

NIRC-ICSI MEMBERS MOOT COURT PROBLEM 2015

IN THE HIGH COURT OF DELHI

Company Petition No: 125 of 2015

Mark Sentriz & Co. (MS) Petitioner

V.

Nero Motors Limited Respondent

1. Nero Motors Limited (“the Company”) was incorporated in the year 1991 in the State of Punjab with an object of carrying on the business of manufacturing motorized bicycles. The paid-up share capital of the company was 180 million comprising of 18 million shares of Rs. 10 each. The Company initially made a foray into manufacturing motorized bicycles and later into the two wheeler sports bike segment in India. In 2010, there was an unprecedented growth in the bike segment, which led the Company to invest heavily in that division.

2. With the focus shifting to bike segment, the bicycles business was largely neglected and contributed a very insignificant share to total revenues. At times, the Board of directors even considered discontinuing the bicycles business. However, the proposal was always thwarted by a few senior members of the management popularly known as the Sidhu group, being headed by the one of the promoters, N. Sidhu. This group did not subscribe to the new-age philosophy of sports bike but believed that bicycles, as a form of medium of transportation, still had the widest possible reach in the country and therefore, the business had to be nurtured and revived.

3. At that time, one of the biggest problems faced by the industry in general, and the Company in particular, was the rate of attrition amongst employees. The difficulty in retaining employees was more pronounced in the bicycles business and this led the Sidhu group to moot the proposal of engaging Human Resource Consultants to address the problem of attrition in the company. When the matter was brought up in the Board Meeting held in October 2012, the directors responsible for managing the bikes business opposed the suggestion contending that it would involve heavy investment with no commensurate tangible/perceivable benefits. After heated discussions, it was finally resolved that Consultants would be engaged for the entire company (not just the bicycles business) on an experimental basis for a period of 2 years initially, with an option for renewals every two years. It was further resolved that the entire amount of consultancy fees would be paid out of the annual budgetary allocation made to the Bicycles Division and would constitute expenses of the Bicycles business. Accordingly, a consultancy contract was entered into in December 2012 with a renowned Italian company Mark Sentriz & Co. (MS) which specialized in recruitment consultancy and employee retention programmes.

4. Some relevant clauses of the consultancy contract are reproduced below:

Reorganization Clause:

“(a)

(b) The Company agrees that no reorganization of business shall take place without notice to the Consultant. Provided that the consent of the Consultant shall not be required where no payments under the Contract are outstanding/due to the Consultant as on the date of sanction of the scheme for reorganization.”

Payment Clause-

“While the services may be delivered to different divisions separately and the Consultant’s fees and bills would be raised as a lump sum (giving a

break-up of fees for each division), the payment would be made as a lump-sum without any demarcation of the amounts attributable to each division”.

Dispute Resolution Clause:

“Any dispute arising out of or in connection with this contract shall be referred to arbitration by a panel of three arbitrators with one arbitrator appointed by each party, who will in turn agree upon the third arbitrator. The place of arbitration shall be Singapore and the language of arbitration shall be English.”

5. In the beginning of the year 2013, it was finally decided to hive off the bicycles business into a separate company under the Sidhu group and a demerger proposal was accordingly drafted. With a revival in the bicycle users, perhaps because of PM Modi’s focus on enhancing the human life style, it was believed that a demerger of the business to a separate company with a focused strategy would have a positive impact on revenues and also enhance shareholder value.
6. The salient features of the Demerger Scheme were as follows:
 - (a) All assets, debts, duties, liabilities and obligations of the Nero Motors Ltd. (demerging company), appertaining and relatable to the Bicycles Business as on the date of demerger (Effective Date), whether provided for or not in the Books of Accounts of the demerging company, whether disclosed or undisclosed in the Balance Sheet, shall be the assets, debts, duties, liabilities and obligations of Sprint Company Ltd. (Resulting company) and the Resulting Company undertakes to meet, discharge and satisfy the same.
 - (b) All legal or other proceedings by or against the demerging company under any statute, whether pending on the Effective Date or which may be instituted in future in respect of any matter arising before the Effective Date and relating to Bicycles Business (including those

relating to any property, right, power, liability, obligation or duties of the demerging company shall be continued and enforced by or against the Resulting Company only after the Effective Date.

(c) All contracts, deeds, bonds agreements and other instruments of whatsoever nature, relating to the Bicycles Business to which the demerging company is a party or to the benefit of which the demerging company may be eligible and which are subsisting or having effect immediately before the Arrangement shall remain in full force and effect against or in favour of the resulting company and may either be enforced as fully and effectually as if instead of the demerging company, the resulting company had been a party thereto or replaced by fresh contracts/deeds etc. executed by the resulting company with the third party concerned.

