether Settlement Proposals such as Tatooine's oughtto pass the muster of Section 29A of IBC?"*

43. The Hon'ble SC has listed the above batch of matters for hearing from 11th – 13th November, 2022, when it will decide all the above-mentioned issues.

44. For the purpose of this Moot Court Competition:

- Teams arerequired to argue on all issues, and bear in mind that outcome of one issue maynot have any consequences on other issues. For example: If in Issue 1, the Court concludes that R2D2's Section 9 was wrongly admitted, parties will still have to argue Issue Nos. 2-4, which otherwise would have become infructuous due to absence of any ongoing CIRP.
- Arguments advanced by CoC in Issue No.3 and Issue No.4 maybe mutually exclusive of each other.
- Amendments introduced by the Parliament by way of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 i.e., Act No. 17 of 2020 shall remain inapplicable for the purposes of the instant competition.
- Rules and Regulations made under the Insolvency & Bankruptcy Code, 2016 will apply mutatis mutandis to the instant moot problem.
- The aforementioned judgement of the Hon'ble Supreme Court of India (**SC**), in Writ Petition No. 1008 of 2018, dated 23March2022, is materially same as the judgement of the Hon'ble Supreme Court in, *Union of India v. Association of Unified Telecom Service Providers of India (*Civil Appeal Nos. 6328-6399 of 2015), dated 24 October 2019. Participants to note that all subsequent orders passed by the Supreme Court in Civil Appeal No. 6328 of 2015 after the judgment dated 24 October, 2019 would remain inapplicable for the purposes of this moot court competition.