**MOOT PROPOSITION**

1. The Republic of Xylum is a developing country with an estimated population of 1.3 billion. Over the past three decades, while Republic of Xylum’s GDP has constantly grown at about nine percent, the country’s healthcare sector continues to lag behind. According to the Xylum Medical and Healthcare Association, the Country’s spending over Healthcare regime remains low at 1.4 percent of the GDP. This is dismal, when compared with the USA’s 17 percent or China’s 5.5 percent. The government aims to increase the healthcare spending to 2.5 percent of the GDP by the end of its 12th five year plan, and to 3 percent by 2022. Much of this will be done through public private partnerships and using technology to increase the reach and multitude of healthcare services.
2. In 2015, realizing the significance of Healthcare regime being an acutely understood issue in Xylum, and with a fast-growing middle class and increased usage of Internet and mobile broadband, enabling it with technology, is very important, leading to high demand for quality and affordable healthcare in Xylum. Healthcare regime in Xylum is poised to grow from $100 billion in 2016 to $280 billion in 2020, creating huge opportunity for healthcare and health-tech companies and startups.
3. With more incentives from the Government of Xylum, various start-ups /ventures came up to solve the key issue of last-mile connectivity and technology, being the key means to connect the citizen of Xylum with the Government Healthcare Scheme, various Healthcare online applications were developed. One of the venture named Salubrity Venture (hereinafter referred as ‘**Venture**’) began in Year 2015, and was established by two Xylum graduates named Ms. Andrea Jane and Mr. Menin Sadaf, from two elite American institutions University of Pennsylvania (Upenn) and MIT with an objective to make a genuine and large impact on Xylum’s healthcare sector. The Venture was formed with the mission to bring digital nutrition and fitness services to billions of citizens of the Republic of Xylum. The Venture was registered with the Registrar of Companies under the Companies Act, 2013 of the country.
4. In April 2015, the Venture realized that by building the first ever healthcare online application with the never heard technologies, they could grab the limelight in the healthcare sector of the country. They commenced with the idea that the healthcare online application was unique for the citizens of the country and there was a surge in the number of smartphone users in the country but the same was lacking an online tracking application which can be easily accessed by them. Keeping this great notion in mind, of developing an online calorie counting, workout and doctor consultation application, the Venture went on to various investors in Xylum seeking financial assistance so that they could kick start with their mission of developing a successful online healthcare application. That the total development cost of the online application was estimated to be XNR 5 Crore. That the task of getting investment from the government banks of Xylum became easier for the Venture, when the Government of Xylum in the budget announcement in the year 2016, declared to give proper financial assistance, incentives and motivation for entrepreneurs, specifically emphasizing upon the start-ups elevating the Healthcare regime in the country. On the basis of the Government’s newly found vision of uplifting the Healthcare sector in the Country of Xylum, one gigantic loan amount was rendered by the Federal Bank of Xylum in 2016 to facilitate the Venture by tendering them a loan of an amount XNR 3 Crore and the same was to be paid within 2 years from date of receiving the loan, on the basis of monthly installments of XNR 12.5 lacs with 3% interest rate.
5. That on receiving this loan amount from the Federal Bank of Xylum, the Venture in the year 2016 entered into a contractual relationship for an amount of XNR 1.5 Crores for 2 years, with one of the Companies named Motion World Pictures (hereinafter referred as ‘**Company**’), which was not registered with the Registrar of Companies (RoC) under the Company law of Xylum. The Contract was entered into for hiring five Animators for the purpose of developing the animated workout and yoga training sessions for their online application. Out of the five Animators, one of the Animator was required by the Venture beyond the development of the online application, if in case any bug/issue arises when the animated workout training session is being operated by the users, then the same can be resolved on immediate basis, without hampering the functioning of application for a longer time. The animated workout and yoga training sessions developed by the animators were copyrighted in the individual capacity of the Animators and the license was issued in the name of the Venture authorizing them to use the same for the purpose of the online application. That the Agreement entered between the parties had a dispute resolution clause that in case any dispute arises between the parties with respect to the agreement the same shall be referred to Arbitration.
6. The Venture adopted all techniques and business management skills to attract the citizens to download the online application in their smartphones or laptops, in order to continuously inspire the citizens of Xylum to become healthier. By this online application called FitoFreak.inc, one could easily track its intake of calories by selecting the respective cuisine had by them in various meals, workout, water and the entire process. In its time FitoFreak.inc became the first application which introduced a full-fledged animated workout session taking to consideration the height, weight, age and BMI ratio of the users. Further, it proved to be the first online application which digitally offered nutritionist and fitness trainer services and the same turned out to be convenient for users to keep a track on their fitness regimes, making them a pioneer of a movement called “Quantified Health” in Xylum.