(d) Any statutory licenses, permissions or approvals or consents held by the demerging company required to carry on operations of Bicycles Business shall stand vested in or transferred to the resulting company without any further act or deed, and shall be appropriately mutated by the statutory authorities concerned therewith in favour of the resulting company.

(e) Consequent to the demerger, for every 3 equity shares held in the demerging company, the shareholder will receive 1 equity share in the resulting company.

7. After the Scheme was approved by 90% of the shareholders and 80% of the creditors of the Company, the High Court of Punjab and Haryana passed an order on 22.05.2013 sanctioning the Scheme without any modifications and a certified copy of the said order was filed with the Registrar of Companies on 15.06.2013. Following the demerger, Nero

Motors Ltd. also shifted its Registered Office from Punjab to Delhi as most of the directors of the demerged company were based in the capital.

8. While there were positive effects on shareholder value as a whole, the flip side of the demerger was that the Sports Bike business initially took a hit due to the sudden absence of senior personnel in the management of the company (Nero Motors Ltd.). This situation worsened with the loss of a few critical contracts for supply of bikes. For the first time since inception, the company reported huge losses for the FY 2013-14.
9. On September 12, 2014, Nero Motors terminated the Consultancy Agreement with Mark Sentriz & Co. In December 2014, MS sent a legal notice to Nero Motors Limited demanding the settlement of outstanding consultancy dues to the tune of Rs.150.26 million, being fees payable for the years, 2012-2013 and 2013-14 along with damages to the extent of 75 million for premature termination of contract [current tenure of the contract – 20.1.2013 to 20.1.2015]. According to MS, Mr. N. Sidhu, a member of the Sidhu Group had engaged the Consultant to conduct market research in the Sports Bike and Bicycles segments. MS produced written acknowledgements of Mr. Sidhu, which evidenced the commissioning of the said services as well as an undertaking on behalf of the company to pay for the same. MS contended that the amounts were admitted debts and MS was entitled to payment of the same. Incidentally, for the years 2013 and 2014 till the demerger took effect, Mr. Sidhu had been heading the Sports Bike division. However, with the demerger taking effect, he resigned from his directorship from Nero Motors Ltd. and took over as a director on the Board of SPRINT CO. LTD.
10. By reply dated March 21, 2015, Nero Motors Ltd. merely responded to the demand for damages and stated that the same was not payable as the termination was for cause and the Consultant had not provided any

services in the past 1 year. Subsequently, in April 2015, MS sent a demand notice under Section 434(1) (a) of the Companies Act, 1956 for its outstanding dues.

11. To this, Nero Motors Ltd. sent a response stating that all liabilities/obligations pertaining to the contract had been taken over by SPRINT COMPANY LIMITED and a copy of the earlier legal notice had already been forwarded to SPRINT for necessary action. Further, Nero Motors Ltd. contended that the sums claimed by the Consultant were for additional services allegedly rendered by the Consultant and were in excess of the contractual fees already paid to the consultant. The director, who had allegedly given the acknowledgment was no longer with the company and had no authority to act without the Board's consent in such matters. No entries were made in the books of accounts, which would amount to an admission of liability. In any case, the liability, if any, had to be borne by SPRINT.
12. On May 15, 2015, MS received a response from SPRINT CO.LTD stating that only liabilities relating to the Bicycles Business were taken over and therefore, the company could be held liable, if at all, only to that extent. Further, SPRINT disputed the said liability stating that the excess payment claimed was not a contractual liability and therefore not payable unless admitted by the Company. As far as damages were concerned, SPRINT disclaimed all responsibility for the same as it was an action taken by Nero Motors Ltd. and Nero Motors Ltd. alone could be held responsible for its consequences.
13. On July 5, 2015, MS filed a company petition before the High Court of Delhi for winding up of Nero Motors Ltd. under Section 433(e) read with Section 434(1)(a) of the Companies Act, 1956 on the ground that the Company was unable to pay its debts. The petitioners also filed

an application for modification of the Scheme for winding up and fixation of exact amount of liabilities of the respective companies towards the petitioners, by virtue of its powers under Section 394 of the Companies Act, 1956.

14. Nero Motors Ltd. countered the petition on the following grounds, among others:

- (1) Nero Motors Ltd. was under no obligation to pay the alleged debt, if any, as all obligations pertaining to the said contract had been transferred to SPRINT COMPANY LIMITED by virtue of the demerger.
- (2) Further, the alleged debt was one in respect of which, a bonafide dispute had been raised by Nero Motors Ltd.
- (3) The machinery of winding up was being used by MS to coerce the company into making payment of the alleged debt, which Nero Motors Ltd. is under no obligation to pay.

