



Dharmashastra

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MOOT COURT COMMITTEE

Presents...

DNLU NATIONAL MOOT COURT COMPETITION 2024

15-17 November, 2024

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Moot Proposition

- [1.] Republic of Indica has witnessed a new economic trend due to its policy and promotion of start-up culture. The policy support and governmental oversight has made it more attractive for businesses to innovate, compete, sustain, and thrive in the given market / 'relevant market' as defined under the Competition Act, 2002.
- [2.] One of the start-up entities, named as 'ABC Corporation' – a private company, commenced its operations in the year 2020 in providing consultancy and advisory services to various clients across different segments (i.e. corporations, SMEs, partnership, proprietorships, and individuals) on 'financial investment' including investment in the securities market in accordance with the relevant 'laws' of RBI and SEBI under the constitutional structure of the Republic of Indica. All the laws and regulations of Republic of 'Indica' is *pari materia* to the laws of India.
- [3.] Mr. 'X' who was one of the founder directors of the 'ABC Corp.' – took an exit route¹ in its 3rd Year of founding. He is no longer associated or connected with the 'ABC Corp.' or any of its functions/ tasks or businesses which it carries out. Further, the founder's agreement of 'ABC Corp.' had a 'covenant not to compete' for six months from the date of severance of all ties. However, Mr. 'X' started his 'youtube' channel in the month of June 2024 on various intricacies, tricks, theories (unproven), methods (not based on any scientific premises) and decisional methods to invest in Indian securities and his videos were instant hit among the viewers. Obviously, he was not a license-holder or certified financial advisor as per the SEBI guidelines.
- [4.] Mr. 'Y', who clubbed and socialized together with Mr. 'X' since 2014, introduced his business partner Ms. 'Z' to Mr. 'X' at a poker event. During the event, Ms. 'Z' showed interest in making strategic investments in her personal capacity in various companies and in securities market of India. In the month of August 2024, the news in the business corridor was that 'ABC Corp.' has decided to go public in its 4th year of founding. Ms. 'Z' and her company made a huge investment by way of 'QIP' in the ABC Corp. just before its IPO date. Mr. 'X' acted as her 'consultant' for the investment. It is also believed that a large number of individual / retail investors participated in the allotment of IPO of the 'ABC Corp.' – which cumulatively made it as one of the 'hottest' listings of Indian security market in the year 2024.

PART II

- [5.] The principle of 'public policy' that 'no court will lend its aid to a man who found his cause of action on an immoral or an illegal act' – as enunciated and elucidated 250 years ago in *Holman v. Johnson* (1775) 1 Cowp 341 at 343, [1775-1802] All ER 98 at 99 remains one of the

¹ The effective date of his resignation was 01.01.2024.

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cherished legal principles. Since then, it has found its utility, application in various legislation, judicial decisions and remains one of the cardinal principles governing contractual relationship(s) in modern days also.

- [6.] However, a distinction in the authorities between ‘repentance cases’ and ‘frustration cases’ is a development of 20th Century in contrast with 19th century’s principles governing contractual relationships.

Part III

- [7.] There was an arrangement between Mr. X and Ms. Z, wherein it was stipulated that Mr. ‘X’ would get advance knowledge of what information a statement anticipated to be made by the RBI which will have an impact on the government investment in various corporations, and that the shares of competitors / rivals of ‘ABC corp.’ would rise or fall dependent upon that statement contained. Accordingly, if Ms. ‘Z’ transfer moneys to Mr. ‘X’, he would place them in his ‘Angel Index Account’ and would be able to gain maximum benefit from such rise or fall. Whereas Ms. ‘Z’ will be making strategic entry as investor in ‘ABC Corp.’ as indicated in para 4 of this moot proposition. Mr. ‘X’ would be placing the fund provided to him by Ms. ‘Z’ once he had the information set out above and therefore minimalizing the risk associated.
- [8.] One of the elements of understanding – cum- agreement between Ms. ‘Z’ and Mr. ‘X’ was that Mr. ‘Y’ was not, nor was to be, involved in the transaction in any manner and Mr. ‘X’ would get his commission on both counts i.e. gain from listing of the share of ‘ABC Corp.’ and other investment on ‘Angel Index Account’. The fact remains that Mr. ‘X’ did not have any ‘information’ as expected and contemplated in the previous paragraph. Despite that Mr. ‘X’ went ahead with investing the money as transferred by Ms. ‘Z’.
- [9.] The investment made through the ‘Angel Index Account’ failed miserably and there was a total loss of USD 50,0000. Ms. ‘Z’ made a claim against Mr. X for recovery of this loss, which Mr. ‘X’ refused. Ms. ‘Z’ subsequently filed a suit for recovery against Mr. X. The High Court of Delhi (single judge bench) held that there was an illegal arrangement between Ms. ‘Z’ and Mr. ‘X’ which directed at achieving a profit from the movement of shares using insider information. The High Court thus held that since illegality strikes at the root of the contract, the claim of Ms. ‘Z’ is dismissed.
- [10.] ‘ABC Corp.’ made representation before the SEBI, complaining about the illegal activities that Mr. ‘X’ i.e. his YouTube videos and acting as financial celebrity cum investment guru without any certification or authorization and requested that Mr. X be ordered to down all his ‘YouTube videos’ because of the proximity (in terms of timing) since the information passed on by him qualifies to be ‘insider dealing’ specially the investment made by Ms. ‘Z’ just before the IPO. SEBI passes an order dated 24.09.2024 imposing penalty on Mr. ‘X’, debarred his PAN CARD

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and restrained Mr 'X' from accessing the securities market, directly or indirectly and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of six months beginning 01.10.2024. The order dated 24.09.2024 also reads as under:-

“*** we further request the MCA to initiate an appropriate action against Mr. 'X' for cancellation of his DIN number and imposition of penalty on account of misuse of the crucial information held in 'trust' as one of the founding directors of the 'ABC Corp.'.”

- [11.] Mr. 'X' challenges the constitutionality of 'covenant not to compete' as found in the founder's agreement violative of Article 19 of the Constitution of Indica in contemporary times. He bases his argument on 'economic choices' and 'cost- benefit analysis' of such clauses in the employment agreement as well as commercial world.
- [12.] An organisation named 'Transparency in Governance' [hereinafter; **TIG**] filed a PIL before the Supreme Court of Indica seeking guidelines for such 'youtuber' in public interest and made Mr. 'X' a part- respondent also.
- [13.] That considering the importance of the issue involved in the petition, Supreme Court of Indica [hereinafter; **SCOI**] allowed Mr. 'X' to raise additional issues and additional pleadings as well. It also issued notice to the Special Leave Petition filed by Ms. 'Z' challenging the order of the Single judge bench of the High Court of Delhi and clubbed the same.
- [14.] The SCOI has framed the following issues for its consideration as it fixed the date of hearing on 15-17 November 2024.

Issue:

1. Whether the action of Mr. 'X' is protected under Article 19 of the Constitution of India or not? What is the constitutional validity of 'covenant not to compete' in the employment as well as founder's agreement in the commercial transaction in the present facts and circumstances?
2. Whether it is open to the claimant [Ms. 'Z'] to recover money paid under an (illegal) agreement in circumstances in which the claimant neither repudiates nor withdraws from the agreement before its performance, but in which its performance then becomes frustrated?
3. Whether Ms. 'Z' was entitled to recover the amount otherwise also in the eyes of law or not?