7. Meanwhile, after seeing the response of the citizen of Xylum towards the FitoFreak.inc, the Venture decided to take FitoFreak.inc to new heights i.e. making it a successful healthcare online application globally. With this, Venture pitched in their business idea to several foreign investors, looking forward to the investment to the tune of XNR 40 lacs. Impressed with their high headed strong approach, one of the renowned business tycoon Mr. Larry Anderson came forward to invest an amount of XNR 30 lacs as well as two another individual investors named Ms. Priya Patel and Mr. Jim Kocoo showed willingness to invest in their online application FitoFreak.inc to the tune of XNR 10 lacs each. That in lieu of the loan amount, the Venture gave a security deposit cheque, amounting to 10% of the loan amount to the individual investors. Further, an agreement was entered with all the individual investors stating that the payment of the loan amount rendered by them in 2016 shall be made within the time period of 2 years along with the interest of 8 percent.
8. In December 2016, FitoFreak.inc was ranked number 1 by ‘TimesIN Now’ magazine in providing the user friendly and customized online application taking the Government’s vision for the healthcare regime to the next level, globally. This idea of Ms. Andrea Jane and Mr. Menin Sadaf did not only encourage youth to begin their own startups but revolutionized the concept of being fit for the people of their country and outside. Due to the success of FitoFreak.inc, the Venture also came out with the concept of e-pharmacy, whereby a new tab in the online application FitoFreak.inc was introduced, wherein the users may click a picture of their prescriptions; post on the application to order the medicines, and after the order being placed the same was to be supplied by them within 6 hours from the order.
9. The fastest growing Venture found itself in trouble when the offline trader lobby, both politically and financially powerful, saw the e-pharmacy as a threat and waged the legal matters in several courts to thwart the emergence of this startup. One anonymous person lodged a Complaint against the Venture before State Drug Controller for the supply of non-standard quality, adulterated or misbranded drugs through the E-pharmacy introduced in their online application FitoFreak.inc. On further investigation by the Authorities, it was found that the Venture has failed to register themselves with Central Licensing Authority under Drugs and Cosmetics Act, 1940, for conducting an E-pharmacy business through their online application FitoFreak.inc. Moreover, by this act of the Venture, it was also booked under the Prevention of Money Laundering Act, 2002 as they have gained huge amount of profit from carrying out this illegal e-pharmacy business without any registration/license from the competent authority under the Drugs and Cosmetics Act, 1940. Because of this, the medicines at the warehouse center of the Venture located at Seilia were also seized by the Adjudicating Authority of the Prevention of Money Laundering Act, 2002. Further, the cognizance of offence was taken against the Venture and subsequently arrest warrant was issued against both the founders of the Venture. Meanwhile, the Venture was banned from continuing the E-pharmacy business. That against the said order of the Adjudicating Authority, an appeal was preferred by the Venture before the Appellant Tribunal on the ground that there is no provision of registration for conducting E-pharmacy business under Drugs and Cosmetics Act, 1940 and moreover, the Venture only delivers the medicines and have no manufacturing unit of its own. That the Appellant Tribunal accepted this defense of the Venture and dismissed the order of the Adjudicating Authority, but the Appellate Authority levied the penalty to an amount of XNR 10 lacs on the Venture on account of uplifting the ban. That the Adjudicating Authority under Prevention of Money Laundering Act, 2002 preferred an Appeal bearing no. 1210/2018 before the High Court of Seilia, Xylum against the Appellant Authority’s order and the same is pending.
10. That seeing this sudden change in situation of the Venture, the Animators who were appointed for the development of animated workout and yoga training sessions for the online application, no longer wanted to work along with Venture and they broke their ties with Venture, without fulfilling their contractual responsibilities, as there were a lot of bugs and issues in the animated workout and yoga training sessions. Further, the Venture failed to fulfil their contractual obligation with the Company, due to which the license issued for the use of animated workout and yoga training sessions was revoked by the Company. Even after the revocation of license, the Venture failed to take down the developed animated workout and yoga training sessions from their online application, which were also copyrighted in the individual capacity of the Animators. That the notice was sent by the Venture to the Company for invoking Arbitration Clause under the agreement and for the appointment of the Arbitrator pursuant to which Arbitration proceeding commenced. Before the Arbitral Tribunal the Venture filed its statement of Claim and demanded specific performance of the Contract from the Company as well as compensation to an amount of XNR 1.5 Crores for non-compliance of the terms and conditions of the agreement. In response to this, Counter Claim was filed by the Company on account of non-payment done by the Venture under the Agreement for the past one year. After hearing both the parties, the Arbitrator passed an award, wherein the adjudication of the Counter Claim filed by the Company was rejected by the arbitrator on ground of non-payment of the Arbitral fees by the Company and partially allowed