15. MS's contentions, among others, were as follows:

- (1) By terminating the contract, Nero Motors Ltd. had confirmed that it was the relevant party to the contract and therefore, all remedies for MS lay against Nero Motors Ltd.
- (2) There was no bonafide dispute, as the liability remained undisputed till the date of demand under Section 434(1) (a). This dispute was merely raised for the purpose of covering up the Company's inability to meet its payment obligations.
- (3) The Company was unreasonably refusing to pay the debt without just cause and with malafide intentions and therefore, the Court could order winding up in such instances.

16. You are required to substantiate the allegations/contentions of the parties with applicable case laws and statutory provisions. You may add to/vary the contentions above without deviating from/being inconsistent with the facts of the problem (till Para 13).



RULES AND REGULATIONS FOR NIRC-ICSI MEMBERS MOOT COURT COMPETITION

I. Introduction

Moot courts or mock trials are usually based on hypothetical cases involving emerging or unsettled areas of law.

II. Aim and Purpose

- a. To expose members to the nuances of court system in India to hone advocacy skills and putting them on the road to practice in the NCLT regime.
- b. To provide a *real-life* experience cum training in doing cutting-edge research, presenting ground breaking arguments (oral and written) and contributing to the development of jurisprudence in the concerned area of laws.

III. Subject, Venue and Date

The **NIRC – ICSI MOOT COURT COMPETITION – 2015**. The subject will be issues in the area of Corporate / Company affairs, including the functioning of regulatory bodies / authorities as applicable to the issues.

The case and rules for the competition can be downloaded from the website of ICSI, www.icsi.edu/nirc

IV. Language

The competition shall be in English.

V. Eligibility

The competition is open only to the members of the Institute. The participating teams are required to confirm participation by 24.07.2015.

Dress code

Formal wear:	Ladies:	Light coloured salwar, kurta, sari or pant/suit
	Gentlemen:	White shirt with tie and dark colored trousers

VI. Team Composition

- a. Each team shall consist of a minimum of 2 and maximum of 4 members. This number cannot be modified under any circumstances.
- b. There can be 2 speakers and 2 researchers designated in each team.
- c. However, teams have the option of designating two of their members (out of maximum of 4) to be speakers for the Petitioner and the other two speakers for the Respondent for the purpose of gaining experience.
- d. Each team will have a team code. Teams shall not disclose their identity or that of their region / city etc.; such disclosure shall invite automatic penalties including disqualification. The administrator's decision in this matter shall be final.

VII. Registration

Teams must register with the Administrator's office. All communications should be marked as **NIRC – ICSI MOOT COURT COMPETITION - 2015** in the subject column and sent by email to the Administrator within the specified time.

VIII. Memorials

The following requirements must be strictly met. Non-conformities will be penalised:

- a. Each team must prepare memorials for both sides to the dispute (Petitioner and Respondent).
- b. **The briefs shall be consistent with the Company Law Board Rules.**
- c. Once the memorials are submitted, no revisions, supplements, or additions will be allowed.
- d. Six (6) copies each of the memorials for Petitioner & Respondent + a soft copy on CD to be submitted at the venue on 26th July at 10 a.m.
- e. Memorials must be submitted on typed A 4 size paper printed on one side and must contain:
 - Table of contents
 - Index of authorities
 - Statement of jurisdiction
 - Statement of facts (1 page only. Submissions of an argumentative statement of facts would attract penalties)
 - Statement of issues
 - Summary of arguments
 - Arguments advanced (15 pages)
 - Prayer
- f. Memorials shall be staple bound. Comb / spiral or any other binding shall not be accepted.
- g. Memorials must have a one-inch margin on all sides of each page. Font size should be 12 and double-spaced. Footnotes must be in font size 10, single-spaced and double-space left between two foot notes.
- i. Page numbering should be on the bottom middle side of each page.
- j. Covers (only paper) must be placed on briefs as follows:
Petitioner: Blue Color, Respondent: Red Color.
- k. The cover page of memorials must state the following
 - The cause title
 - Identify brief as Petitioner or Respondent.
- l. Identity of a team in any form shall not be revealed anywhere in the memorial. Instead the allotted team code numbers should be mentioned on the top right corner of the cover. Violation of this provision shall result in penalties including disqualification. The team codes will be provided during orientation. The Administrator's decision shall be final.
- m. The teams shall have an option to submit one separate paper book which shall carry copies of relevant annexure(s), articles and case laws. The paper book shall have a white cover and 2 copies shall be submitted along with the memorials. Any identifying mark / seal on the paper book shall attract severe penalties including disqualification. The submission of this paper book **does not** necessarily entitle the team to any additional marks.

IX. Oral Rounds

In each oral round a team will be represented by two speakers who will present arguments and do the rebuttals / sur-rebuttals – all within the prescribed time limit of that respective round.

(Total 30 + 30 = 60 minutes)

- a. Each team will get a total of 30 minutes to present their case. Every minute of extra time will attract automatic penalties. The time includes questioning by the judges.
- b. The division of this time is at the discretion of the team members, subject to a maximum all inclusive of 18 minutes per speaker. Division of time shall be informed to the organisers at the time of registration and cannot be altered at any subsequent stage of the preliminary rounds. Both speakers must compulsorily speak.
- c. The oral arguments need not be confined to the issues presented in the memorials.
- d. There will be a minimum of Two Judges for the preliminaries.

X. Scouting

- a. Teams will not be allowed to observe the orals of any other team(s). Scouting is strictly prohibited. Scouting by any of the teams will result in disqualification.
- b. Any team can file a written complaint with the Administrator, regarding a case of scouting. The Administrator's decision will be final.
- c. The researchers shall sit with the speakers at the time of the orals and shall not attend the court sessions of any other team participating in the competition.

XI. Scoring

- a. Each round's total will be a sum of the oral scores for that round and the memorial scores.
- b. Final rounds will be judged only on the basis of oral presentations.
- c. If two or more memorials are found to be verbatim reproduction of each other, no points will be awarded for either of the memorials.

A. Orals

Parameters for judging on a scale of 0 – 140 points are:

- i. Knowledge of facts
- ii. Logic, reasoning and clarity
- iii. Persuasiveness
- iv. Deference to the court
- v. Proper and articulate analysis of the issues arising out of facts
- vi. Understanding of the laws directly applicable to the issues
- vii. Ingenuity (ability to argue by analogy from related aspects of law)

B. Written Submissions (Memorials)

- a. Any revisions, supplements or additions to the memorials after submission shall attract severe penalties subject to the discretion of the Administrator.
- b. Parameters for judging on a scale of 0 – 60 points are:

- i. Logical progression of ideas
- ii. Originality in analysis and arguments
- iii. Effective use of headings to outline arguments
- iv. Understanding essential legal issues presented
- v. Focus on essential (not collateral) issues
- vi. Clear, concise and unambiguous writing style
- vii. Forceful and persuasive presentation
- viii. Integration of facts into legal argument
- ix. Understanding of strengths and weaknesses of case
- x. Discussion of viable alternative arguments
- xi. Understanding and analysis of authority
- xii. Proper use of citations and citation form
- xiii. Effective use of authority to support arguments
- xiv. Ability to distinguish adverse cases
- xv. Neatness, legibility, typos or format errors

XII. Awards

- *Best Team*
- *Corporate Lawyer of the Year* (best advocate)
- *Best Memorial Award.*
- *All participants will get certificates of participation.*

Anonymity

- a. Member counsel may introduce him / her to the court in the usual manner and may also state their names. However, the team's region or office or other affiliations shall not be revealed at any time to any of the judges before the awards ceremony.
- b. Further, all team members, coaches, advisors, and observers shall refrain from identifying a team at any time and in any manner, including, but not limited to, wearing any identifying items, such as badges, blazers or identifying material (such as books, logo or seal of the college, regional / chapter office).

XIII. Copyright

- a. The copyright over the memorials submitted for participation in the competition is assigned by participants and shall also vest completely and fully in Northern India Regional Council of the Institute of Company Secretaries of India. The participants shall certify in writing the originality of materials contained therein and shall be responsible for any claim or dispute arising out of the further use and exhibition of these materials.
- b. Further use and exhibition of these materials, electronically or otherwise, shall be the exclusive right of Northern India Regional council of the Institute of Company Secretaries of India (who shall not be responsible for any liability to any person for any loss caused by errors or omissions in such material, or for the accuracy, completeness, or adequacy of the information contained in these materials).
- c. Publishing of these materials on affiliated websites such as www.icsi.edu/niro does not constitute consent to any use of this material for commercial redistribution in any manner whatsoever. However, links directing to the collection or individual pages are welcome.

d. Top memorials may be displayed and / or distributed at any programme organized by NIRC

XIV. Miscellaneous

1. Participants are required to maintain proper decorum in the court during competition. The administrators reserve the right to take appropriate action for any unethical, unprofessional or immoral conduct.
2. The administrator reserves the right to vary, alter, modify or repeal any of the above rules if so required and as they deem appropriate.

XV. Administrator contact information:

ICSI-NIRC

Administrator, ICSI National Moot Court Competition

ICSI-NIRC Building

Plot No 4, Prasad Nagar Institutional Area

Rajendra Place, New Delhi 110 005

Email ID: alka.arora@icsi.edu

Phone: 011-49343005

Date:

REGISTRATION FORM
(Please fill in capital letters)

Undertaking

1. We hereby state that our participation complies with the rules and regulations of the competition.
2. We certify that the materials submitted are prepared by us and indemnify the organizers for any claim or dispute arising out of the further use and exhibition of these materials.

Name	Membership No.	Mobile No.	Email Id	Signature
1.				
2.				
3.				
4.				