the claim filed by the Venture to the amount of XNR 85 lacs, but rejected the specific performance of the Contract. After receiving this award, both the parties challenged the same under Section 34 of the Arbitration and Conciliation Act, 1996 before Commercial Court of Xylum wherein the rejection of the specific performance and partial acceptance of the claim amount was challenged by the Venture and simultaneously the Company Challenged the non-adjudication of the Counter Claim raising the defense that whatever Arbitral Fees, which was asked by the Arbitrator was paid by the Company. That the Adjudicating Court under Section 34 also upheld the award. That an Appeal against the said order was preferred by both the parties under Section 37 of the Arbitration and Conciliation Act, 1996 before the High Court of Seilia, Xylum, wherein one of the important issue raised by the Company was whether the Arbitrator was justified in rejecting the adjudication of the Counter Claim, when no objection was raised by him during the Arbitration proceedings and till the end Company was under this presumption that the adjudication of Counter Claim will be done by the Arbitrator, as all the requisite arbitral fee was paid by the Company, as and when asked by the Arbitrator. Another issue which was raised by the Venture was that since the very beginning they demanded the specific performance of the contract as fulfillment of contractual obligation was time bound, and the compensation in lieu of the same would not be an adequate relief. That the High Court without taking into consideration the arguments rendered by both the parties towards the issues raised by them, upheld the award passed by the Arbitrator. Hence, the Company preferred an Appeal bearing No. 1310/2018 before the Supreme Court of Xylum, against the order passed by the High Court of Xylum, and the same is pending.
11. Due to such legal hassles, the Venture experienced downfall in its business activities, whereby it could not pay the aforementioned loan amount, resulting in the Insolvency Proceedings being initiated against the Venture in the NCLT by one Mr. Larry Anderson towards the non-payment of loan amount rendered by him to the tune of XNR 30 lacs within the stipulated time. The insolvency proceedings were accepted by the NCLT and a Resolution Professional was appointed. That a notice was issued in the various newspapers regarding the insolvency proceedings after which claims were preferred by various creditors against the Venture, including two individual investors, named Ms. Priya Patel and Mr. Jim Kocoo who rendered a loan amount to the tune of XNR 10 lacs each. Committee of Creditors was formulated in which one of the sole creditor was Federal Bank of Xylum, which rendered loan for an amount of XNR 3 crores. The Resolution Professional while verifying the claim amount of all the creditors accepted only the principal amount and rejected their claim with reference to the interest. That another notice was circulated by the Resolution Professional inviting Resolution Plan, towards which two resolution plans were submitted; one by the Corporate Debtors themselves and another by Mr. Larry Anderson who initiated the insolvency proceedings against the Venture. That the Resolution plans were submitted for the approval before the COC, who accepted the Resolution Plan submitted by the Corporate Debtors. Meanwhile, an interim application was preferred by the Resolution Professional pointing out various coercive actions under Section 68, 69 & 70 due to the Transactions u/s 43, 45, 50 and 66 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtors and the same was pending before the NCLT for adjudication. Simultaneously, the Resolution Plan submitted by the Corporate Debtors was submitted for the approval before the NCLT. Further, various interim applications raising objection towards rejection of interest was preferred by the aforementioned creditors before the NCLT. That the NCLT without adjudicating upon these interim applications and without taking into consideration the pending interim application filed by the Resolution Professional pointing out fraud and various operation mismanagement in the accounts of the Venture, approved the Resolution Plan which was submitted by the Corporate Debtors. That aggrieved by this order of the NCLT, Mr. Larry Anderson along with other Creditors preferred an Appeal before NCLAT, but the same was dismissed by upholding the order passed by the NCLT. That the Creditors now have invoked Civil Original Appellant Jurisdiction of the Supreme Court of Xylum, raising the issue that whether the NCLT and NCLAT was justified in approving the Resolution plan which was submitted by the Corporate Debtors ignoring the fact that the interim application was pending before the adjudicating authority for adjudication pertaining to various allegations raised against the Corporate Debtors by the Resolution Professional on account of fraudulent and wrongful trading, preferential transactions, undervalued transaction and defrauding the creditors, further, seeking liquidation of the Venture, the Appeal Bearing no. 1410/2019 is pending for the adjudication before the Supreme Court of Xylum.
12. Taking into consideration the common factual background of the cases, the Hon’ble Supreme Court of Xylum, seated at the national capital Hobragade, along with the Appeal Bearing no. 1410/2019 filed invoking Civil Original Appellant Jurisdiction of the Supreme Court of Xylum as well as Appeal bearing No. 1310/2018 pending before the Supreme Court of Xylum has transferred the Appeal bearing no. 1210/2018 from the High Court of Seilia, Xylum and clubbed all the above mentioned matters. That the issue pertaining to maintainability of clubbing of all these Appeals has already been settled by the Supreme Court of Xylum. Hence, the matters have been listed for final hearing and are scheduled to take place on date ­­­\_\_\_\_\_\_\_.

**Notes:**

* The Constitution of Xylum and all laws within the Republic of Xylum are *parimateria* with the laws of India.
* The participants are not expected to argue on procedural aspects, such as transferring and clubbing of the matters.
* The participants arguing the FOR side would be representing the Petitioner(s)/Appellant(s) and the participants arguing the AGAINST side would be representing the Respondent(s).

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| --- | --- |
| **FOR** | **AGAINST** |
| Adjudicating Authority Under Prevention of Money Laundering Act, 2002 | Salubrity Venture |
| Motion World Pictures | Salubrity Venture |
| Mr. Larry Anderson and others | Salubrity Venture |

**ANNEXURE-1**

**Agreement Between Motion World Pictures and Salubrity Venture**

**RELEVANT CLAUSES**

**Agreement** has been entered into on the 21st day of August, 2016 at Xylum

Between:

1. **World Motions Picture**, a company not incorporated under the Companies Act, 2013 having its registered office at Mount Poonamalle Road, Manapakkam, Xylum (hereinafter called “**Company**”) which expression shall include its successors and permitted assigns (the **“First Party”**) of the First Part; and
2. **Salubrity Venture**, a Venture incorporated under the Companies Act, 2013 having its registered office at 386, Veer Savarkar Marg, Prabhadevi, Xylum (hereinafter called “**Venture**”) which expression shall include its successors and permitted assigns (the **“Second Party”**) of the Second Part.

The Company and the Venture shall be individually referred to a “**Party**” and collectively as “**Parties**”.

**WHEREAS:**

The Company and Venture entered into an Agreement with the main object of developing the animated workout and yoga training sessions for their online application i.e. FitoFreak.inc.

NOW THIS DEED OF AGREEMENT WITNESSES THE TERMS AND CONDITIONS AS FOLLOWS:

1. **Contractual Relationship:**

The Contract was entered into for hiring five Animators for the purpose of developing the animated workout and yoga training sessions for their online application. Out of the five Animators, one of the Animator was required by the Venture beyond the development of the online application, if in case any bug/issue arises when the animated workout training session is being operated by the users, then the same can be resolved on immediate basis, without hampering the functioning of application for a longer time.

1. **Payment Terms:**

The contractual relationship has been entered for an amount of XNR 1.5 Crores for 2 years. With the Condition that an advance of an amount of XNR 50 Lacs and remaining XNR 1 Crores with a yearly installment of XNR 50 Lacs. And in case delay in payment an interest of 24% from the date of delay.

1. **Brand Ownership:**

The animated workout and yoga training sessions developed by the animators were copyrighted in the individual capacity of the Animators and the license was issued in the name of the Venture authorizing them to use the same for the purpose of the online application.

1. **Indemnification:**

Company will indemnify the Venture, limited to its scope of animated workout and yoga training sessions from any losses due to any breach of clauses by the Company e.g. Late delivery, non-fixing of bugs and issues, not honoring of any clauses in this agreement, any loss to Venture/End customer due to not conforming to the technical specifications given in the requirement in Hardware + O.S. + "application on the device", which is primary responsibility of the Company.

1. **Delivery Time:**

The development of animated workout and yoga training sessions was required to be done within 6 months from the date of this Agreement.

1. **Terms of Contract:**

That the Agreement shall come into force immediately and shall remain valid until 2 years with further extension of 6 months on mutual consent of parties.

1. **Governing Law:**

This Agreement shall be governed by the laws of Xylum.

1. **Dispute Resolution:**

Any and all claims, disputes, questions or controversies involving the Parties and arising out of or in connection with the Agreement, or the execution, interpretation, validity, performance, breach or termination hereof (collectively, “**Dispute(s)**”) that cannot be finally resolved by the Parties within thirty (30) calendar days of the arising of a Dispute by amicable negotiation and conciliation shall be referred to a panel of arbitrators consisting of one arbitrator appointed by the petitioner, one arbitrator appointed by the respondent and both the arbitrators shall appoint the presiding arbitrator and the arbitration shall be conducted in accordance with the Xylum Arbitration and Conciliation Act, 1996 as amended from time to time. The venue of Arbitration shall be Seilia.

1. **Jurisdiction:**

Subject to Clause 8 above, this Agreement shall be subject to the jurisdiction of the courts in Xylum.

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